

Mr. Roger Novotny
Director
South Dakota Division of Banking
217 1/2 W. Missouri Avenue
Pierre, South Dakota 57501-4590

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

Dear Mr. Novotny:

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,

A handwritten signature in black ink, appearing to read 'W. Matchneer III', with a stylized flourish at the end.

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

Enclosure

South Dakota SAFE Act provisions

January 14, 2010

NOTE: South Dakota House Bill 1060 (codified as SDCL 54-14-12 through 54-14-39, inclusive) adopted and revised certain provisions regarding the mortgage lender business, and provided for fees and penalties related thereto.			
#	South Dakota legislative provisions	Corresponding SAFE Act Provisions and HUD Guidance	HUD Comments on South Dakota provisions
1.	<p>Exemptions. Section 24. Amends § 54-14-20 to read as follows: The State of South Dakota, any political subdivision of the state, and any quasi- governmental organization created by an executive order of the State of South Dakota and any subsidiary of such organization; any nonprofit corporation formed pursuant to chapter 47-22; any nonprofit United States Treasury Community Development Financial Institution, Small Business Administration Certified Development Company, or Regional Revolving Loan Fund; or any commercial club, chamber of commerce, or industrial development corporation formed pursuant to § 9-12-11 or 9-27-37 <u>is exempt from the requirements of this chapter.</u></p>	<p>12 U.S.C. § 5102 Definitions. (3) <i>Loan Originator</i> (A) In General- The term “loan originator” (i) means an individual who- (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain; (ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause; (iii) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent such lender, mortgage broker, or other loan originator; and (iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans...</p>	<p>South Dakota law exempts a variety of entities. The exemptions provided in South Dakota’s legislation are not included in either the SAFE Act or HUD’s proposed rule. To the extent that South Dakota applies its exemptions to the individual employees of the entities, the exemption may differ from the SAFE Act and HUD’s proposed rule when such employees are engaging in the business of a loan originator.</p>

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		<p>Frequently Asked Questions and Answers: The FAQs posted on HUD’s SAFE Act website further provide that “A state must require licensure of individuals who engage in the business of a loan originator, unless the individual meets the SAFE Act’s definition of a registered loan originator (§1503(7) of the SAFE Act).</p>	
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