



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

JAN 27 2010

Mr. Thomas Gronstal
Superintendent
Iowa Division of Banking
200 East Grand, Suite 300
Des Moines, IA 50309-1827

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

Dear Superintendent Gronstal:

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. The Department 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, the Department 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:

Kevin Stevens
Phone: (202) 402-4317
Email: Kevin.L.Stevens@hud.gov

Please feel free to give Kevin 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,

A handwritten signature in black ink, appearing to read 'W. Matchneer III', with a stylized flourish at the end.

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

Enclosure

IOWA SAFE ACT LEGISLATION
January 20, 2010

	Iowa's SAFE Act Legislation SF 355 Section 535D	Corresponding SAFE Act Provisions, Proposed Regulations, and HUD Commentary where applicable	HUD Comments
1.	<p>Section 535D.3 Definitions-</p> <p>8. "Mortgage Loan Originator" ... "Mortgage Loan Originator does not include any of the following: . . . d. An individual employed by a residential mortgage loan servicer if the individual is involved solely in loss mitigation efforts.</p> <p>7. "Loss mitigation efforts" means, when a residential mortgage loan borrower is in default or default is reasonably foreseeable, working with the borrower on behalf of the residential mortgage loan servicer to modify either temporarily or permanently the obligation or otherwise mitigate loss on an existing residential mortgage loan.</p>	<p>HUD's PROPOSED RULE, Preamble, Sec. II.L. (Loan modifications.)</p> <p>Given the material alteration to the terms of a residential loan that are occurring through today's modifications, HUD is inclined to include in its definition of a loan originator, which is being developed through this rulemaking, an individual who performs a residential mortgage loan modification that involves offering or negotiating of loan terms that are materially different from the original loan. At least in some circumstances, when a borrower seeks modification of an existing loan, he or she is requesting an offer of terms that are different from those of his or her existing loan. The loan servicer responds to this request by requesting from the borrower much of the same, if not exactly the same, information necessary in an application to refinance a mortgage or obtain a new loan, and the loan servicer offers or negotiates the terms of the modification with the borrower.</p>	<p>If in its final rule, HUD includes loan modification as a loan originator activity, then an exemption from licensing requirements for individuals who perform these activities would be inconsistent with the SAFE Act's requirements.</p>

<p>2.</p>	<p>Sec. 4. NEW SECTION. 535D.4 LICENSE AND REGISTRATION REQUIRED.</p> <p>1. On or after January 1, 2010, an individual shall not engage in the business of a mortgage loan originator <u>with respect to any residential real estate located in this state</u> without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. (emphasis added)</p>	<p>12 U.S.C. § 5102(3)(A) LOAN ORIGINATOR. – The term “loan originator” means “[a]n individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain. . . .”</p> <p>12 USC §1503(8) The term “residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest <u>on a dwelling</u> (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).</p> <p>HUD’s Proposed Rule § 3400.103 Individuals required to be licensed by states. (a) Except as provided in paragraph (e) of this section, in order to operate a SAFE-compliant program a state must prohibit an individual from engaging in the business of a loan originator with respect to <u>any dwelling or residential real estate in the state.</u> . . .</p>	<p>Iowa’s legislation limits the licensing requirements to individuals engaged in the origination of loans only with respect to “residential real estate.” This appears to be inconsistent with the minimum licensing requirements of the SAFE Act, which includes individuals from engaging in the business of a loan originator with respect to <u>any dwelling or residential real estate</u> in the state.</p>
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3.	<p>No corresponding provision.</p>	<p>12 U.S.C. § 5104(e) Mortgage call reports. Each mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.</p> <p>Proposed Rule § 3400.111 Other minimum requirements for State licensing systems. (f) The supervisory authority must require a loan originator to ensure that all residential mortgage loans that close as a result of the loan originator engaging in activities described in § 3400.103(b)(1) are included in reports of condition submitted to the NMLSR. Such reports of condition shall be in such form, shall contain such information, and shall be submitted with such frequency and by such dates as the NMLSR may reasonably require.</p>	<p>Section 535D of the Iowa Secure and Fair Enforcement for Mortgage Licensing Act, does not include a provision that requires the submission of mortgage call reports to the NMLSR.</p>
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