



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

201 1 5 1010

Dominic B. Griffin III
Commissioner
Hawaii Division of Financial Institutions
P.O. Box 2054
Honolulu, Hawaii 96805

RE: The Secure and Fair Enforcement for Mortgage Licensing Act of 2008

Dear Mr. Griffin:

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the SAFE Act) was enacted on July 30, 2008, as part of the Housing and Economic Recovery Act of 2008. The SAFE Act is designed to enhance consumer protection and reduce fraud by encouraging states and U.S. territories to establish minimum standards for the licensing and registration of certain mortgage loan originators and for the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry.

Pursuant to our responsibilities under the SAFE Act, the U.S. Department of Housing and Urban Development (HUD) has conducted a preliminary review of the licensing and registration legislation adopted by your jurisdiction. In order to assist your jurisdiction's efforts at compliance, enclosed for your review is our side-by-side comparison chart of provisions in your statute that appear to be inconsistent with, or at a minimum raise questions regarding compliance with, the SAFE Act. This chart is not a determination of your jurisdiction's compliance with the minimum requirements of the SAFE Act. Rather, HUD has provided this preliminary review as a tool to help identify specific areas of your statute that may require legislative or regulatory changes or clarification. In connection with this preliminary review, HUD also notes that your statute authorizes the implementation of SAFE Act requirements through regulatory or administrative means. Therefore, a determination of compliance with the minimum provisions of the SAFE Act will require HUD review of those regulations or administrative actions.

In addition, HUD's proposed SAFE regulations were published in the Federal Register on December 15, 2009, for a 60-day comment period, a link for which is provided here: <http://www.hud.gov/offices/hsg/ramh/safe/safeprule.pdf>. This proposed rule provides a detailed interpretation of the SAFE Act's minimum standards that jurisdictions would be required to meet when registering and licensing loan originators. HUD specifically requests your comments on the proposed rule in accordance with the instructions provided in the preamble. Until these rulemaking procedures are complete

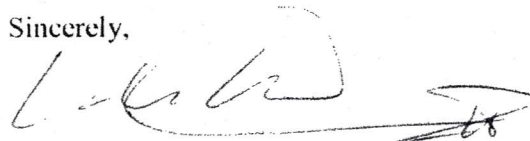
through HUD's issuance of a final rule, these regulations are subject to change and are not provided as a direct measure of your jurisdiction's current efforts at compliance.

In order to facilitate a faster response to your questions and concerns, HUD has assigned a SAFE Act Specialist to act as the primary point of contact for your jurisdiction. The specialist assigned to work with your jurisdiction is:

Ann Shearer
Phone: (202) 402-2172
Email: Ann.B.Shearer@hud.gov

Please feel free to give Ann a call if you have any questions or concerns. In addition, you can provide the specialist with any information that you believe would be important for HUD's consideration in assessing your state's compliance with the SAFE Act.

Sincerely,



William W. Matchneer III
Associate Deputy Assistant Secretary for
Regulatory Affairs and Manufactured Housing

Enclosure

HAWAII SAFE LEGISLATION

January 14, 2010

NOTE: Hawaii enacted Senate Bill 1218 on July 15, 2009, to implement a SAFE Act-compliant licensing system for mortgage loan originators. In this chart, we highlight provisions of Senate Bill 1218 that appear to be inconsistent with the SAFE Act.

#	HAWAII Legislative language	SAFE Act, Proposed Rule, and other HUD Commentary	Comments
1	<p>LOAN PROCESSORS AND UNDERWRITERS</p> <p>Hawaii’s legislation, in Section 1, Definitions, defines a “Loan processor or underwriter” as “an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a mortgage loan originator or person who is exempt from licensing as a mortgage loan originator under this chapter.”</p> <p>Under Section 2, Exemptions, Hawaii’s legislation exempts from the licensing provisions “An individual engaging solely in loan processor or underwriter activities; provided that an individual, including an independent contractor, who performs the services of a loan processor or underwriter shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationary, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator,</p>	<p>Proposed Rule § 3400.23 Definitions <i>“Loan processor or underwriter, for purposes of this part, means an individual who, with respect to the origination of a residential mortgage loan, performs clerical or support duties at the direction of and subject to the supervision and instruction of: (1) A State-licensed loan originator, or (2) A registered loan originator.”</i></p> <p>§ 3400.103 Individuals required to be licensed by States. <i>“(d)(1) Except as provided in paragraph (e) of this section, a State must prohibit an individual who is an independent contractor from engaging in residential mortgage loan origination activities as a loan processor or underwriter with respect to any dwelling or residential real estate in the State, unless the individual first:</i> <i>(i) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and</i> <i>(ii) Obtains and maintains a valid loan originator license from the State.</i> <i>(2) An individual engages in residential mortgage loan origination activities as a loan processor or underwriter if, with respect to a residential mortgage loan application, the individual performs clerical or support duties.</i> <i>(e) A State is not required to impose the</i></p>	<p>Hawaii specifically exempts loan processors and underwriters from the licensing requirements unless they advertise or otherwise offer to perform any of the activities of a mortgage loan originator. This appears to be inconsistent with the SAFE Act Proposed Rule which specifically requires that loan processors and underwriters who are independent contractors be licensed mortgage loan originators unless they “perform[] only clerical or support duties and does so at the direction of and subject to the supervision and instruction of an individual who is licensed and registered. . . .”</p>

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	<p>and any loan processor or underwriter, including an independent contractor, who advertises that the individual can or will perform any of the activities of a mortgage loan originator or engages in the activities of a mortgage loan originator shall not be exempt under this chapter and shall obtain and maintain a license under this chapter and a valid unique identifier issued by the Nationwide Mortgage Licensing System.”</p>	<p>prohibitions required under paragraphs (a) and (d) of this section on the following individuals: * * * * *</p> <p>(3) A loan processor or underwriter who performs only clerical or support duties and does so at the direction of and subject to the supervision and instruction of an individual who is licensed and registered in accordance with paragraph (a) of this section. . . .”</p>	
<p>2.</p>	<p>Hawaii Revised Statutes, Section 454-1, defines a mortgage broker as:</p> <p>[A] person...who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly makes, negotiates, acquires, or offers to make, negotiate, or acquire a mortgage loan on behalf of a borrower seeking a mortgage loan.</p>	<p>12 U.S.C. § 5102(3) LOAN ORIGINATOR. (A) IN GENERAL.—The term “loan originator”— (i) means an individual who— (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain...</p>	<p>This definition of a mortgage broker is appears to cover the same individuals as the SAFE Act’s definition of a mortgage loan originator. While Hawaii’s mortgage broker statute exempts loan originators from its licensing scheme, it is not clear to us how Hawaii would decide which individuals would need to be licensed under which statute. Hawaii’s mortgage broker licensing scheme does not appear to contain all of the SAFE Act’s requirements.</p>