



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

Ms. Sara M. Cline
Commissioner of Banking
West Virginia Division of Banking
One Players Club Drive, Suite 300
Charleston, West Virginia 25311

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

Dear Ms. Cline:

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.

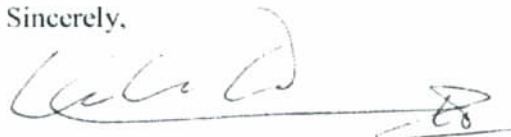
In addition, HUD's proposed SAFE regulations were published in the Federal Register on December 15, 2009, for a 60-day comment period, a link for which is provided here: <http://www.hud.gov/offices/hsg/ramh/safe/safeprule.pdf>. This proposed rule provides a detailed interpretation of the SAFE Act's minimum 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.

In order to facilitate a faster response to your questions and concerns, HUD 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:

Ann Shearer
Phone: (202) 402-2172
Email: Ann.B.Shearer@hud.gov

Please feel free to give Ann 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

WEST VIRGINIA SAFE ACT LEGISLATION

January 14, 2010

For purposes of this chart, HUD reviewed West Virginia’s Senate Bill No. 532, which passed on April 9, 2009 and is codified in Article 17A of Chapter 31 of West Virginia’s statutes.

	WEST VIRGINIA LEGISLATION	CORRESPONDING SAFE ACT & PROPOSED RULE LANGUAGE	HUD COMMENTS
1.	<p>DEFINITIONS § 31-17A-2(6)(A)(iv). “Mortgage loan originator” does not include “a manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the sales transaction.”</p>	<p>12 U.S.C. § 5102(3) <i>LOAN ORIGINATOR.</i> The term “loan originator” (i) means an individual who takes a residential mortgage loan application; and offers or negotiates terms of a residential mortgage loan for compensation or gain; does not include any individual who is not otherwise described and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause; ...</p> <p>12 USC § 5102(3)(A)(ii) <i>Administrative or clerical tasks.</i> The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.</p>	<p>WVA provides an exemption for manufactured or mobile home retailer employees who perform “purely administrative or clerical tasks.” WVA does not define “administrative or clerical tasks.” This exemption would be inconsistent with the SAFE Act, if it allows the employee of a manufactured or modular home retailer to take a mortgage loan application and offer or negotiate the terms of a residential mortgage loan without being licensed.</p>

2.	<p>DEFINITIONS § 31-17A-2(9). “Nontraditional mortgage product means any mortgage product other than a fixed rate mortgage.”</p>	<p>12 U.S.C. § 5102(6) The term “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.</p> <p>12 U.S.C. § 5104(c)(1)(C) Prelicense education requirements must include “at least 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.”</p> <p>12 U.S.C. § 5105(b)(1)(C) Continuing Education. Annual continuing education requirements must include at least “2 hours of training related to lending standards for the nontraditional mortgage product marketplace.”</p>	<p>Under WVA’s definition, a 15, 20, or even a 40- year fixed rate loan would be considered a “traditional mortgage product.” This language is broader than that in the SAFE Act, which defines a “nontraditional” mortgage as any mortgage product other than a 30-year fixed rate product. Additionally, this may affect what type of training loan originators receive in nontraditional mortgage products.</p>
3.	<p>INTERIM OR PROVISIONAL LICENSING. § 31-17A-3(e)(1). To implement an orderly and efficient licensing and transition process, the commissioner may establish interim policies and procedures for licensing and acceptance of applications as follows: (1) Mortgage loan originators employed by or under exclusive contract to licensed mortgage brokers after the effective date of this article shall submit an application on a form prescribed by the commissioner . . .</p>	<p>Proposed Rule § 3400.109(a). Except as provided in paragraphs (b), (c) and (d) of this section, a state must provide that the effective date for requirements it imposes in accordance with §§ 3400.103 (individuals required to be licensed by states), 3400.105 (minimum loan originator license requirements), and 3400.107 (minimum annual license renewal requirements) is no later than July 31, 2010.</p> <p>Paragraph (d) would permit a state to delay the effective date for requirements</p>	<p>HUD’s proposed rule permits a delayed effective date for individuals who engage 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 until such date that that program is terminated. West Virginia’s provision differs from HUD’s proposed rule by permitting a delayed effective date applicable to a broader category of loan modifications.</p>

	<p>notwithstanding the licensing requirements under this section, an individual acting exclusively as an employee of a servicer who is engaging in loss mitigation efforts with respect to an existing mortgage transaction serviced by his or her employer is not required to meet the education, testing, background and licensing standards of this article <u>until July 1, 2011</u>, to the extent that this extension of time is not denied by guideline, rule, regulation or interpretive letter issued by the United States Department of Housing and Urban Development. . . .</p>	<p>it imposes on those individuals who engage 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 until such date that that program is terminated.</p>	
4.	<p>MORTGAGE CALL REPORTS §31-17-11. Records and reports; examination of records; analysis. Each licensee shall file with the commissioner a report under oath or affirmation concerning his or her business and operations in this state for the preceding license year upon participation in the Nationwide Mortgage Licensing System and Registry and on a date established by the Nationwide Mortgage Licensing System and Registry.</p>	<p>12 USC § 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(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</p>	<p>West Virginia's mortgage call reports provision appears to only apply to the employing entity, such as the mortgage broker or lender. This differs from HUD's proposed rule, which provides that states must require loan originators to ensure that all residential mortgage loans that close as a result of their loan origination activities are included in reports of condition submitted to the NMLSR.</p>

		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.”	
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