# TEXAS DEPARTMENT OF SAVINGS & MORTGAGE LENDING

Douglas B. Foster
Commissioner

February 8, 2010

Mr. Jeff Pender
Mr. Tim Irvine
Texas Department of Housing and Community Affairs ("TDHCA")

Re: Licensing of TDHCA field personnel and Austin staff

Dear Jeff and Tim:

This letter is in response to yours of February 4, 2010. After you have reviewed its contents please advise if you would like to set a conference call to discuss.

We agree with your statement that the support activities undertaken by TDHCA employees in the Austin office are not residential mortgage loan origination activities requiring licensure under the Texas SAFE Act ("SAFE Act") as codified in Texas Finance Code Chapter 180.

The area we disagree with is the conclusion that the field personnel, who have direct contact with the consumer, are not required to be licensed. It is TDSML's opinion that the field personnel are required to be licensed under the SAFE Act.

The SAFE Act requires residential mortgage loan originators ("RMLO") to be licensed. A RMLO is defined in § 180.002 (19) 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". The issue, therefore, is whether the field personnel fall under the definition of a RMLO.

A residential mortgage loan is defined in § 180.002(18) as a loan primarily for personal, family, or household use that is secured by a deed of trust or other consensual security interest on a dwelling or on residential real estate. Residential real estate as defined in § 180.002(20) includes real property on which a dwelling is intended to be constructed as well as real property on which a dwelling is constructed. Loans under the program described in your letter are residential mortgage loans.

The field personnel are paid to take the information from the borrower; therefore, they are receiving compensation or gain.

The next issue to determine is whether the field personnel either take an application **or** offer or negotiate the terms of the loan. Please note, according to the statute, whether the taking of an application is for the purpose of negotiating the term of the loan does not

2601 North Lamar, Suite 201 • Austin, Texas 78705 • (512) 475-1350
FAX (512) 475-1505 EMAIL: smlinfo@sml.state.tx.us WEBSITE: www.sml.state.tx.us

impact the conclusion. The taking of a residential mortgage loan application is sufficient to cause one to be a RMLO. HUD Commentary as restated in the preamble to HUD's Proposed Rules states that HUD views the term "taking an application" to mean "any request from a borrower, however, communicated, for an offer (or in response to a solicitation of an offer) of residential mortgage loan terms, as well as the information from the borrower that is typically required in order to make such an offer". It is TDSML's opinion that the field personnel are "taking an application" for purposes of the SAFE Act because they are communicating with a borrower about the terms of the loan.

HUD, in the preamble to the Proposed Rules, states that it views the terms "offer" and "negotiate" broadly. These terms include "interactions that are typical between two parties in an arm's length relationship prior to entering into a contract, such as presenting loan terms for acceptance by a prospective borrower and communicating with the borrower for the purpose of reaching an understanding about prospective loan terms". It is TDSML's opinion that this view of "offer" and "negotiate" encompasses the actions of the field personnel and further evidences their need to be licensed under the SAFE Act. The field personnel are communicating terms of a loan product to the borrower and obtaining information from the borrower that is necessary to determining whether the borrower qualifies for a residential mortgage loan.

Please call me at 475-1038 if you would like to discuss the contents of this letter. For additional information regarding the process for obtaining licenses, please contact licensing@sml.state.tx.us.

Sincerely,

Caroline Jones

Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending

Cc: Commissioner Douglas B. Foster, TDSML
Ms. Sandra Weller, Director of Licensing, TDSML

February 4, 2010

Doug Foster, Commissioner

Caroline Jones, General Counsel

Texas Savings and Mortgage Lending Department

2601 North Lamar

Austin, Texas

Dear Doug and Caroline:

This is a follow-up to our earlier phone conversation regarding the SAFE Act and new licensing requirements. Most of our housing financing programs follow the procedures outlined below. To keep matters simple we request that you comment only on what is outlined below. We understand that if a current or future program operates or is changed to operate differently than as represented below, the program may become subject to licensing under the SAFE Act.

The Texas Department of Housing and Community Affairs ("TDHCA") offers individuals home loan products under several federal and state programs. These products are usually offered as zero-interest, deferred, forgivable loans, but we occasionally require repayable loans for higher income families. The terms of a loan under the program are determined by income alone. No terms of a loan are negotiable.[1] The initial intake interaction with the potential borrower is handled by representatives of subrecipients of the Department, typically a unit of local government or a non-profit organization. The "intake" people do not negotiate loan terms but rather take specific program eligibility information from potential borrowers (W-2's, tax returns, SS#, etc.) to determine whether their family meets the income qualifications of the particular program and which preset loan terms they qualify for. Technically this could be considered "taking an application" but it is for determining what, if any, preset loan terms the borrower is eligible for and not for the purposes of negotiating the best interest return for the Department.

Ultimately, that information is forwarded to Department employees in Austin who then assemble the income information with other information about the construction contractor, title company, etc., and forward the file to legal for the drafting of closing documents. TDHCA employees

[1] There are two exceptions for which the Department believes licensing may necessary. The Single Family Development Program permits negotiation of loan terms to keep loan payments within 25%-30% of the potential borrower's gross income. Also, we have a committee that reviews and approves applications to modify loans from any of our programs. We believe loan modification activity is also subject to licensing under your current guidance.

occasionally interact with potential borrowers when the borrowers call to ask program-related questions.

Under the above scenario we believe that the activities conducted by both the intake people in the field and the support activities undertaken by TDHCA employees in Austin are not loan origination activities requiring licensing under the SAFE Act. There is no negotiation of terms because all loan terms are fixed from the start of the program and depend on the potential borrower's income. We believe that their activities are confined to the administrative or clerical processing activities exemption under TEX. FIN. CODE §180.002(1).

Please call Jeff Pender at (512) 475-4752 or Tim Irvine at 475-3296 if you need any further clarification. Thanks again for assisting us with this important matter.