

JAN 15 2010

Mr. Steven Kaplan  
Secretary  
Pennsylvania Department of Banking  
17 N. Second Street, Suite 1300  
Harrisburg, PA 17101-2290

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

Dear Mr. Kaplan:

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.

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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](mailto: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 'William W. Matchneer III', written over a faint dotted line.

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

Enclosure

# PENNSYLVANIA SAFE Act legislation

January 14, 2010

NOTE: PA Act 31 of 2009 (House Bill 1654) amended PA's existing mortgage licensing statute at 7 PA C.S. Chapter 61 (relating to mortgage loan industry licensing and consumer protection) (the "Mortgage Licensing Act") (7 PA C.S. §6101 et seq.).

#	Pennsylvania Legislation	Corresponding SAFE Act & Proposed Rule Language, and HUD Commentary, where applicable	HUD Comments
1.	<p><b>DEFINITIONS</b></p> <p><b>7 Pa. C.S. §6102</b>                      "Mortgage originator."                      PA exempts from the definition of a "mortgage originator" an employee of a licensee or person exempt from licensure "who solely renegotiates terms for existing mortgage loans held or serviced by the licensee or person and who does not otherwise act as a mortgage originator." PA further adds, however, that this exclusion shall not apply if HUD or a court determines that the SAFE Act requires such an employee to be licensed as a mortgage originator under SAFE.</p>	<p><b>HUD's PROPOSED RULE, §I.L. (preamble)</b>                      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 individuals who perform residential mortgage loan modifications in the definition of a loan originator, then an exemption from licensing requirements for individuals performing these activities would be inconsistent with the SAFE Act's requirements.</p>



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2.	<p><b>CONDITIONAL LICENSES.</b> <b>7 Pa. C.S. §6133(f).</b> The department may impose conditions on the issuance of any license.... If the department determines that conditions upon a licensee have not been fulfilled, the department may take any action authorized under this chapter against the licensee that the department deems necessary. <u>In the case of mortgage originator applicants, the department may issue mortgage originator licenses effective immediately upon receipt of an application,</u> which licenses shall be conditional licenses issued under this subsection.</p>	<p><b>HUD's FREQUENTLY ASKED QUESTIONS AND ANSWERS.</b> In the FAQs posted on HUD's website, in response to a question regarding "provisional" or "conditional" licenses, HUD stated that "a state may issue a SAFE-compliant loan originator license only upon evidence sufficient to support findings by the state agency that each of the minimum licensing standards has been met."</p>	<p>Pennsylvania may only issue a SAFE loan originator license if they have evidence sufficient to support findings by the state licensing agency that each of the minimum licensing standards has been met.</p>
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