

JAN 26 2010

Douglas B. Foster
Commissioner
Texas Department of Savings & Mortgage Lending
2601 North Lamar Blvd., Suite 201
Austin, TX 78705

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

Dear Mr. Foster:

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

Texas SAFE Act legislation

January 15, 2010

NOTE: Texas' legislature adopted House Bill 10, amending the Texas Finance Code, Chapter 180, to create the Texas SAFE Mortgage Licensing Act			
#	Texas legislative language	SAFE Act & Proposed Rule language	HUD Comments
1.	<p><u>DEFINITIONS</u></p> <p><i>Section 180.002(19) DEFINITIONS</i> Texas' legislation defines a "Residential mortgage loan originator" as "an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates the terms of a residential mortgage loan; and does not include: . . .</p> <p>(iii) an individual licensed under Chapter 1201, Occupations Code, unless the individual is directly compensated for arranging financing for activities regulated under that chapter by: a lender, mortgage broker, or other residential mortgage loan originator; or an agent of a lender, mortgage broker, or other residential mortgage loan originator;</p> <p>(iv) an individual who receives the same benefits from a financed transaction as the individual would receive if the transaction were a cash transaction.</p>	<p>12 U.S.C. § 5102(3) Mortgage Loan Originator:</p> <p>(i) An individual who:</p> <p>(I) takes a residential mortgage loan application; and</p> <p>(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;</p> <p>(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;</p> <p>(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 of such lender, mortgage broker, or other loan originator; and</p> <p>(iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.</p>	<p>If an individual licensed under Chapter 1201 is compensated for engaging in the business of a loan originator, the SAFE Act requires that he or she be licensed, regardless of who provides the compensation. Neither the SAFE Act, nor HUD's proposed rule provides an exemption for an individual who receives the same benefits from a financed transaction as a cash transaction.</p>

<p>2.</p>	<p><u>SCOPE OF COVERAGE</u></p> <p>Section 180.003 EXEMPTION. The following persons are exempt from this chapter: . . .</p> <p>(4) “an individual who is an exclusive agent of a registered financial services company; is exempt from regulation under Chapter 156 as provided by Section 156.202(5); and is individually enrolled as a registered mortgage loan originator with the Nationwide Mortgage Licensing System and Registry.”</p> <p>(6) “a nonprofit organization providing self-help housing that originates zero interest residential mortgage loans for borrowers who have provided part of the labor to construct the dwelling securing the loan.”</p>	<p>12 U.S.C. § 5102. Definitions (2) Depository institution. The term "depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 USCS § 1813], and includes any credit union.</p> <p>§ 5103 License/Registration: (a) Individuals may not engage in the business of a loan originator without first (1) obtaining and maintaining annually: (A) a registration as a registered loan originator; or (B) a license and registration as a State-licensed loan originator; and (2) obtaining a unique identifier.</p>	<p>The cited exemptions in the Texas legislation are not included in the SAFE Act or HUD’s Proposed Rule.</p> <p>The Texas legislation does not define a “registered financial services company.” The SAFE Act provides an exemption from state licensing for individuals who are employees of depository institutions or of federally regulated subsidiaries of depository institutions.</p> <p>To the extent that Texas applies its "nonprofit organization" exemption to individuals, the exemption would be inconsistent with the SAFE Act.</p>
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