

June 23, 2009

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, D.C. 20219

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

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

Gary K. Van Meter, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22102-5090

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: Registration of Mortgage Loan Originators
Docket No. R-1357

Dear Ladies and Gentlemen:

I am writing to you on behalf of Mortgagebot LLC, a company located in Mequon, Wisconsin ("Mortgagebot"). Mortgagebot is a technology company founded in 2000 that provides over 900 financial institutions and other lenders throughout the United States with online loan application and origination solutions through its PowerSite suite of products. PowerSite Consumer, PowerSite Advisor, and PowerSite Pro are software products hosted on Mortgagebot's servers that collect and approve online

residential mortgage loan applications, all with varying levels of involvement from financial institution employees (“Employees”).

Recently, the Office of the Comptroller of the Currency, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Farm Credit Administration, and the National Credit Union Administration (collectively, the “Agencies”) issued a request for comments in connection with proposed regulations implementing the Secure and Fair Enforcement for Mortgage Licensing Act (the “S.A.F.E. Act”). Mortgagebot appreciates the opportunity to comment on this proposed rule.

The S.A.F.E. Act, and the Agencies’ forthcoming regulations, provide that residential “mortgage loan originators” employed by Agency-regulated financial institutions must register as such and obtain a unique identifier. The S.A.F.E. Act defines a “mortgage loan originator” as an individual who (i) takes a residential mortgage loan application; and (ii) offers or negotiates terms of a residential mortgage loan for compensation or gain.

In their joint notice of proposed rulemaking dated June 9, 2009, the Agencies provided a number of examples in the Appendix attempting to illustrate the scope of the definition of a “mortgage loan originator.” In order to provide additional meaningful illustrations, the following request for comments was made:

The Agencies also request comment on whether there are mortgage loans for which there may be no mortgage loan originator. Are there situations where a consumer applies for and is offered a loan through an automated process (such as a prescreened offer extended to a consumer as part of a mass mailing *or an automated loan approval in response to an online application*) without contact with a mortgage loan originator? To the extent there are such situations, please describe the contact and communication that a consumer would have with the institution and its employees. (emphasis added)

Indeed, Mortgagebot’s PowerSite software collects residential mortgage loan applications over the internet and provides potential borrowers with automated loan approvals. Each PowerSite product accomplishes the collection of application information with varying levels of assistance from Employees. Mortgagebot is submitting these comments for your consideration because we believe some of our loan origination software does not require loan originators.

PowerSite Consumer

PowerSite Consumer (“PS Consumer”) allows potential borrowers to fill out web-based residential mortgage loan applications without the assistance of Employees. Borrowers access the loan application over the internet via a participating institution’s website. These dynamic applications continuously change to suit the particular applicant based on the information that the borrower is inputting. After completing the application, borrowers electronically submit the application to the institution.

The application is then automatically forwarded to Fannie Mae or Freddie Mac’s electronic underwriting engine for approval. If approved, the borrower receives notification on the PS Consumer

web-page immediately after submitting the application. The borrower's information is then forwarded to the institution's loan office for further processing. If the borrower does not qualify for the loan under the Fannie Mae or Freddie Mac underwriting guidelines, the application is electronically forwarded to a loan officer for further underwriting or to deny the loan application.

As you can see, for residential mortgage loans approved using PS Consumer, there are no Employees "taking" residential mortgage loan applications. Thus, Mortgagebot believes that these loan transactions occur without the use of "mortgage loan originators" under the new regulations. We do believe, however, that Employees approving loans that did not qualify for online loan approval may indeed be "mortgage loan originators."

PowerSite Advisor

PowerSite Advisor ("PS Advisor") allows bank branch and call-center Employees to quote interest rates and fees to prospective borrowers by collecting a limited number of borrower data points. After providing a quote, the Employee can complete a full online loan application on the borrower's behalf using a dynamic software program similar to PS Consumer. Once the Employee electronically submits the application, it is automatically directed to Fannie Mae or Freddie Mac's automated underwriting engines.

The Employee then communicates the loan approval (if the application is approved) to the borrower, and the application data is forwarded to the institution's loan origination system where the process would be completed, most likely with the help of an assigned loan officer.

PS Consumer and PS Advisor are very similar in that they both allow borrowers to obtain automated loan approval. The difference is that with PS Advisor, Employees help borrowers input information and electronically submit their application. Although these Employees are arguably "taking" applications, they have no discretion over what items of information are collected—they simply collect the information that is required by the software. As a result, under the first element of the "mortgage loan originator" test, one can view these Employee activities as much more akin to either forwarding a loan application to loan approval personnel (Appendix A(a)(2)(ii)) or assisting a consumer who is filling out an application (Appendix A(a)(2)(iii)) than "receiving information that is sufficient to determine whether the consumer qualifies for a loan" (Appendix A(a)(1)).

Further, we believe Employees using PS Advisor are not "offering or negotiating terms of a loan," as required under the second element of the "mortgage loan originator" definition. Generally quoting interest rates and fees and communicating an online loan approval to a borrower should not make an Employee a "mortgage loan originator" because the Employee is not presenting a loan offer for the borrower's acceptance. The Employee is merely communicating general loan product information, telling the borrower that the borrower is approved, and forwarding the information along to the institution's loan officers.

For the foregoing reasons, we do not believe that Employees using PS Advisor qualify as "mortgage loan originators" under the proposed rule. However, if an Employee were to conduct further activities—such as collecting an application fee and locking an interest rate upon obtaining approval—we believe that the Employee may qualify as a "mortgage loan originator." We welcome any comment or clarification from the Agencies on this issue.

PowerSite Pro

Lastly, PowerSite Pro (“PS Pro”) is a similar web-based, electronic loan application program. Like PS Consumer and PS Advisor, it provides automated loan approval responses to electronic applications. However, PS Pro is used by professional loan officers as a point-of-sale loan application and approval tool, and allows the loan officers more flexibility to collect borrower information and offer loan products. Loan officers are able to accept borrower information, populate the web-based loan application, and electronically submit the application to Fannie Mae or Freddie Mac’s automatic underwriting engines for an immediate approval decision. If the borrower is approved, the loan officer communicates the approval to the borrower and continues the loan origination process, which would normally include the ability to offer a particular loan to the borrower for acceptance.

Mortgagebot believes that loan officers using PS Pro do qualify as “mortgage loan originators” under the new regulations because they collect loan application information for the purpose of determining whether the consumer qualifies for the residential mortgage loan, and the loan officers typically present the loan offer to borrowers for acceptance and negotiate its terms.

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As you can see, Mortgagebot’s PowerSite products involve varying degrees of communication between the borrower and Employees. We believe that the automated loan approvals obtained in response to these web-based applications are the types of transactions that the Agencies had in mind in their request for comments. You will note that PS Consumer removes Employees from the loan application process, altogether. Further, Employees using PS Advisor have very little discretionary influence over the loan application process, and are only able to collect the specific information required by the software before submitting it for automatic approval. Finally, PS Pro gives loan officers the ability to efficiently obtain loan approvals for use in their loan origination activities.

I hope that these comments will be helpful to the Agencies as the proposed rule is revised for implementation. Mortgagebot applauds the efforts of the Agencies to scrutinize loan originators in an attempt to protect consumers from unscrupulous mortgage lending practices. Thank you again for giving us the opportunity to comment on this proposed rule. If you have any further questions about Mortgagebot or anything discussed in this letter, please feel free to contact me at (262) 292-0888 or Scott.Happ@mortgagebot.com.

Sincerely,

Scott Happ
President and Chief Executive Officer
Mortgagebot LLC