

[S.A.F.E. Act Compliance FAQ for Rules]

This year, the U.S. Department of Housing and Urban Development issued final rules clarifying the scope of S.A.F.E. Act to certain nonprofit organizations and units of local government. In response the Department of Consumer and Business Services adopted rules in November 2011 clarifying state-law license requirements for mortgage loan originators. This FAQ is meant to assist you as you review the department's [adopted rules](#).

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Our organization is a government entity. Are our employees required to obtain mortgage loan originator licenses?

As adopted by DCBS, employees of local governments that originate residential mortgage loans will not be required to obtain a license. Local governments that are included within the new rules include:

- All federal agencies.
- All statewide elected officials, boards, commissions, departments, divisions and other entities.
- All cities, counties and local service districts.
- Entities created by intergovernmental agreement (see ORS chapter 190).
- Housing authorities (public corporation created under [ORS 456.055 to 456.235](#)).

If your organization is one of the entities listed in the rule, state law requiring licenses for mortgage loan originators will not apply to your employees. There is no review process to follow. You should consult with your legal counsel if you have any questions about the application of the rule to your entity's operations.

Our organization is a private, nonprofit organization. Are our employees required to obtain mortgage loan originator licenses?

Basically, employees of any nonprofit organization that is determined by the director to be a “bona fide” nonprofit organization may originate residential mortgage loans without a license.

What makes a nonprofit organization “bona fide?”

There are ten separate criteria that, when taken together, would make a nonprofit organization “bona fide” for purposes of Oregon mortgage lending laws:

- The nonprofit organization has been granted a tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).
- The nonprofit organization promotes affordable housing, provides homeownership education, or provides similar services.
- The nonprofit organization conducts its activities in a manner that serves public or charitable purposes.
- The nonprofit organization charges no more in fees than is necessary to support the organization’s loan origination program activities.
- The nonprofit organization compensates its employees in a manner that does not incentivize employees to act other than in the best interests of the borrower.
- The nonprofit organization provides for the borrower residential mortgage loans that are consistent with loan origination in a public or charitable context, that contain terms in the best interest of the borrower, and that are comparable to mortgage loans and housing assistance provided under government housing assistance programs.
- The nonprofit organization requires or provides to employees subject to 441-880-0006 training on state and federal fair lending laws and consumer protection laws that are relevant to the loan origination services that the nonprofit organization provides to its borrowers.
- The nonprofit organization requires a state criminal records check of each individual employed by the nonprofit organization to engage, in whole or in part, in loan origination activities.
- The nonprofit organization requires or provides continuing education on state and federal fair lending laws and consumer protection laws that are relevant to the loan origination services that the nonprofit organization provides to its borrowers.
- The nonprofit organization implements and administers a complaint process that, at a minimum, provides a process for receiving complaints from borrowers and creates a record of the resolution of the complaint, if any.

Your organization should review the [full text of the adopted rule](#) (OAR 441-880-0008) for more information.

What do we need to provide to DCBS?

Please make a request in writing – it can be sent via regular mail, e-mail or fax, but it has to be in writing. There is no particular form, as long as your organization addresses all the criteria above. Along with your written request, the department will need to examine the following documents, which you must provide with your written request:

- Your organization’s determination letter from the Internal Revenue Service (IRS) recognizing your organization as exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

- Your organization’s organizing documents, including articles of incorporation and bylaws.
- Your organization’s registration as a charitable organization with the Oregon Department of Justice (DOJ).
- Your organization’s most recent report filed with the DOJ that describes the assets that your organization holds and the administration of those assets.
- Your organization’s most recent Form 990, Return of Organization Exempt from Income Tax, filed with the IRS.
- If not included within the nonprofit organization’s Form 990 tax return, a description of the compensation and incentive structure for employees performing loan origination activities for your organization.
- A description of each loan program provided by your organization, including a description of eligibility, purpose, loan terms, key features and servicing or securitization plans, if any.
- A copy of your organization’s complaint process, which should include how complaints are received and the process for keeping complaint files.

In order to make a decision, the division may require information from your organization that is in addition to the list of documents mentioned above. It is important that an organization provide requested materials within 30 days, or the request may be denied.

What happens while DCBS makes a decision?

As long as the information you provided is true and correct at the time of the request, employees that originate residential mortgage loans for your organization may continue to do so. Without a request, the department will have to treat employees of a nonprofit organization as subject to the mortgage loan originator licensing laws.

Also, please keep in mind that a determination by the department is limited to compliance with Oregon mortgage loan originator licensing – a nonprofit organization is expected to meet other, applicable laws on fair lending and consumer protection.

Are there any ongoing requirements once we have been determined to be a “bona fide” nonprofit organization?

Yes. Your organization will need to certify to the department every year that the criteria used to make a “bona fide” determination continue to be met. If any significant changes occur, such as a new compensation structure for employees or new loan programs, you should notify the department of the changes. Additionally, your organization will need to provide to the department a copy of a recent financial audit from an outside party. The department does not expect a new audit be performed solely to comply with these rules.

In order to meet the terms of HUD's final rules, the department is authorized to examine the books and records of your nonprofit organization if a determination was granted. The frequency and scope of such an examination has not been determined.

Can a determination be rescinded?

Yes; if the department determines that the nonprofit organization no longer meets the criteria under which it applied, then the original determination can be rescinded. The department's decision may be appealed administratively. Please contact your legal counsel if you have questions about the contested case proceedings.