



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

Mr. Jeffrey C. Vogel, CEM  
Commissioner  
Wyoming Division of Banking  
122 West 25<sup>th</sup> Street  
Herschler Building, 3<sup>rd</sup> Floor East  
Cheyenne, WY 82002

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

Dear Mr. Vogel:

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:

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

**WYOMING SAFE ACT LEGISLATION**  
**January 14, 2010**

In order to enact SAFE-compliant legislation, Wyoming modified the Wyoming Residential Mortgage Practices Act (“WY Mortgage Act”) in Chapter 23 of Title 40, and the state’s Uniform Consumer Credit Code (“WY UCCC”), in Chapter 14 of Title 40. The WY Mortgage Act covers first lien mortgage transactions, while the WY UCCC governs all consumer loans except first lien mortgage transactions. Consumer loans are defined as loans that do not exceed \$50,000 or in which the debt is secured by an interest in land or a dwelling. (The Wyoming UCCC would cover loans on mobile homes as they may be classified as personal property (chattel) loans secured by a dwelling.) Persons and entities that wish to do both types of transactions must obtain a license under each regulation. Differences between the WY Mortgage Act and the WY UCC that may affect compliance with the SAFE Act are noted below.

#	WYOMING LEGISLATION House Bill No. 0169	CORRESPONDING SAFE ACT & PROPOSED RULE LANGUAGE	HUD COMMENTS
1.	<p><b>DEFINITIONS</b>  <b>§40-23-102, Wyoming Mortgage Act</b>            (a)(xv) "Residential mortgage loan" means a <u>first</u> mortgage loan made 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 or residential real estate in Wyoming upon which is constructed or intended to be constructed a dwelling..</p>	<p><b>12 USC § 5102(8). DEFINITIONS.</b>            “Residential mortgage loan” means <u>any loan</u> 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 TILA) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).</p>	<p>By limiting the definition of “residential mortgage loan” to mean only a <u>first</u> lien mortgage loan secured by the property, Wyoming may cause a gap in loan originator licensing because loan originators who mostly originate second lien or other mortgage loans would not be required to obtain a license. The SAFE Act does not limit residential mortgage loans to only first lien loans.</p>
2.	<p><b>LICENSING REQUIREMENTS –            ISSUANCE OF LICENSE and            SURETY BOND.</b></p> <p><b>§40-14-643, Wyoming UCCC.</b>  <b>Issuance of loan originator licenses.</b>            (a) The administrator shall not issue a mortgage loan originator license unless the administrator makes at a minimum</p>	<p><b>12 USC § 5104(b). ISSUANCE OF LICENSE.</b>            The minimum standards for licensing and registration as a State-licensed <u>loan originator</u> shall include the following:            (1) never had a loan originator license revoked ...            (2) no felony conviction...            (3) financial responsibility, character,</p>	<p>Both of Wyoming’s laws require a licensee – defined in §40-23-102 as a <i>company</i> licensed under the WY Mortgage Act as a mortgage broker or a mortgage lender – to obtain a surety bond covering employees or contractors. But neither law requires a loan originator to obtain a surety bond, provide evidence that the employing mortgage lender or</p>

<p>the following findings.....</p> <ul style="list-style-type: none"> <li>• no license revocation;</li> <li>• no felony conviction;</li> <li>• demonstrated financial responsibility, character :&amp; general fitness;</li> <li>• completed prelicense education;</li> <li>• passed a written test;</li> </ul> <p><b>§40-23-126, Wyoming Mortgage Act. Issuance of loan originator license.</b>  (a) The commissioner shall not issue a mortgage loan originator license unless the administrator makes at a minimum the following findings.....</p> <ul style="list-style-type: none"> <li>• no license revocation;</li> <li>• no felony conviction;</li> <li>• demonstrated financial responsibility, character :&amp; general fitness;</li> <li>• completed prelicense education;</li> <li>• passed a written test;</li> </ul> <p><b>§40-14-637, Wyoming UCCC. Surety bonds.</b> (a) “Any organization employing or contracting with a mortgage loan originator shall maintain a surety bond...The surety bond shall be used to cover individual mortgage loan originators employed by or under contact with a licensee.... The amount of the</p>	<p>and general fitness...  (4) completed the pre-licensing education requirements...  (5) passed a written test...  (6) <u>applicant has met either a net worth or surety bond requirement, or paid into a State fund</u>, as required by the State pursuant to section 1508(d)(6).</p> <p><b>12 USC § 5107(d)(6). STATE LICENSING LAW REQUIREMENTS.</b> States must establish a minimum net worth or surety bond requirement that reflects the dollar amount of loans originated by a residential mortgage loan originator, or has established a recovery fund paid into by loan originators.</p>	<p>mortgage broker maintains such surety bond coverage for the loan originator, or to meet a net worth requirement or otherwise pay into a state fund. The failure to require proof of a surety bond covering the loan originator before issuing a loan originator’s license is inconsistent with the SAFE Act.</p>
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	<p>bond shall be based upon the volume of residential mortgage loan activity transacted by the licensee.”</p> <p><b>§40-23-110, Wyoming Mortgage Act. Surety bond.</b> (a) All licensees shall maintain a surety bond...The surety shall be used to cover individual loan originators employed or under contract with a licensee. The bond to be maintained shall be in the amount of ....Effective January 1, 2010, as established by rule of the commissioner based upon the volume of business activity transacted by the licensee under this act.</p>		
3.	<p><b>MORTGAGE CALL REPORTS.</b></p> <p><b>40-14-638 Wyoming UCCC and 40-23-131 Wyoming Mortgage Act</b> both require the licensee, not the loan originator, to submit a report of condition to the NMLSR.</p> <p>“Licensee” is defined as “a company licensed . . . as a mortgage broker or mortgage lender.”</p>	<p><b>12 USC § 5104(e). STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE.</b></p> <p>“Each mortgage licensee shall submit to the NMLS reports of condition, which shall be in such form and shall contain such information as the NMLS may require.”</p> <p><b>Proposed Rule § 3400.111(f)</b>, requires that the supervisory authority “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.”</p>	<p>Wyoming requires licensed entities (companies) to provide “reports of condition,” rather than requiring reports from individual licensed loan originators. This differs from HUD’s proposed rule, which provides that states must require each loan originator 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>

<p>4. <b>EXEMPTIONS</b>  <b>§40-14-641 Wyoming UCCC. Loan originator licensing; registration; rulemaking.</b>  (a) An individual, unless specifically exempted under subsection (c) of this section, shall not engage in the business of a mortgage loan originator . . . without first obtaining and maintaining annually a license. . . .  (c) An individual is <u>exempt</u> from subsection (a) of this section if he is:  (iii) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as <u>a seller's residence</u>. . . .</p> <p><b>§40-23-124, Wyoming Mortgage Act. Loan originator licensing; registration; rulemaking.</b>  (a) An individual, unless specifically exempted under subsection (c) of this section, shall not engage in the business of a mortgage loan originator . . . without first obtaining and maintaining annually a license. . . .  (c) An individual is exempt from subsection (a) of this section if he is: . . .  (iii) An individual who offers or negotiates terms of a residential mortgage loan secured by a <u>dwelling that serves as a seller's residence</u>;</p>	<p><b>Proposed Rule §3400.103(e)(5).</b> The state is not required to impose the prohibitions (of loan origination activity without a license) on “Any individual who only offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as <u>the individual’s residence</u>.”</p>	<p>The exemption language in both the WY UCCC and the WY Mortgage Act, with respect to “Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as <u>a seller's residence</u>” differs from HUD’s proposed rule. As written, Wyoming’s exemption language is broader than the exemption provided in the HUD’s proposed rule. The WY exemption language could be interpreted to provide an exemption to any individual originating a loan secured by any (other) seller’s residence. HUD’s proposed rule provides an exemption only for an individual who is offering or negotiating terms of a residential mortgage loan secured by a dwelling that served as <u>that individual’s residence</u>.</p>
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