Office of Housing

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

JAN 20 2010

Sarah Bloom Raskin
Commissioner
Maryland Office of Financial Regulation
500 North Calvert Street, Room 402
Baltimore, Maryland 21202

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

Dear Ms. Raskin:

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

MARYLAND SAFE ACT LEGISLATION
January 20, 2010

NOTE: To implement the SAFE Act, Maryland's legislature adopted Senate Bill 269 which amended various provisions of Maryland law to conform to the SAFE Act, specifically amending the Mortgage Lender Law (Subtitle 5) (Md. Code Ann., Fin. Inst. ("FI") §11-501) and the Mortgage Originator Law (Subtitle 6) (Md. Code Ann., Fin. Inst. ("FI") §11-601. We have reviewed both Subtitle 5 and Subtitle 6.

#	MARYLAND SAFE ACT LEGISLATION	CORRESPONDING SAFE ACT & PROPOSED RULE LANGUAGE	HUD COMMENTS
1.	**INDEPENDENT CONTRACTORS.** **FI § 11-601. Definitions.** **(h) Independent contractor.** – "Independent contractor" means a person whose compensation is paid without a deduction for federal or State income tax. **(q) Mortgage loan originator.** – (1) "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, takes a loan application or offers or negotiates terms of a mortgage loan. (2) "Mortgage loan originator" does not include an individual who acts solely as a mortgage loan processor or underwriter…." **(r) Mortgage loan processor or underwriter.** – (1) "Mortgage loan processor or underwriter" means an individual who performs clerical or support duties as an employee of, at the direction of, and subject to the supervision and instruction of a person licensed, or exempt from licensing, under Title 5 of this article.	**12 U.S.C. § 5103(b)(2)** "An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such independent contractor is a State-licensed loan originator." **Proposed Rule § 3400.23**: "Independent contractor means an individual who performs his or her duties other than at the direction of and subject to the supervision and instructions of an individual who is licensed and registered in accordance with §3400.103(a) of this section, or is exempt under §3400.103(e)(7) of this section." *[§3400.103(a) refers to individual licensed loan originators. §3400.103(e)(7) describes individuals employed by depositories or subsidiaries of depositories that are regulated by the banking agencies and registered under NMLS.]*	The SAFE Act requires that an independent contractor who engages in residential mortgage loan origination activities as a loan processor or underwriter be individually licensed as a loan originator under a SAFE-compliant licensing program. However, Maryland's mortgage originator licensing provisions (Subtitle 6 of Maryland's Financial Institutions Code) specifically states that the licensing requirements do not apply to independent contractors. Independent contractors are subject to the licensing requirements under Subtitle 5. [Subtitle 5 is the Maryland Mortgage Lender licensing law.] Subtitle 5 does not specifically address independent contractors, nor is an "independent contractor" defined in Subtitle 5. We note also that Subtitle 5, as the Mortgage Lender licensing law, does not require the pre-license education or testing that SAFE requires for individual mortgage loan originators. Thus, if an independent contractor loan processor or underwriter were required to be licensed

	(2) "Mortgage loan processor or underwriter" <u>does not include</u> an individual who: (i) Represents to the public, through advertising or other means of communication including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator; or (ii) <u>Performs mortgage loan processing or underwriting activities as an independent contractor</u>. **FI § 11-602. General considerations.** **(a) Applicability**. – (1) The licensing provisions of this subtitle do <u>not</u> apply to independent contractors. (2) Independent contractors are subject to the licensing provisions of Subtitle 5 of this title unless exempt from licensing under <u>that</u> subtitle. **(b) License required. --** Unless exempted from this subtitle under subsection (d) of this section, an individual may not engage in the business of a mortgage loan originator unless the individual holds a valid license issued under this subtitle.		under Subtitle 5, rather than Subtitle 6, it appears that that individual could be licensed without completing the pre-license education or testing that is required by SAFE.

2.	**DEFINITIONS** **FI § 11-601 (p) Mortgage loan.** – "Mortgage loan" has the meaning stated in § 11-501 of this title. **FI § 11-501. Definitions.** **(l) Mortgage loan.** -- "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 or residential real estate on which a dwelling is constructed or intended to be constructed. **FI §11-501. Definitions.** (c) "Dwelling". -- (1) "Dwelling" has the meaning stated in 15 USC §1602(v). (2) "Dwelling" <u>does not include a residential structure or mobile home unless</u> the residential structure or mobile home, or at least one unit contained in the residential structure or mobile home, <u>is owner-occupied</u>.	**12 USC §5102(8).** RESIDENTIAL MORTGAGE LOAN.-- The term "residential mortgage loan" means <u>any</u> 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). **Truth in Lending Act, §1103(v)** (15 USC §1602(v)). The term "<u>dwelling</u>" means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.	With respect to residential structures or mobile homes, Maryland's definitions of "dwelling" and "mortgage loan" have the effect of applying the licensing requirements only to loan originator's making loans on owner-occupied dwellings. The SAFE Act does not limit its application only to loans on owner-occupied dwellings.

3.	**DEFINITIONS** **FI § 11-601 (x) Residential real estate**. - "Residential real estate" has the meaning stated in § 11-501 of this title. **FI §11-501(q) Residential real estate**. - "Residential real estate" means any <u>owner-occupied real property</u> located in Maryland on which a dwelling is constructed or intended to be constructed.	**12 U.S.C. § 5102(8).** RESIDENTIAL MORTGAGE LOAN.-- The term "residential mortgage loan" means <u>any</u> 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). **Truth in Lending Act, §1103(v).** (15 USC §1602(v)): The term "<u>dwelling</u>" means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.	Maryland's definition of "residential real estate" limits the term, and the related licensing requirements, to only owner-occupied properties. The SAFE Act does not limit its application to owner-occupied real property.
4.	**EXEMPTIONS** **FI § 11-602(d)**(5) Subject to subsection (e) of this section, an <u>individual loan servicer.</u> **FI §11-602(e) Modification of exemptions.** The exemption under subsection (d)(5) of this section is subject to modification by regulations that are adopted by the Commissioner and consistent with any applicable written interpretations of the federal SAFE Act of 2008 by the US	**HUD's PROPOSED RULE, Preamble, Sec. II.L. (Loan modifications.)** 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	In §11-602(d)(5) of the Financial Code, Maryland exempts individual loan servicers from the loan originator license requirements unless HUD determines otherwise. Maryland's definition of an "individual loan servicer" includes those who "collect data and <u>make decisions to modify" the terms of the mortgage loan obligation</u>. If in its final rule, HUD includes loan modification as a loan originator activity, then an exemption from licensing

	Department of Housing and Urban Development presented through commentaries, guidelines, rules, regulations, or interpretive letters. **FI § 11-601. (j) Individual loan servicer**. -- "Individual loan servicer" means an individual who on behalf of a note holder or mortgage loan servicer: (1) Collects or receives payments, including payments of principal, interest, escrow amounts, and other amounts due on existing mortgage loan obligations owed to the note holder or mortgage loan servicer, at a time when the borrower is in default, or in reasonably foreseeable likelihood of default; and (2) Working with the borrower and the note holder or mortgage loan servicer, collects data and makes decisions to modify, either temporarily or permanently, the terms of the mortgage loan obligations described in item (1) of this subsection or to proceed with collection efforts through foreclosure or other processes.	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.	requirements for individuals who perform these activities would be inconsistent with the SAFE Act's requirements.

5.	**EXEMPTIONS.** **FI § 11-502. Applicability.** (b) "Exceptions." -- The provisions of this subtitle do not apply to: (4) Any person who: (i) Makes 3 or fewer mortgage loans per calendar year; and (ii) Brokers no more than one mortgage loan per calendar year (5) Any person who takes back a deferred purchase money mortgage in connection with the sale of: (i) A dwelling or residential real estate owned by, and titled in the name of, that person; or (ii) A new residential dwelling that the person built**;** (6) A nonprofit charitable organization registered with the Maryland Secretary of State or a nonprofit religious organization; (7) An employer making a mortgage loan to an employee; … (9) A real estate broker who is licensed in the State and makes a mortgage loan providing a repayment schedule of two years or less to assist the borrower in the purchase or sale of a dwelling or residential real estate through the broker; (10) A home improvement contractor licensed under the Maryland Home Improvement Law who assigns a mortgage loan without recourse within	**12 U.S.C. § 5103. LICENSE OR REGISTRATION REQUIRED.** An individual may not engage in the business of a loan originator without first obtaining, and maintaining annually, a registration as a registered loan originator; or a license and registration as a State-licensed loan originator; and obtaining a unique identifier. **Proposed Rule § 3400.103(e): Individuals required to be licensed by states.** The only exemptions to the state-license requirements, provided in the Proposed Rule, would be the following: (1) An individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the individual is compensated directly or indirectly by a lender, mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator; (2) An individual who is involved only in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D); (3) A loan processor or underwriter who performs only clerical or support duties and does so at the direction of and	Maryland provides an exception for individuals who make three or fewer mortgage loans and broker no more than one mortgage loan per year. This exception is not provided in the SAFE Act or in HUD's proposed rule. Maryland's statute also provides an exception for "any person who takes back a deferred purchase money mortgage in connection with the sale of a dwelling or residential real estate owned by and titled in the name of that person or a new residential dwelling that the person built". This appears to be inconsistent with the exemption in HUD's proposed rule, which provides an exemption for individuals who offer or negotiate terms of a residential mortgage loan secured by a dwelling that served as the individual's residence. Maryland exempts nonprofit charitable organizations. Individuals, not organizations, are subject to the SAFE Act's licensing requirements. To the extent that Maryland applies its exception to individual employees of exempt entities, the exception would be inconsistent with the SAFE Act and HUD's proposed rule when such employees are engaging in the business of a loan originator.

	30 days after completion of the contract to a person licensed under this subtitle or to an institution that is exempt from this subtitle…; (11) A subsidiary or affiliate of an institution described in subsection (c) of this section (banks, savings banks, trust companies, savings and loan associations, and credit unions), which subsidiary or affiliate is subject to audit or examination by a regulatory body or agency of this State, the United States, or the state where the subsidiary or affiliate maintains its principal office; … (12) Any employee benefit plan qualified under Internal Revenue Code § 401 or persons acting as fiduciaries with respect to such a plan, making mortgage loans solely to plan participants from plan assets; (13) Employees acting within the scope of their employment with: a licensed mortgage lender; or a person who is exempt from licensure under this subtitle.	subject to the supervision and instruction of an individual who is licensed and registered in accordance with paragraph (a) of this section or who is exempt under paragraph (e)(7) of this section; (4) An individual who only offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual; (5) Any individual who only offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence. (6) A licensed attorney who only negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; or (7) An individual who is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry, and who is an employee of a depository institution; a subsidiary that is owned and controlled by a depository institution, and regulated by a Federal	Maryland provides an exception for real estate brokers who make mortgage loans providing a repayment schedule of two years or less to assist the borrower in the purchase or sale of a dwelling or residential real estate through the broker. This appears to be inconsistent with the SAFE Act, which provides an exemption for real estate brokers who only perform real estate brokerage activities. Maryland's exception for subsidiaries or affiliates of banking entities appears to be inconsistent with the SAFE Act. The SAFE Act permits employees of subsidiaries of depositories regulated by the federal banking agencies to be exempted from licensing (they must be registered), but does not provide a similar exemption for employees of entities affiliated with depositories. Finally, Maryland exempts employee benefit plans or persons acting as fiduciaries with respect to such plans. These exceptions are not provided in the SAFE Act or in HUD's proposed rule. Maryland provides an exception for employees acting within the scope of their employment with a licensed mortgage lender or a person who is exempt from licensure. States must require licensure of an individual who

		banking agency; or an institution regulated by the Farm Credit Administration.	engages in the business of a loan originator, unless the individual meets one of the exemptions in the SAFE Act or HUD's proposed rule.
6.	**PROVISIONAL LICENSES.** **FI § 11-607. Investigation and approval** (c) Provisional approval. -- If the Commissioner has not notified the applicant in writing that the applicant's application is incomplete or has been denied within 30 days after the Commissioner receives the completed application, the application shall be considered provisionally approved.	**HUD's FREQUENTLY ASKED QUESTIONS AND ANSWERS.** QUESTION: May a state issue "provisional licenses" to mortgage loan originators who have not completed the SAFE Act's testing and education, or prior to a state's completion of the required background check? ANSWER: 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. Nothing in the SAFE Act prohibits a state from seeking additional evidence after it issues a license or from reconsidering the accuracy of a prior finding upon considering additional evidence that becomes available to the state.	The SAFE Act does not expressly provide for provisional licenses, nor does HUD's Proposed Rule include a provision for such licenses. The 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 SAFE Act licensing requirements has been met.

7.	**LICENSE RENEWAL.** **FI § 11-609.** (e) Certain requirements may be completed on or before December 31, 2010. -- Notwithstanding anything to the contrary in this section or § 11-605 of this subtitle, an applicant for renewal of a license who is duly licensed under this subtitle on July 1, 2009: . . . (2) Is deemed to have satisfied the prelicensing educational course requirement under § 11-606 of this subtitle if the applicant completed 20 hours of continuing education courses approved by the Commissioner within 5 years prior to the expiration date of the applicant's current license.	**12 U.S.C. § 5104(c)(2).** Approved Educational Courses. – For purposes of paragraph (1), pre-licensing education courses shall be reviewed, and approved by the [NMLSR].	The SAFE Act specifically requires that pre-licensing education courses be reviewed and approved by the NMLSR. Maryland's renewal requirements appear to be inconsistent with the requirements of the SAFE Act to the extent that Maryland's law allows non-approved courses to be counted toward meeting the SAFE Act's pre-licensing education requirements.
8.	**§ 11-519: Reinstatement of suspended license; issuance of new license after revocation:** The Commissioner may reinstate a suspended license or issue a new license to a person whose license has been revoked if, after investigation, the Commissioner is satisfied that the conditions that were the cause for the suspension or revocation have been corrected and are unlikely to recur.	**12 U.S.C. § 5104(b):** **Issuance of License:** The minimum standards for licensing and registration as a State-licensed loan originator shall include the following: (1) The applicant has never had a loan originator license revoked in any governmental jurisdiction. . . .	This provision in the Maryland Mortgage Lender law is inconsistent with the SAFE Act. Under the SAFE Act, a loan originator license cannot be issued to an applicant who has had loan originator license revoked.

9.	**MORTGAGE CALL REPORTS.** **§11-513.1 Annual reports**. A licensee shall submit to the NMLSR a report of condition once each calendar year on the date, in the form, and containing the information required by the NMLSR.	**12 USC §5104(e):** Each mortgage licensee shall submit to the NMLSR reports of condition, which shall be in such form and shall contain such information as the NMLSR may require. **HUD's PROPOSED RULE §3400.111(f):** The State 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 mortgage origination activities are included in reports of condition submitted to the NMLSR. Such reports 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 reasonably may require.	The Mortgage Originator licensing law appears to contain no provisions requiring submission of a "call report" or report of condition from individual licensed mortgage loan originators. Instead, the requirements for a "report of condition" appears only in Subtitle 5, pertaining to mortgage lenders (entities). 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.