



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

JAN 20 2010

Mr. Richard Weaver
Commissioner
Missouri Division of Finance
301 West High St.
PO Box 716
Jefferson City, MO 65102

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

Dear Commissioner Weaver:

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,



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

Enclosure

MISSOURI SAFE ACT LEGISLATION
January 15, 2010

	Missouri SAFE Act Legislation 95 th Gen. Assemb. 2009, House Comm. Substitute for H.B. No. 382, Sections 443.701-443.893	Corresponding SAFE Act provisions, Proposed Regulations, and HUD Commentary, where applicable	HUD Comments
1.	<p>443.703 (34) "Registered mortgage loan originator", any individual who: (a) Meets the definition of mortgage loan originator and is an employee of: (i) A depository institution; (ii) A subsidiary or service corporation that is: i. Owned and controlled by a depository institution; and ii. Regulated by a federal banking agency; or (iii) An institution regulated by the Farm Credit Administration; and (b) Is registered with and maintains a unique identifier through, the NMLSR; See also: (10) "Exempt person", the following persons: (a) Any person that is a depository institution or first-tier subsidiary or service corporation thereof;</p>	<p>12 U.S.C. § 5102. (7) Registered loan originator . The term "registered loan originator" means any individual who-- (A) meets the definition of loan originator and is an employee of-- (i) a depository institution; (ii) a subsidiary that is-- (I) owned and controlled by a depository institution; and (II) regulated by a Federal banking agency; or (iii) an institution regulated by the Farm Credit Administration; and (B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.</p>	<p>Missouri's definitions of a "registered mortgage loan originator" and an "exempt person" include a "service corporation." The Missouri statute does not define a "service corporation."</p> <p>The Missouri statute differs with the SAFE Act to the extent that a "service corporation" is not a subsidiary of a depository institution, and employees of service corporations are "registered mortgage loan originators" exempt from the licensing requirements in Sec. 443.706.</p>

<p>2.</p>	<p>443.703 20) "Mortgage loan originator", an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan. Mortgage loan originator does not include: ... (d) An individual who is servicing a mortgage loan See also: (15) "Individual mortgage loan servicer", a person who on behalf of a lender or servicer licensed by this state, collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process; (36) "Servicing", the collection or remittance for, or the right or obligation to collect or remit for, any lender, noteowner, noteholder or for a residential mortgage loan broker's own account, of payments, interests, principal and trust items such as hazard</p>	<p>Proposed Rule, §II.L. (preamble) (Loan modifications) Given the material alteration to the terms of a residential loan that are occurring through today's modification, 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>The Missouri definition of a "mortgage loan originator" states that it does not include "an individual who is servicing a mortgage loan". Missouri defines the terms "individual mortgage loan servicer" and "servicing." Under the statute it is not clear whether "an individual who is servicing a mortgage loan" and is therefore exempt from the licensing requirements would be an "individual mortgage loan servicer" or would be an individual involved in "servicing." The distinction may be important because HUD stated in the preamble to its Proposed Rule that it is inclined to include the modification of loan terms in the definition of actions that can only be performed by a licensed loan originator. If HUD's final rule includes the modification of loans in its definition of mortgage loan origination activities, and the Missouri statute does not include individuals who modify loans in its definition of a "mortgage loan originator," then Missouri's statute would differ from the SAFE Act requirements.</p>
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	insurance and taxes on a residential mortgage loan and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing;		
3.	443.717 2. For purposes of subsection 1 of this section, prelicensing approved education courses include courses reviewed and approved by the NMLSR based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.	12 U.S.C. § 5104 (c) Pre-licensing education of loan originators – . . . (2) Approved educational courses – For purposes of paragraph (1), pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.	The Missouri legislation states that prelicensing approved education courses “include courses reviewed and approved by the NMLSR.” This language suggests that review and approval by NMLSR of prelicensing courses is not required, which differs from the SAFE Act. By contrast, the continuing education provision of the Missouri legislation follows the SAFE Act by requiring NMLSR review and approval of continuing education courses (see § 443.723.2.).
4.	443.723 9. A person meeting the requirements of subdivisions (1) and (3) of subsection 2 of section 443.719 may make up any deficiency in continuing education as established by rule of the director. (for reference- 443.719... 2. A written test shall not be treated as a qualified written test for purposes of subsection 1 of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate		Missouri’s statute regarding this issue is unclear as the section reference stated in this paragraph is to test requirements and not license renewal requirements.

	<p>subject areas, including:</p> <ul style="list-style-type: none"> (1) Ethics; (2) Federal law and regulation pertaining to mortgage origination; (3) State law and regulation pertaining to mortgage origination; (4) Federal and state law and regulation on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.) 		
5.	<p>443.741. The director is required to report violations of sections 443.701 to 443.893, as well as enforcement actions and other relevant information, to the NMLSR subject to the provisions contained in section 443.731.</p>	<p>12 U.S.C. § 5107 (d) State licensing law requirements . . . (3) The State loan originator supervisory authority is required to regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.</p>	<p>While Missouri's statute states that violations must be reported to the NMLSR, the impact of the "subject to" provision is unclear since section 443.731 is only in reference to bonding requirements.</p>