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Office of Thrift Supervision

Department of the Treasury

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MEMORANDUM FOR: **CHIEF EXECUTIVE OFFICERS**

FROM: Timothy T. Ward, Deputy Director
Examinations, Supervision, and Consumer Protection

SUBJECT: Notice of Proposed Rulemaking to Implement the Secure and
Fair Enforcement for Mortgage Licensing Act (SAFE Act)

The Office of Thrift Supervision (OTS), together with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Farm Credit Administration (the Agencies) are jointly requesting public comment on the attached notice of proposed rulemaking entitled *Registration of Mortgage Loan Originators* (NPRM). The objectives of the SAFE Act's registration and identification requirements are to increase accountability and tracking of residential mortgage loan originators, enhance consumer protection, reduce fraud in the mortgage loan origination process, and provide consumers with easily accessible information on the background of a mortgage loan originator.

The NPRM implements the SAFE Act with respect to Agency-regulated institutions. The SAFE Act requires employees of an institution who engage in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry (Registry) and to obtain a unique identifier. The OTS proposed rule covers requirements for savings associations, their operating subsidiaries and their employees who act as mortgage loan originators. Comments on the NPRM are due to the Agencies within 30 days from the date it is published in the Federal Register. Comments on the proposed information collection requirements are due within 60 days.

Under the SAFE Act, the Agencies must develop a system, by July 29, 2009, for registering institution employees as mortgage loan originators with the Registry, a web-based system developed by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators. While the Registry currently supports the licensing of state-regulated mortgage lending institutions and their mortgage loan originators, it was not originally designed to support the registration of mortgage loan originators

employed by Agency-regulated institutions. The Agencies and CSBS are addressing modifications to the Registry to support a federal registration process.

While the Agencies intend to publish a joint final rule establishing a system of federal registration by July 29, 2009, the NMLSR will not be able to accept registrations from employees of Agency-regulated institutions at that time. Therefore, the proposed rule provides for a delay in implementation of the registration requirements until 180 days after the Registry becomes operational and available for initial federal registrations.

The proposed rule specifies the categories of information that federal registrants must submit to the Registry and require savings associations and their operating subsidiaries to adopt policies and procedures to ensure compliance with the SAFE Act and the final regulation. Such policies and procedures should be appropriate to the nature, size and scope of a savings association's residential mortgage lending activities.

The Agencies invite public comments on all aspects of the NPRM, as well as specific comments on the following key topics:

- *De minimis exception.* The SAFE Act *authorizes* the federal banking agencies to make such de minimis exceptions to the SAFE Act's requirements "as may be appropriate." The proposed rule establishes an exception for certain employees and the Agencies seek comment on whether the proposed exception adequately and appropriately covers circumstances which are truly de minimis, whether other ways of structuring a de minimis exception would be more appropriate, and whether any de minimis exception is appropriate.

- *Definition of mortgage loan originator.* The SAFE Act defines "mortgage loan originator" as an individual who takes a residential mortgage loan application and offers or negotiates terms of residential mortgage loans for compensation or gain. As described in the NPRM, the Agencies seek comment on the appropriate scope of this definition. An Appendix to the proposed rule contains illustrations of activities that would constitute loan origination activity and those that would not.

- *Delayed implementation, initial registrations and annual renewals.* The Agencies seek comment on the whether the proposed implementation period provides adequate time for completing the initial registration process or whether an alternative schedule would be appropriate. We also seek comments on whether the requirements for initial registrations and renewals of registrations are adequate for institutions and their employees and serve the consumer protection purposes enumerated in the SAFE Act.

- *Employee information, fingerprints, authorization and attestation.* The proposed rule lists categories of information that mortgage loan originators must submit to the Registry. Employees must also provide fingerprints, in digital form if practicable, to the Registry for submission to the Federal Bureau of Investigation.

The Agencies seek comment on the requirements as well as employee data that is proposed to be made public, and whether any additional data should be collected or made public.

- *Use of unique identifier.* The proposed rule requires an institution to make the unique identifier(s) of its registered mortgage loan originator(s) available to consumers in a manner and method practicable to the institution. The Agencies invite comments on the adequacy and appropriateness of the unique identifier requirements with respect to the consumer protection and anti-fraud purposes of the SAFE Act.

For further information contact Debbie Merkle, Project Manager, Credit Risk at (202) 906-5688 or Rhonda Daniels, Senior Compliance Program Analyst, at (202) 906-7158.

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