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

Office of Housing

JAN 21 2010

Mr. David H. Mills
Director
Indiana Department of Financial Institutions
30 South Meridian Street
Suite 300
Indianapolis, IN 46204

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

Dear Mr. Mills:

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,

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

Enclosure

Indiana SAFE Act Legislation
January 21, 2010

NOTE: Indiana House Bill (No. 1646) amended Indiana's existing mortgage licensing statute at Title 23, Article 2, Chapter 5 (23-2-5) Indiana Code. This chart also references Indiana's amended Administrative Code, Title 750, Department of Financial Institutions, Article 9 (750 IAC 9-1)			
	INDIANA's legislation and Administrative Code	Corresponding SAFE Act Provisions, HUD Proposed Rule Language &Guidance , Where Applicable	HUD COMMENTS
1.	**750 IAC 9-1-1: Definitions** (22): Mortgage transaction" means a loan or consumer credit sale that is or will be used by the debtor primarily for personal, family, or household purposes and is secured by a mortgage, land contract or other equivalent consensual security interest on a dwelling or residential real estate. **750 IAC 9-2-4: Application** **Sec. 4.** (a) Except as provided in subsection (b), this article applies to a mortgage transaction: (1) that is secured by an interest in land in Indiana; and (2) the closing for which takes place after June 30, 2010. (b) This article does not apply to a mortgage transaction if: (1) the debtor is not a resident of Indiana at the time the transaction is entered into; and (2) the laws and regulations of the debtor's state of residence require that the transaction be made under the laws and regulations of the state of the debtor's residence.	**12 U.S.C. § 5102** (3) LOAN ORIGINATOR.-- The term "loan originator" means an individual who takes a residential mortgage loan application; and offers or negotiates terms of a residential mortgage loan for compensation or gain. . . . (8). RESIDENTIAL MORTGAGE LOAN. -- 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 on a dwelling (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).	Indiana's administrative code limits application of the loan originator licensing requirements to mortgage transactions secured by an interest in land in Indiana, which could exclude coverage of manufactured and modular home loans. SAFE applies to mortgage loans secured by dwellings (as defined in TILA). The TILA definition of a dwelling includes manufactured homes. To the extent that IAC sec. 4(b) could be read to allow unlicensed individuals to engage in the business of a loan originator, it appears to be inconsistent with the SAFE Act.

2.	**750 IAC 9-3-1 Licensing of mortgage loan originators, Sec. 1 (b)** Notwithstanding the licensing requirements under this section, an individual acting exclusively as a servicer engaging in loss mitigation efforts…is not required to meet the licensing standards… until July 1, 2011 to the extent that this extension of time is not denied by any guideline, rule, regulation, or interpretive letter issued by the United States Department of Housing and Urban Development.	**Proposed Rule § 3400.109** [Generally, the state must provide that the effective date for requirements imposed regarding mortgage loan originator licensing, education, testing and renewal is no later than July 31, 2010. For individuals currently licensed under the state's pre-SAFE licensing program, the state may delay the effective date for the license issuance, renewal, education, testing, etc. to no later than December 31, 2010.] **Proposed Rule § 3400.109(d)** (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.	If in its final rule HUD defines loan origination to include loss mitigation, then a compliance date of July 1, 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.