



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

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OFFICE OF  
COMMISSIONER OF BANKING

Louie A. Jacobs  
Commissioner of Banking  
South Carolina State Board of Financial Institutions  
1205 Pendleton Street, Suite 305  
Columbia, South Carolina 29201

STATE BOARD OF  
FINANCIAL INSTITUTIONS  
CONSUMER FINANCE DIVISION

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

Dear Mr. Jacobs:

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](mailto: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 long horizontal stroke extending to the right.

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

Enclosure

**SOUTH CAROLINA SAFE ACT LEGISLATION**

January 21, 2010

NOTE: South Carolina's mortgage lending legislation S673 has separate provisions for Mortgage Lending and Mortgage Brokers. One act is titled "Licensing of Mortgage Brokers" ("MB Licensing Act") and the other is titled the "South Carolina Mortgage Lending Act" ("Lending Act"). Both acts have enacted similar provisions in order to implement the minimum requirements of the SAFE Act.

#	SOUTH CAROLINA SAFE ACT LEGISLATION	CORRESPONDING SAFE ACT PROVISIONS, COMMENTARY, FAQs, &/OR PROPOSED RULE LANGUAGE	HUDD COMMENTS
1.	<p><b>EXEMPTIONS</b></p> <p>Both §37-22-110 (18)(f) Lending Act and §40-58-20(16)(f) MB Licensing Act define an 'Exempt person' to include: ... a natural person who sells residential real estate and who lends or services, in one calendar year, no more than five purchase money notes secured by mortgages, deeds of trust, or other security instruments on the real estate sold as security for the purchase money obligation, unless HUD or a court of competent jurisdiction determines that this exemption is not in compliance with the SAFE Act....</p>	<p><b>No comparable SAFE Act provision for state-licensed loan originators.</b></p>	<p>South Carolina's exemption from the licensing requirements for someone who originates or services a de minimis number of loans per year is not provided for in the SAFE Act for state-licensed loan originators, nor does HUD's proposed rule provide such an exemption.</p>
2.	<p><b>EXEMPTIONS</b></p> <p>Both §37-22-110 (18)(g) Lending Act and §40-58-20(16)(g) of the MB Licensing Act define an 'exempt person' to include: an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts;...</p>	<p><b>PROPOSED RULE, Preamble, Sec. H.L. (Loan modifications.)</b></p> <p>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</p>	<p>If in its final rule, HUD includes loss mitigation 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>

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	<p>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><b>3. EXEMPTIONS</b> Both §37-22-110 (18)(j) Lending Act and §40-58-20(16)(j) define an 'Exempt person' to include: a manufactured home retailer and its employees if performing only clerical or support duties in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a <u>mortgage lender or a mortgage broker</u> for the performance of the clerical or support duties.</p>	<p><b>12 U.S.C. § 5102.(3) Loan Originator--</b> The term "loan originator" means an individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain.</p>	<p>South Carolina's exemption for manufactured home retailer employees performing only clerical or support duties, provided they receive no compensation or gain from a mortgage lender or mortgage broker, may be inconsistent with the SAFE Act.</p>
<p><b>4. PROVISIONAL LICENSING. § 37-22-140 (L)(1), Lending Act.</b> "A person with three years' experience as a loan originator who applies for a license as a loan originator and who has completed and filed with the Nationwide Mortgage Licensing</p>	<p><b>HUD's FREQUENTLY ASKED QUESTIONS AND ANSWERS. QUESTION:</b> May a state issue "provisional licenses" to mortgage loan originators who have not completed the SAFE Act's testing and education, or</p>	<p>The SAFE Act does not expressly provide for provisional licenses, nor does HUD's Proposed Rule include a provision for such licenses.</p>

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<p>System and Registry all information, documents, and requirements for licensure pursuant to this chapter and who has been assigned a unique identifier by the Registry must be provided a provisional license as a loan originator before the commissioner takes action on his application if the applicant is employed by a mortgage lender licensed pursuant to this chapter and a senior officer or managing principal of that licensee attests to the commissioner that: ...”</p>	<p>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.</p>	
<p><b>5. MINIMUM LICENSING REQUIREMENTS.</b> <b>Section 37-22-140(B)(3) of the Lending Act,</b> which contains the pre-licensing education requirement, states that: “To satisfy the twenty hours of prelicensing education, an applicant may show proof of the equivalent of twenty or more semester hours of satisfactorily completed course work in real estate finance or real estate law or course work that is equivalent to the education requirements in the SAFE Act pursuant to Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289 if the course work counts toward the successful completion of a degree that is baccalaureate level or more advanced with a major or minor in finance, accounting, business administration, real estate finance</p>	<p><b>12 U.S.C. § 5104(c). PRE-LICENSING EDUCATION OF LOAN ORIGINATORS.</b> <b>(1) MINIMUM EDUCATIONAL REQUIREMENTS.</b>—In order to meet the pre-licensing education requirement, a person shall complete at least 20 hours of education approved in accordance with paragraph (2), which shall include at least— (A) 3 hours of Federal law and regulations; (B) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and (C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace. <b>(2) APPROVED EDUCATIONAL</b></p>	<p>The SAFE Act and HUD’s proposed rule require that pre-licensing education be approved by the NMLSR. South Carolina’s law appears to be inconsistent with the SAFE Act and HUD’s proposed rule in this respect.</p>

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<p>economics, or similar baccalaureate or more advanced degree, approved by the commissioner, from an accredited college or university. The coursework must be approved pursuant to 12 U.S.C. 5101 et seq.</p>	<p><b>COURSES.</b>—For purposes of paragraph (1), pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.</p> <p><b>(3) LIMITATION AND STANDARDS.</b>—</p> <p><b>(A) LIMITATION.</b>—To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer pre-licensure educational courses for loan originators.</p> <p><b>(B) STANDARDS.</b>—In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.</p>	
<p>6. <b>STATE LICENSING LAW REQUIREMENTS.</b> Section 37-22-130 of the Lending Act and Section 40-58-90 of the MB Licensing Act provide a means for persons aggrieved by an administrative order issued by the commissioner to request a contest case hearing. However, it appears that neither Act provides a means for applicants or licensees to challenge information contained in the NMLSR system.</p>	<p><b>12 U.S.C. § 5107(d)(4) Challenging NMLSR:</b> States must put a process in place for challenging information contained in the NMLSR.</p> <p><b>HUD's Proposed Rule §3400.111(e)</b> The supervisory authority must have a process in place for challenging information submitted to the NMLSR.</p>	<p>South Carolina's law appears not to include a process for challenging information submitted to the NMLSR.</p>