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

Office of Housing

JAN 21 2010

Mr. E. Joseph Face, Jr.
Commissioner
Virginia Bureau of Financial Institutions
PO Box 640
Richmond, VA 23218-0640

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

Dear Commissioner Face:

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:

Kevin Stevens
Phone: (202) 402-4317
Email: Kevin.L.Stevens@hud.gov

Please feel free to give Kevin 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

VIRGINIA SAFE ACT LEGISLATION
January 20, 2010

	Virginia's SAFE Act Legislation Title 6.1 Chapter 16.1, For purposes of this chart, HUD reviewed Bill S1171	Corresponding SAFE Act Provisions and HUD Commentary on SAFE Act, where applicable	HUD Comments
1.	**Sec. 6.1-431.1 Definitions** "Mortgage loan originator" means an individual who takes an application for or offers or negotiates the terms of a residential mortgage loan, as defined in §1503(8) of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, P.L. 110-289, that is secured by <u>real property</u> located in the Commonwealth.	**12 U.S.C. § 5102** (3) LOAN ORIGINATOR. (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; . . . (8). RESIDENTIAL MORTGAGE LOAN. -- The term "residential mortgage loan" means any loan primarily for personal, family or household use that is <u>secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling</u> (as defined in section 103(v) of the Truth in Lending Act) <u>or residential real estate</u> upon which is constructed or intended to be constructed a dwelling (as so defined).	Virginia's definition of "mortgage loan originator" in effect limits the licensing requirements to individuals engaged in the origination of loans with respect to "real property located in the Commonwealth." Virginia's legislation appears to be inconsistent with the minimum requirements of the SAFE Act because it does not include in the definition of "mortgage loan originator" individuals who originate loans on dwellings.
2.	**Sec. 6.1-431.1 Definitions** "Mortgage loan originator" does not include . . . (viii) any individual acting as an individual loan servicer. "Individual loan servicer" means any person who, on behalf of the note holder, collects or receives payments, including payments of principal, interest, escrow amounts, and	**HUD's PROPOSED RULE, Preamble, Sec. II.L. (Loan modifications.)** As noted earlier in this preamble, HUD continues to seek comment on HUD's inclination to require licensing, as loan originators under the SAFE Act, of individuals who perform loan modifications that involve offering or	As HUD has stated in its proposed rule, refinancings are unambiguously covered by the SAFE Act. In addition, if in its final rule, HUD includes loan modification as a loan originator activity, then an exemption from licensing requirements for individuals who perform these activities also would be inconsistent

	other amounts due, on obligations due and owing to the note holder pursuant to a residential mortgage loan, or who, when the borrower is in default or in foreseeable likelihood of default, works on behalf of the note holder with the borrower to modify or refinance, either temporarily or permanently, the obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.	negotiating of loan terms that are materially different from the original loan. HUD first addressed this issue in a frequently asked questions section on its Web site, concerning the SAFE Act. For the convenience of the reader, and to highlight the questions for which HUD specifically seeks comment, HUD reviews its consideration of this issue as set forth in the frequently asked questions section. HUD's consideration of this issue is based on HUD's recognition that servicers are increasingly taking applications for and negotiating the terms of loan modifications that materially alter the terms of existing mortgage loans. These types of loan servicing activities are often very different from what industry and the public viewed as typical loan servicing activities only a few years ago. Today's loan modifications may include an increase or decrease in the interest rate, a change to the type of interest rate (*e.g.*, fixed rate versus adjustable rate), an extension of the loan term, an increase or a write-down of the principal, the addition of collateral, changes to provisions for prepayment penalties and balloon payments, and even a change in the parties to the loan through assumption or the addition of a cosigner.	with the SAFE Act requirements.

		The activities of a loan servicer that result in modification of the terms of a residential mortgage loan can be virtually indistinguishable from the performance of a refinancing, which is unambiguously covered by the SAFE Act. 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.	

3.	**Sec. 6.1-431.13** A. A mortgage loan originator applicant who has completed and filed with the Commission and the Registry all information, documents, and requirements for licensure pursuant to this chapter shall be provided a provisional license, registration, and unique identifier as a mortgage loan originator for the period prior to action being taken on his application by the Commission if (i) the applicant is employed by or contracted to act as a mortgage loan originator for a person licensed under Chapter 16 (§ 6.1-408 et seq.), and (ii) a senior officer or principal of such person attests to the Commission that: 1. If the applicant is not currently or has not within the six-month period prior to the date of application been acting as a mortgage loan originator or a state-licensed mortgage loan originator in another state under provisions of § 1507 of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, P.L. 110-289: a. The applicant has never had a mortgage loan originator license denied, revoked, or suspended in any governmental jurisdiction; b. The Commission has not denied the application of or revoked or taken any adverse action with respect to any license held by the applicant during the five-year period ending on the date of filing of the application; c. The applicant has not been convicted of a felony that would otherwise authorize the Commission to deny a license;	**HUD's Frequently Asked Questions and Answers:** **1. Provisional Licensing:** 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. Please also see section D of HUD's Commentary on the Model State Law ("HUD's Commentary," also available on the SAFE Act page of this website) for guidance on dates by which states must require individuals to obtain SAFE-compliant licenses.	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

	d. The application meets or exceeds all of the applicable requirements of this chapter for licensure; and e. The licensed person will be responsible for the acts of the applicant during the period that such application is pending; or 2. If the applicant is currently or has within the six-month period prior to the date of the application been acting as a registered mortgage loan originator or a state-licensed mortgage loan originator in another state under provisions of § 1507 of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, P.L. 110-289:		
4.	**No corresponding provision.**	**12 U.S.C. § 5104 State license and registration application and issuance.** (e) Mortgage call reports. Each mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.	Virginia's legislation does not containa provision requiring licensees to submit reports of condition to the NMLSR.
5.	**§ 6.1-431.11.** Continuing education requirements for mortgage loan originators. A. A licensed mortgage loan originator shall complete annually at least eight hours of continuing Education… **§ 6.1-431.12**	**12 U.S.C. § 5105(a) Standards for License Renewal** The minimum standards for license renewal for State-licensed loan originators shall include the following: (1) The loan originator continues to meet the minimum standards for license issuance.	While Virginia's legislation requires continuing education and states that a license will expire yearly unless a renewal fee is paid, Virginia's legislation does not contain any provision that specifically requires loan originators to continue to meet minimum licensing standards in order to renew their license.

	C. Every license shall remain in force until it expires or has been surrendered, revoked, or suspended. The expiration, surrender, revocation, or suspension of a license shall not affect any preexisting legal right or obligation of the licensee. Licenses shall expire at the end of each calendar year unless renewed by prior payment of the annual license renewal fee. **§ 6.1-431.15. Annual fees.** A. In order to defray the costs of his examination, supervision, and regulation, every licensee shall pay an annual license renewal fee.	(2) The loan originator has satisfied the annual continuing education requirements described in subsection (b). **Proposed Rule § 3400.107 Minimum annual license renewal requirements.** For an individual to be eligible to renew a loan originator license as required under § 3400.105(f), a State must require the individual: (a) To continue to meet the minimum standards for license issuance provided in § 3400.105;	
6.	**No corresponding provision.**	**12 U.S.C. § 5107(d) STATE LICENSING LAW REQUIREMENTS.-** For purposes of this section, the law in effect in a State meets the requirements of this subsection if the Secretary determines the law satisfies the following minimum requirements: (1) A State loan originator supervisory authority is maintained to provide effective supervision and enforcement of such law, including the suspension, termination, or nonrenewal of a license for a violation of State or Federal law. (2) The State loan originator supervisory	Virginia's legislation does not contain provisions that require the State loan originator supervisory authority to regularly report violations of the State or Federal law as well as other enforcement actions or relevant information to the NMLSR. In addition, Virginia's legislation also does not require the State loan originator supervisory authority to put a process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.

		authority ensures that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry. (3) The State loan originator supervisory authority is required to regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry. (4) The State loan originator supervisory authority has a process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry… **HUD's Proposed Rule § 3400.111 Other minimum requirements for State licensing systems.** (d) The supervisory authority must be required under State law to regularly report violations of such law, as well as enforcement actions and other relevant information, to the NMLSR. (e) The supervisory authority must have a process in place for challenging information contained in the NMLSR.	