

Massachusetts Bankers Association

July 9, 2009

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**RE: RIN 1557-AD23 [Docket ID OCC-2009-0005]
Docket No. R-1357
RIN 3064-AD-43
RIN 1550-AC33 [Docket No. 2009-0004]**

To Whom It May Concern:

On behalf of our nearly 200 commercial, savings and co-operative banks, federal savings banks, and savings and loan associations throughout Massachusetts and New England, the Massachusetts Bankers Association (MBA) appreciates the opportunity to comment on the proposed rule to implement the registration of mortgage loan originator provisions included in the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). While MBA understands the objectives of the legislation were to create a national database of all mortgage loan originators, we are concerned that several aspects of the proposed rule will place a significant regulatory and financial burden on our member institutions.

Our member banks did not cause the current mortgage lending crisis, and generally adhered to safe and sound lending principles. Our banks are well-regulated, and did not make the kinds of risky loans that have resulted in many borrowers facing delinquencies and foreclosures. The original intent of the SAFE Act, and the many state mortgage originator licensing statutes enacted in recent years, was to require higher educational and training standards for loan originators while providing a system whereby the state could conduct background and credit checks on individuals working for non-depository institutions, which traditionally have not been subject to stringent oversight. In Massachusetts, depository institutions were specifically exempted from the licensing requirements under the state statute.

MBA believes that it would be unfortunate if banks, particularly community banks, were burdened with costly and complicated new regulations to register loan originators. While the agencies' proposal does recognize some of the compliance challenges that smaller institutions will face, we believe that the rule should provide much greater flexibility for banks while simplifying the process for all depository institutions. Our comments on several aspects of the proposed rule are below.

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Definition of Mortgage Loan Originator

Under the proposed rule, the definition of “mortgage loan originator” is based on the definition of the term “loan originator” included in the SAFE Act. Specifically, this term means an individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain. It does not include individuals who perform purely administrative or clerical tasks on behalf of an individual who is a mortgage loan originator.

The agencies have requested comments on a number of issues related to the definition of “mortgage loan originator”, including 1) whether the definition should cover individuals who modify existing residential mortgage loans; 2) whether individuals who engage in approving mortgage loan assumptions should be excluded from the proposed definition; and 3) whether individuals who engage in certain refinancing transactions should be excluded.

- **Coverage of Individuals who Modify Existing Loans & Approve Assumptions**

MBA believes the definition of “mortgage loan originator” should exclude bank personnel who are responsible only for modifying or facilitating the assumption of existing mortgage loans. These duties do not involve making or originating a new mortgage loan, simply changing the terms of the existing loan agreement. In these situations, there is no “sale” of a mortgage loan product to a borrower, and it is our understanding that the compensation structure and incentives for individuals with these responsibilities differs considerably from those of a bank employee who originates new mortgage loans.

From a practical standpoint, at many banks the loan modification function is not handled by the mortgage department. Instead, these activities may be the responsibility of the loss-mitigation or collections staff. Extending the rule to cover these individuals – who never originate a new mortgage loan – would place a significant cost and regulatory burden on the banking industry.

At some institutions with large loss-mitigation departments, the costs of registering staff would be enormous. In addition, at a time when federal and state regulators and policymakers are encouraging institutions to modify existing loans with the goal of sustaining homeownership, placing additional requirements on loss-mitigation personnel will only serve to slow the modification process for at-risk homeowners. We urge you to exempt these individuals and activities from the final regulation.

- **Coverage of Individuals Engaged in Certain Refinancing Transactions**

We also support exempting bank personnel that only engage in refinancing transactions, including those transactions that do not involve cash-out to the borrower and are with the same institution. We believe that in cases where an institution has employees that handle only these types of transactions and do not originate other mortgage loans, these individuals should be exempt from the registration requirements.

Initial Registration Requirements & Batch Processing

Under the proposed rule, employees of depository institutions who fall under the definition of a mortgage loan originator must register with the Registry, maintain their registration, and obtain a unique identifier. Institutions must require these employees to register and comply with these regulations. The rule also allows institutions to select one or more individuals to submit the required employee information on behalf of each of their mortgage loan originators to facilitate this registration process.

According to the proposal, in order to mitigate the burden on the initial registration process on institutions, the Agencies are considering whether to modify the Registry to permit a “batch” process for Agency-regulated institutions to submit, in bulk, some or all of the required employee and institution data. However, such a process might not eliminate an individual employee’s role in the registration process or the employee’s responsibility to attest to the accuracy of the data submitted on the employee’s behalf.

MBA believes that the regulatory agencies should do everything possible to minimize the compliance burden on the banking industry. We recommend that the agencies, in consultation with the Registry, should work to develop a standardized form that could be adapted for all banks. This would allow batch processing, while ensuring that all relevant information was provided to the Registry. In addition, we would encourage the agencies to provide institutions with a substantial implementation period for the new rules (see below). The burden of the initial registration process is considerable, particularly for smaller banks, and there must be sufficient time to address any operational or technical issues prior to any enforcement of the regulations.

De Minimis Exemption

MBA believes that the current proposed *de minimis* exemption for bank employees who originate five or less mortgage loans and the institution by which they are employed makes twenty-five or less mortgage loans annually is far too narrow. Because of the broad definition of mortgage loan originator in the statute, the proposed exemption would be virtually meaningless, and might banks to register far more employees than necessary. We recommend that the agencies adopt a much broader exemption policy in the final rule. In addition, we believe that the definition of “mortgage loan originator” must be clarified so that institutions can ensure that they are in compliance with the new regulations.

180-day Implementation Period

The Agencies are seeking comment on whether an implementation period of 180-days is sufficient for banks and their employees to complete the initial registration process. MBA believes that institutions should be given considerable time to comply with the initial registration requirements, since they will place a significant financial and staff resources burden on banks. The agencies should consider a staggered schedule for the initial registrations, possibly through a system based on asset size or volume of mortgage loans originated. Smaller institutions that do not have large numbers of mortgage loan originators, along with institutions that originate low numbers of mortgage loans, regardless of asset size, should have the greatest amount of time to comply with the requirements.

Maintaining Registration

The proposed rule requires a registered mortgage loan originator to renew his or her registration with the Registry during the annual renewal period. The employee must confirm that the information previously submitted to the Registry remains accurate and complete, updating any information as needed. Any registration that is not renewed during this period will become inactive and the individual will be prohibited from acting as a mortgage loan originator.

MBA is concerned with a requirement that every registered loan originator must renew their registration on a yearly basis. This places a significant compliance burden on individual originators as well as compliance and other staff at all banks. We believe that the registration of covered employees should remain valid until and unless there is a change in employment status or other material change in circumstance that requires information in the database to be updated. Alternatively, this recommendation could also be combined with a longer time period – possibly 3-5 years – for registration renewals. This

would reduce the cost and burden on banks while still ensuring that the database contains accurate information on registered loan originators.

Compliance Policies

The agencies have also proposed that institutions develop detailed written policies and procedures for compliance with the registration requirements. This will require significant time and staff resources of our member banks, who are already working to comply with numerous other regulations in the mortgage lending area. While we understand that financial institutions must comply with these new regulations, requiring them to have detailed written plans for how they will do so is unnecessary. We ask the agencies limit unnecessary burdens with respect to this issue in the final regulations.

Required Employee Information

The proposed rule requires covered employees to submit specific personal information to the Registry. This includes name, Social Security number, date of birth, as well as employment and criminal history. Registered mortgage loan originators will also be required to provide a fingerprint for the purposes of conducting a criminal history background check. Under the proposal, fingerprints that are on file with the bank and are less than three years old can be used in lieu of a new fingerprint.

MBA recommends that the three-year time period be extended to at least 10 years. Fingerprints do not change, and there is little reason to force institutions to bear the cost of fingerprinting employees if they already have records on file. A longer eligibility period would also speed the process of registering employees, since many institutions would not be required to contract with third party vendors to process new fingerprints.

Conclusion

MBA strongly believes that the banking agencies should make the mortgage loan originator registration process as simple, straightforward, and low-cost as possible for banks of all sizes. Banks are already highly regulated at the state and/or federal levels, and are already subject to examinations of their mortgage lending policies and procedures. Adding an additional requirement that will provide limited benefits to consumers or regulators will only add to the compliance burden and cost on traditional banks that have not been involved in many of the egregious practices that caused the mortgage lending crisis.

Thank you again for the opportunity to comment on the proposed rule. If you have any questions or would like additional information, please contact me at (617) 523-7595 or via email at jskar@massbankers.org.

Sincerely,


Jon K. Skarin
Director, Federal Regulatory & Legislative Policy