

JAN 15 2010

Mr. Steven L. Cayouette
State Chief Bank Examiner
Rhode Island Department of Business Regulation
1511 Pontiac Avenue
Building 69-2
Cranston, RI 02920

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

Mr. Cayouette:

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:

Charles Johanek
Phone: (202) 402-6143
Email: 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

RHODE ISLAND SAFE ACT LEGISLATION

January 14, 2010

NOTE: An Act Adopting the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2009 (Rhode Island S 0461 bill of 2009) amended Rhode Island’s General Laws (R.I.G.L. 19-14 Financial Institutions “Licensed Activities”) to include a new chapter “The Secure and Fair Enforcement Mortgage Licensing Act of 2009” (R.I.G.L. 19-14.10)

	RHODE ISLAND R.I.G.L. 19-14.10	CORRESPONDING SAFE ACT PROVISIONS, HUD GUIDANCE & PROPOSED RULE LANGUAGE, WHERE APPLICABLE	HUD COMMENTS
1.	<p>§1914.10-3 Definitions (6)(i)(E) “Mortgage loan originator” Does not include a person (or its employees) engaged in servicing mortgage loans. For purposes of this exclusion, "servicing mortgage loans" means, on behalf of the note holder...working with the borrower on behalf of the note holder and pursuant to the contract between the person servicing mortgage loans and the note holder, to modify but not refinance, either temporarily or permanently, the obligations, or otherwise finalizing collection of the obligation through the foreclosure process.</p>	<p>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 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 loan modification as a loan originator activity, then an exemption from licensing requirements for individuals performing these activities would be inconsistent with the SAFE Act’s requirements.</p>

2.	<p>Chapter 19-14.1: Lenders and Loan Brokers</p> <p>§ 19-14.1-10 Special exemptions</p> <p>(a) The licensing provisions of <u>chapter 14 of this title shall not apply to:</u></p> <p>(1) Nonprofit charitable, educational, or religious corporations or associations;</p> <p>2) Any person who makes less than six (6) loans in this state in any consecutive twelve (12) month period; there is no similar exemption from licensing for loan brokers for brokering loans or acting as a loan broker;</p>	<p>12 U.S.C. § 5103 LICENSE OR REGISTRATION REQUIRED.</p> <p>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.</p> <p>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 are as follows:</p> <p>(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;</p> <p>(2) An individual who is involved only in extensions of credit relating to timeshare plans...;</p> <p>(3) A loan processor or underwriter who performs only clerical or support duties and does so at the direction of and subject to the supervision and instruction of an individual who is licensed and registered ...;</p> <p>(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;</p>	<p>Only <i>individuals</i> are subject to the SAFE Act's licensing requirements. To the extent that Rhode Island applies these exemptions only to <i>companies</i> and not individuals, the exemptions provided in RI's law would not differ from the SAFE Act and HUD's proposed rule. However, these exemptions appear to be inconsistent with the requirements of the SAFE Act to the extent that they could also be read to exempt individuals from the SAFE Act's licensing requirements. The SAFE Act and HUD's Proposed Rule do not provide for such exemptions.</p>
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