July 6, 2011

Dear U.S. Habitat affiliate leader,

As you are no doubt aware, Habitat for Humanity has been advocating for more than two years to achieve a positive outcome regarding the federal mortgage licensing rule known as the SAFE Act (SAFE Mortgage Licensing Act of 2008). Habitat affiliates, state support organizations and Habitat for Humanity International staff have all worked tirelessly to advocate and educate decision-makers on behalf of the ministry and our partner families. It is my pleasure to announce that all of your hard work has paid off. Last week, the Department of Housing and Urban Development issued the SAFE Act Final Rule, which provides for a full exemption for bona fide nonprofits such as Habitat affiliates.

Although the final rule doesn’t specifically mention Habitat, it explains that employees of bona fide nonprofit organizations who act as loan originators do not act in a commercial context and are not covered by the SAFE Act. Consequently, neither Habitat volunteers nor employees acting in the normal course of Habitat’s work will need to meet the licensing or registration requirements of the SAFE Act.

In order to ensure that this exemption is recognized by your state, Habitat affiliated organizations will again need to reach out to their state decision-makers. Affiliates should coordinate with their state support organization or the affiliate that has been leading previous SAFE Act discussions in their state to determine the best process for contacting officials. Because statewide coordination can be more difficult without an SSO, we also ask those affiliates that have been leading the process in states with no SSO to make other affiliates and HFHI aware of their next steps. In most states, the exemption process should be fairly straightforward, as Habitat has already been able to secure state-level exemptions in the majority of states around the country. Those exemptions now simply need to be updated to include HUD’s determination.

The key to securing that exemption is whether a nonprofit will be considered “bona fide” by state regulators. HUD provided a series of guidelines to help state regulators make that determination. Habitat affiliated organizations should be prepared to provide documentation and background materials for each of the HUD guidelines below, as detailed in the Federal Register [76 Federal Register 126 (June 30, 2011), p. 38466], when asking their state regulators for an exemption:

2. Promotes affordable housing or provides homeownership education or similar services.
3. Conducts its activities in a manner that serves public or charitable purposes.
4. Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients.
5. Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients.
6. Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.
7. Meets such other standards that the state determines appropriate.
Habitat affiliated organizations should have no trouble meeting any of these guidelines and being classified as a bona fide nonprofit. (Note: The full rule can be downloaded by clicking here. For quick reference, the most pertinent pages are 3 and 4 of 38).

Please also note that this determination does not provide any exemptions from any other federal requirements such as RESPA or Truth-in-Lending, and that affiliates may still be required to meet state licensing or registration requirements. Affiliates should confirm with their state decision-makers as to what requirements they must still meet in order to do business in their community. It is the duty of every Habitat affiliate to meet all applicable state laws and regulations.

Affiliates with additional questions on the SAFE Act and the HUD final rule should reach out to John Snook, HFHI’s director of state and local relations, at jsnook@habitat.org or 800-HABITAT, ext. 4418, or Frankie Berger, associate director of state and local relations, at fberger@habitat.org or 800-HABITAT, ext. 4408.

In partnership,

Larry

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