IDAHO
DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

January 21, 2010

Jeanne Jackson-Heim
Executive Director
Idaho Real Estate Commission
PO Box 83720
Boise, ID 83720-0077

*Re: Idaho SAFE Act's Definition of "Mortgage Loan Originator"*

Dear Jeanne:

Thank you for your letter of January 11, 2010 in which you provided answers to questions posed to the Idaho Real Estate Commission from the Department of Finance relative to the SAFE Act and its applicability to real estate licensees. I appreciated receiving your analysis as a part of our combined effort to foster a mutual understanding of the exemption in the Idaho SAFE Act pertaining to real estate licensees.

As I mentioned in my prior correspondence to you, because overall responsibility for interpretation, implementation, and compliance with the SAFE Act rests with HUD, please be advised that if HUD's interpretation of the "real estate exemption" provision of the SAFE Act leads to a result contrary to our mutual understanding, HUD's conclusions would be determinative, and the Department would be required to implement HUD's interpretation.

Having said the foregoing, based upon your representations, the Department will proceed under the following understanding, as articulated in your January 11, 2009 letter:

1. When an Idaho real estate licensee negotiates terms of a residential mortgage loan with a lender on behalf of a distressed homeowner, for the real estate licensee's own business or investment interests in procuring the subject property, the real estate agent ***is*** offering or providing real estate brokerage services to the public. Therefore, in such a scenario the real estate licensee is not a "mortgage loan originator" under Idaho Code §26-31-303(6);

2. Although engaging in the activity in the scenario described in paragraph 1, above, does not require a real estate license in Idaho, unless another exemption applies it most likely does require a license as a mortgage loan originator. Based upon your letter, an exception to that is where the buyer or seller in such a scenario is a real estate licensee. In that case, it is a regulated real estate transaction according to Idaho law, and the actions of the real estate licensee fall under the regulatory oversight authority of the Idaho Real Estate Commission; and

3. If the activities set forth in paragraph 1, above, are engaged in by an assistant to a real estate licensee, and the assistant is not licensed by the Real Estate Commission, the "real estate exemption" in the SAFE Act is not applicable to such assistant.

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In your January 11th letter to me, you requested clarification as to whether the Department considers it a violation of the SAFE Act for a licensed real estate agent to be compensated by a lender for real estate brokerage activity when the seller of the property is a lender. You indicated that this situation presents itself quite often with many bank-owned properties. You are undoubtedly referring to the following exemption language in Idaho Code §26-31-303(6):

> Mortgage loan originator" means 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 terms of a residential mortgage loan.
> (a) Mortgage loan originator does not mean the following:
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> ***
>
> ***(ii) A person or entity that only performs real estate brokerage activity and is licensed or registered in accordance with Idaho law, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator, or by any agent of such lender, mortgage broker or other mortgage loan originator;*** ...(Italics and bolding added)

It is the Department's interpretation that the above exemption language operates to remove a real estate licensee out of the definition of "mortgage loan originator," when engaging in real estate brokerage activities except in instances where the real estate licensee is compensated "by a lender, a mortgage broker or other mortgage loan originator, or by any agent of such lender, mortgage broker or other mortgage loan originator" <u>for loan origination activities</u>. The Department does not believe that the above Idaho SAFE Act language stands for the proposition that a real estate licensee becomes a "mortgage loan originator" by virtue of receiving a customary real estate sales commission, <u>for real estate brokerage activities</u>, from a seller of real property who happens to be a lender. If a real estate licensee receives compensation from a lender for conducting "loan origination activities" that would lead to a different conclusion. However, I understood your question to relate to a real estate licensee's receipt of compensation from a lender, such as a bank, for performing real estate brokerage activities for the lender, such as acting as a bank's real estate agent in the marketing and selling of bank-owned residential properties.

The Department of Finance appreciates receiving IREC's input into the interpretation of the real estate exemption language in the SAFE Act as applied to Idaho real estate agent licensees.

Thank you.

Sincerely,

Gavin M. Gee
Director, Idaho Department of Finance