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July 9, 2009

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: RIN number 3064-AD43

Jennifer J. Johnson, Secretary
Board of Governors of the
Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1357

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington, DC 20219
Attention: Docket ID OCC-2009-0005

Regulation Comments,
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: OTS-2009-0004

Gary K. Van Meter, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090
Attention: RIN 3052-AC52

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
Attention: RIN 3133-AD59

Re: Proposed Interagency Rule to Implement the SAFE Act

Dear Sir or Madam:
The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the proposed regulation to implement the Secure and Fair Enforcement for

[1] *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

Mortgage Licensing Act (SAFE Act). The SAFE Act requires an employee of a bank, savings association, credit union or other depository institution and their subsidiaries regulated by a Federal banking agency, or an employee of an institution regulated by the Farm Credit Administration who acts as a residential mortgage loan originator, to register with the Nationwide Mortgage Licensing System and Registry (Registry), obtain a unique identifier and maintain this registration. This proposal would implement these requirements and provide that Agency-regulated institutions must require their employees who act as residential mortgage loan originators to comply with the SAFE Act's requirements to register and obtain a unique identifier and must adopt and follow written policies and procedures. While ICBA acknowledges the objectives of the SAFE Act and this regulation and is aware of the environment that led to these rules, we have many concerns with the proposed rule in its current form. Our concerns are highlighted below.

De Minimis Exception

Section 1507 of the SAFE Act requires the Federal banking agencies to make de minimis exceptions "as may be appropriate" to the Act's requirements to register and obtain a unique identifier. The proposed rule states that these registration requirements do not apply to an employee of an Agency-regulated institution if during the last 12 months: (1) The employee acted as a mortgage loan originator for 5 or fewer residential mortgage loans; and (2) the Agency-regulated institution employs mortgage loan originators who, while exempted from registration pursuant to the section, in the aggregate, acted as a mortgage loan originator in connection with 25 or fewer residential mortgage loans.

ICBA Comment: ICBA strongly believes the de minimis exception, as proposed, is unrealistic and so narrow that very few banks, if any, would qualify, rendering the exception useless. Also, this exception would be difficult to manage because loan transactions would have to be carefully monitored to insure that banks do not go over the narrow minimum threshold. Furthermore, because this minimum threshold is so small, any community banks that actually qualify will likely end up registering their mortgage loan originators anyway, for fear that a bank miscalculation on loan volume will put them in non-compliance with the law.

The exception should be rewritten to instead be based on the asset size of the financial institution, such as an exemption for financial institutions that have $500 million in assets or less. The purpose and spirit of the SAFE Act is to prevent bad actors in the mortgage loan industry and these actors have existed nearly entirely within larger national financial institutions and unregulated mortgage companies. Smaller financial institutions typically know their customers and their community environment and have a personal investment in their communities, where providing good and solid mortgage loans is a business priority and their business model is based on honest lending practices and not packaging poorly underwritten loans and selling them on the secondary market. Many community banks keep all of their mortgage loans in portfolio while others keep at least some of their mortgage loans in portfolio, and therefore these banks have more of a financial incentive in providing solid loans to consumers that they are able to comfortably repay.

In addition, these reporting requirements are unnecessary for community banks who know all of their employees and are able to adequately self regulate and monitor employee lending practices given their smaller size. ICBA strongly urges the Agencies to consider these distinctions between community banks and large national financial institutions and mortgage companies when drafting the final regulation.

Definition of "Mortgage Loan Originator"

The Agencies are asking for comment on whether the definition of "mortgage loan originator" in the regulation should also cover individuals who modify existing residential mortgage loans and if so, whether they should be excluded from this definition. For example, the Agencies are considering whether the final rule should exclude from this definition persons who modify an existing residential mortgage loan. The Agencies also seek comment on whether individuals that engage in certain refinancing transactions should be excluded from the reporting requirements.

ICBA Comment: ICBA believes that loan modifications for consumers or loan refinancings that are conducted by the same lender should be exempt from the reporting requirements of the SAFE Act. This exemption seems consistent with the purpose and goals of the SAFE Act, which is to provide transparency for consumers and eliminate bad actors in the mortgage industry. These transactions are conducted for consumer convenience, such as to make loan payments more manageable, and are not the types of problematic transactions that Congress intended to address.

Implementation Period for Initial Registrations

The proposal provides a grace period for initial registrations, where an employee is not required to register and can continue to originate residential mortgage loans without complying with the rule's registration requirements for 180 days from the date the Agencies provide public notice that the Registry is accepting initial registrations. After this 180-day period expires, any existing employee or newly hired employee subject to the registration requirements is prohibited from originating residential mortgage loans without first meeting the registration requirements. The Agencies seek comment on whether the 180-day implementation period is enough time for institutions and their employees to complete the initial registration process, and whether a staggered registration process should be developed.

ICBA Comment: Given the number of people that will need to register under the SAFE Act, ICBA believes the Agencies should allow registrants a one year period to initially register, which shall begin from the date the Agencies provide public notice that the Registry is accepting initial registrations. Providing this additional time will make it easier for financial institutions to finalize their procedures and register any employees in a timely manner. Furthermore, this longer period will prevent the Registry from getting overwhelmed with new registrants in a short amount of time and eliminate the need for the Agencies to implement a complicated staggered registration process, because financial institutions and their employees would have more time to register.

INDEPENDENT COMMUNITY BANKERS *of* AMERICA *The Nation's Voice for Community Banks®*
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Maintaining Registration Requirements

The Agencies require reported information for registrants be updated within a 60-day compliance grace period for a mortgage loan originator that becomes an employee of an institution as a result of an acquisition, merger or reorganization. The Agencies are also proposing a 30-day period for registrants to update their registrations if any of their information changes, such as their name or employment status, or if any of their previously submitted information becomes inaccurate.

ICBA Comment: ICBA believes the 60-day reporting requirement for changes in registration due to a bank acquisition, merger or reorganization is not long enough and should be changed to at least 180 days, so that banks and their employees have enough time to be in compliance. Most times, integration as a result of bank mergers, acquisitions and reorganizations can take several months, and 60 days would not be nearly enough time to comply in the case of a bank merger, etc. We see no negative impacts on extending this timeline to 180 days.

Furthermore, ICBA believes the 30-day period for registrants to update their registrations if any of their information changes should instead be a 60-day period, which would be the same amount of time registrants are provided to annually renew their registration. A 60-day period provides more time for registrants to insure that they are properly following institution procedures and submitting information with complete accuracy. It also makes more sense for compliance purposes to have this timing requirement be the same as the amount of time allowed for covered employees to annually renew their registration.

Registering Financial Institution Employees

The Agencies seek comment on batch processing and whether they should consider allowing financial institutions to submit in bulk some or all of the required employee and institution data to the Registry. The Agencies also seek comment on the appropriateness of having one employee input registration information into the Registry on another employee's behalf.

ICBA Comment: ICBA is in favor of the Agencies allowing for batch processing of covered mortgage loan originators by individual financial institutions, so that a bank administrator can submit all the required information in a timely manner, and banks do not have the compliance burden of insuring that all of their covered employees have individually completed the registration process and provided the required information in a timely manner. Allowing for a bank representative to submit information on behalf of covered employees is far more convenient, would lead to greater efficiency in submitting information and would more likely insure compliance with the requirements.

Fingerprint Requirements

The SAFE Act and proposed regulation require that mortgage loan originators also provide fingerprints, in digital form if practicable, for use in conducting a criminal history background check. The Agencies, however, are not requiring employees to obtain new fingerprints for submission to the Registry if the employing financial institution has the employee's fingerprints on file, provided that the fingerprints were taken less than three years prior to their registration with the Registry. The Agencies seek comment on whether the three year age limit for existing fingerprints is appropriate.

ICBA Response: ICBA believes that any fingerprints that are on file with a financial institution, either in paper form or electronically, for at least 10 years prior to registration with the Registry should be considered current for purposes of this reporting requirement. This is consistent with the current updating requirements for passports, which expire every 10 years. Any time period less than ten years makes no practical sense and will only result in greater compliance burden, considering the fact that fingerprints don't change over time. If the Agencies finalize a timeframe that is less than 10 years, we urge them to provide in their final rule data and evidence that indicates the timeframe in which fingerprints lose their accuracy.

Also, please note that many community banks do not obtain fingerprints for their employees as a matter of standard procedure and will have to start from scratch in implementing a procedure for obtaining employee fingerprints. This process will likely need to be conducted by an outside contractor or local law enforcement authorities and could be quite costly and burdensome for community banks. If the Agencies require these fingerprints for smaller financial institutions, then they should also publish guidance and recommendations on how these fingerprints can be obtained and submitted to insure proper compliance.

Use of Unique Identifier

The proposed regulation requires that banks make the unique identifiers of their employees that are mortgage loan originators available to consumers in a manner and method practicable to the institution. Banks can comply by directing consumers to a listing of registered mortgage loan originators and their unique identifiers on their website, posting this information in a publicly accessible place such as their branch office lobby or lending office reception area, or establishing a process to ensure that institution personnel provide the unique identifier of a registered mortgage loan originator to consumers who request it from employees other than the mortgage loan originator. The Agencies also propose to require a registered mortgage loan originator to provide the unique identifier to a consumer upon request, before acting as a mortgage loan originator and through the originator's initial written communication with a consumer, if any. The Agencies seek comment regarding the adequacy and appropriateness of these unique identifier requirements and any difficulties that an institution or its employees may have in complying with these requirements.

ICBA Response: While the idea of employee registration and obtaining a unique identifier may provide greater transparency for customers of large financial institutions and mortgage companies that work on a nationwide basis, it will do little to help community bank customers that are more likely to be familiar with their local bank employees and their local bank's reputation in the community.

These requirements only add to the already heavy compliance burden that community bankers are faced with. Therefore, for community banks that are subject to these regulatory requirements, we only support a requirement to provide these unique identifiers upon consumer request. For larger national financial institutions and mortgage companies, it makes more sense that these unique identifiers be posted on their websites and/or in their individual branch offices in addition to being provided upon consumer request.

In closing, ICBA understands the purpose and the spirit of the SAFE Act and the proposed regulation, which is to identify and hold accountable mortgage loan originators who abused the system and helped to cause the current financial crisis. While the intent of the SAFE Act and the proposed regulation is positive, community banks did not engage in the practices that led to the current problems in the mortgage industry yet are again being put in the position of having to bear the burden and costs of the measures implemented to remedy the sins of those who were. Furthermore, with community banks, customers typically know their bankers and the bank's employees, therefore any potential benefit from implementing this regulation would be minimal in relation to the cost it would impose on community banks, which will eventually be passed on to the consumer in the form of higher closing costs or interest costs. We urge the Agencies to carefully consider these points as they revise the final regulation.

We also urge the Agencies to carefully consider the huge compliance burden all of the recently proposed regulations have had on community banks. While regulations on an individual basis may seem manageable for community banks, the rapid increase in <u>all regulations</u> on financial institutions (EFTA, TILA, UDAP, HOEPA, etc.,) leads to a burdensome environment for these banks that do not have the resources of larger banks to absorb the increased cost of compliance. As a result, the expense trickles down to their customers by way of greater costs and fees for bank services and products, which in our current economic environment of budget cuts and increasing unemployment, can be overwhelming. Or, the result may instead be that many community banks that have been the good actors in the lending industry will be driven out of business due to the crushing weight of regulatory burden.

ICBA thanks you for the opportunity to comment. If you have any questions about our letter or need additional information, please do not hesitate to contact me at 202-659-8111 or by email at Elizabeth.Eurgubian@icba.org.

Sincerely,

/s/

Elizabeth A. Eurgubian

Regulatory Counsel