



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

Mr. Jorge Solis
Director, Division of Banking
Illinois Department of Finance
320 West Washington Street
Springfield, IL 62786

JAN 21 2010

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

Dear Mr. Solis:

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

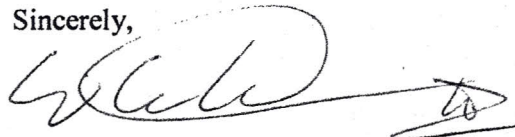
and are not provided as a direct measure of your jurisdiction's current efforts at compliance.

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:

Charles JohaneK
Phone: (202) 402-6143
Email: Charles.A.JohaneK@hud.gov

Please feel free to give Charles 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

ILLINOIS SAFE ACT LEGISLATION

January 21, 2010

NOTE: The Illinois House Bill (HB4011) amended Illinois' existing mortgage licensing statute(The Residential Mortgage License Act of 1987) at 205 ILCS 635

	ILLINOIS Public Act 096-0112 HB4011 Enrolled	CORRESPONDING SAFE ACT PROVISIONS, HUD'S PROPOSED RULE & GUIDANCE WHERE APPLICABLE	HUD COMMENTS
1.	<p>(205 ILCS 635/1-4) (from Ch. 17, par. 2321-4) Sec. 1-4. Definitions. (d) "Exempt person or entity" shall mean the following: (1) (iii) any pension trust, bank trust, or bank trust company; (v) any Illinois Consumer Installment Loan Act (vi) any insurance company authorized to transact business in this State (viii) any service corporation of a savings and loan association or savings bank organized under the laws of this State or the service corporation of a federally chartered savings and loan association or savings bank having its principal place of business in this State, other than a service corporation licensed or entitled to reciprocity under the Real Estate License Act of 2000; or (ix) any first tier subsidiary of a bank, the charter of which is issued under the Illinois Banking Act by the Illinois Commissioner of Banks and Real Estate</p>	<p>12 U.S.C. § 5102. Definitions (3) Loan originator . . . (ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause; (iii) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator; and (iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.</p> <p>PROPOSED RULE §3400.103(e) A state is not required to impose the mortgage loan originator licensing</p>	<p>The exemptions cited in the chart and provided for in Illinois' statute are not provided for in the SAFE Act, nor are they included in HUD's proposed rule. To the extent that 205 ILCS 635/1-4(d)(1.5) would allow unlicensed individuals to engage in the business of a loan originator, it is inconsistent with the SAFE Act.</p>

<p>(1.5) <u>Any employee of a person or entity mentioned in item (1) of this subsection, when acting for such person or entity, or any registered mortgage loan originator when acting for an entity described in subsection (tt) of this Section.</u></p>	<p>requirements on the following individuals:</p> <p>(1) An individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the individual is compensated directly or indirectly by a lender, mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator;</p> <p>(2) An individual who is involved only in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D);</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 or who is exempt under paragraph (e)(7) of this section;</p> <p>(4) An individual who only offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;</p> <p>(5) Any individual who only offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.</p> <p>(6) A licensed attorney who only</p>	
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2.	<p>(205 ILCS 635/1-4) (from Ch. 17, par. 2321-4) Sec. 1-4. Definitions.</p> <p>(d) "Exempt person or entity" shall mean the following:</p> <p>(2) Any person or entity that does not originate mortgage loans in the ordinary course of business making or</p>	<p>See 12 USC § 5102(3) and HUD's PROPOSED RULE §3400.103(e) provided above</p>	<p>The Illinois statute exempts individuals who make less than two residential mortgage loans per year. The SAFE Act does not provide, and HUD's proposed rule does not expressly include such an exemption, regardless of whether the origination is done in the ordinary course of business.</p>

	acquiring residential mortgage loans with his or her or its own funds for his or her or its own investment without intent to make, acquire, or resell more than 2 residential mortgage loans in any one calendar year.		
3.	<p>(205 ILCS 635/1-4) (from Ch. 17, par. 2321-4) Sec. 1-4. Definitions. (d) "Exempt person or entity" shall mean the following: (3) Any person employed by a licensee to assist in the performance of the activities regulated by this Act who is compensated in any manner by only one licensee.</p>	<p>See 12 USC § 5102(3) and HUD's PROPOSED RULE §3400.103(e) provided above</p>	<p>The Illinois statute exempts employees who assist in residential mortgage loan origination. To the extent that this provision would allow unlicensed individuals to engage in the business of a loan originator, it is inconsistent with the SAFE Act.</p>
4.	<p>(205 ILCS 635/1-4) (from Ch. 17, par. 2321-4) Sec. 1-4. Definitions. (d) "Exempt person or entity" shall mean the following: . . . (5) Any individual, corporation, partnership, or other entity that originates, services, or brokers residential mortgage loans, as these activities are defined in this Act, and who or which receives no compensation for those activities, subject to the Commissioner's regulations with regard to the nature and amount of compensation.</p>	<p>12 U.S.C. § 5102. Definitions (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>PROPOSED RULE, Preamble, Sec. II. D. For Compensation or Gain The terms "for compensation or gain" are proposed to be broadly defined in</p>	<p>If the Commissioner defines "compensation" in a way that differs from the way HUD would define "for compensation or gain" in its final rule, then such an exemption would be inconsistent with the SAFE Act's requirements.</p>

		<p>§ 3400.103(c)(2) and would include any circumstances in which an individual receives or expects to receive anything of value in connection with offering or negotiating terms of a residential mortgage loan. These terms would not be limited to payments that are contingent upon closing of a loan.</p>	
5.	<p>(205 ILCS 635/Art. 7-1A) Sec. 7-1A. Mortgage loan originator license (3) For all individuals described in item (1) or (2) of this subsection (b) who are <u>loss mitigation</u> specialists employed by servicers, the operability date shall be July 31, 2011, or any date approved by the Secretary of the U.S. Department of Housing and Urban Development pursuant to authority granted under Public Law 110-289, Section 1508.</p>	<p>HUD's Proposed Rule § 3400.109 (d) For an individual who engages in the business of a loan originator solely by providing or facilitating residential mortgage loan modifications and refinancing under the Department of the Treasury's Making Home Affordable program, a State may delay the effective date for requirements it imposes in accordance with §§ 3400.103, 3400.105, and 3400.107 until the date such program is terminated.</p>	<p>If in its final rule HUD defines loan origination to include loss mitigation, then an operability date of July 31, 2011 for loan mitigation specialists would be inconsistent with the SAFE Act's requirements, unless a later effective date is established in accordance HUD's final rule.</p>