

Seller Financing

Impact of the Safe Act and the Dodd-Frank Act

(July 5, 2011)

EXECUTIVE SUMMARY

Seller financing plays an important role in financing the sale of real estate, especially when credit is tight. This paper summarizes the impact of two federal laws that affect seller financing. On July 30, 2008, President George W. Bush signed into law the Secure and Fair Enforcement for Mortgage Licensing Act (the SAFE Act). The SAFE Act requires licensing or registration of loan originators. On July 21, 2010, President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or DFA). The Dodd-Frank Act restructures the oversight of financial regulation and includes amendments to the Truth in Lending Act (TILA). Both of these laws will affect seller financing, except to the extent exempted.

SAFE Act. Licensing of loan originators under state laws enacted pursuant to the SAFE Act and meeting minimum federal requirements is already required. The HUD website has [information about the SAFE Act](#). HUD has published a final rule establishing minimum federal standards that requires licensing of individuals who engage in the business of a loan originator. An individual engages in the business of a loan originator if the individual, in a commercial context and habitually or repeatedly, takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain. HUD's overall responsibility for interpretation, implementation, and compliance transfers to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011. The law exempts those who only perform real estate brokerage activities unless compensated by a lender, mortgage broker, or other loan originator (or their agent). Unless brokers/agents engage in the business of a loan originator, they will not have to be licensed as loan originators.

Dodd-Frank Act. Title XIV of the DFA states that no creditor may make a mortgage loan without making a reasonable or good faith determination that the customer has the ability to repay the loan. "Qualified mortgages," as defined in Title XIV, are considered to have met the ability to repay standard. The Federal Reserve Board published a proposed rule on May 11, 2011. Comments are due to the CFPB by July 22. The CFPB takes over responsibility for Title XIV on July 21. Title XIV will not take effect until final regulations to be issued by the CFPB go into effect. CFPB has until January 21, 2013, to issue the final regulations, and they must take effect no later than 12 months after their issuance. If CFPB misses the deadline, Title XIV takes effect anyway on January 21, 2013.

The DFA definition of mortgage originator exempts an individual (or an estate or trust) that provides mortgage financing for no more than 3 properties in any 12 month period from the requirements of Title XIV, but only if the financing meets certain rules:

1. The seller did not construct the home.
2. The loan is fully amortizing (no balloon mortgages allowed).
3. The seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan.
4. The loan has a fixed rate or is adjustable after 5 or more years, subject to reasonable annual and lifetime caps.
5. The loan meets other criteria set by the Federal Reserve Board.