

**Communication between Federal Reserve Bank of Boston staff and  
and a Representative of Pierce Atwood LLP  
at the New England Consumer Advisory Forum  
November 16, 2010**

**Participants:** Attendees at the New England Consumer Advisory Group Forum, including Carol Lewis, Dawn Hicks, and Patricia Allouise (Federal Reserve Bank of Boston)

Richard P. Hackett, Esq., Pierce Atwood LLP

**Summary:** The Federal Reserve Bank of Boston hosted the Sixth Annual New England Consumer Advisory Group Forum. The forum's title was "The New Consumer Financial Protection Law: Revolutionary Changes; Revolutionary Challenges." In the course of the forum, one of the presenters, Richard P. Hackett, Esq., of Pierce Atwood LLP, made two comments relating to the provisions of the Dodd-Frank Wall Street Reform and Protection Act (the "Act") that authorize the Federal Reserve to issue rules.

The attached email dated December 14, 2010 details the comments provided by Mr. Hackett.

RE: Follow-up from the New England Consumer Advisory Group Forum held at the Federal Reserve Bank of Boston on November 9, 2010

Rick Hackett

to:

Patricia.Allowise

12/14/2010 02:58 PM

Cc:

Carol.Lewis, "Rick Hackett", "Thomas P. Quinn", "Ryan Stinneford", "Lori A. Desjardins", "Kevin J. Handly"  
Show Details

Dear Pattie

Thank you again for the invitation to address the New England Consumer Advisory Group in November regarding Title XIV of Dodd Frank.

As you requested, I have set down in writing the portion of my presentation that suggested action by the Board.

#### 1. Scope of Activities Constituting "mortgage loan originator"

The Board has recently adopted rules governing compensation to and steering activities of mortgage loan originators (MLOs). 75 Fed. Reg. 58509, amending Subpart E of 12 C.F.R. Part 226. In the new rule, the Board defined the activities that constitute acting as an MLO. As used by the Board, the term refers to someone who "arranges, negotiates or obtains" a mortgage loan.

In the Federal Register announcement, the Board indicated its intent to further amend Subpart E to implement portions of sections 1401-1403 of Dodd-Frank that provide additional conduct requirements for MLOs, beyond the current Regulation Z rules. When it does so, the Board should harmonize its definition of the activities that constitute MLO behavior with the definition of MLO in section 1401 of Dodd-Frank. That definition is more expansive and detailed than the Board's current definition. It covers more types of activities and is triggered in some cases by minimal contact with a mortgage transaction. Presumably, the board will adopt the Dodd-Frank definition as it revises Subpart E.

At the same time, the Board should consider the extent to which the Congress intended the section 1401 definition to be coterminous with the SAFE Act definition of MLO. This is important, because a financial institution is required by Dodd-Frank to cause its MLOs to comply with the SAFE Act and with state registration requirements issued in conformity with the SAFE Act. See section 129B(b)(2) of the Truth-in-Lending Act ("TILA"), as adopted by section 1402 of Dodd-Frank.

This is not an academic issue. If the activities that trigger coverage as an MLO are different for SAFE Act, TILA section 129B and Regulation Z, there is a great potential for confusion and compliance error. To the extent that statutory differences compel different rules (for example, between SAFE Act and Dodd-Frank), the Board should call out those differences clearly in its regulations of MLOs in order to assist financial institutions in complying with differing statutes that purport to govern the same topic and the same behavior.

For example, it may be that the class of bank employees who must be registered under SAFE is smaller than the class of employees whose compensation and behavior are controlled under section 129B of TILA. If this is true, the Board should clearly so indicate.

#### 2. Effective Date of Certain Sections of Title XIV of Dodd Frank

Under section 1400(c)(2) of Dodd-Frank, “a section, or provision thereof, of this Title [XIV] shall take effect on the date on which the final regulations implementing such section, or provision, take effect.” Section 1400(c)(3) contains an override that will cause provisions to take effect 18 months after the designated transfer date, if regulations have not yet been issued. Otherwise, all of Title XIV appears to await implementing regulations to become effective.

However, certain provisions of Title XIV do not require any implementing rules, either by the Board or by any other federal regulator. For example, Subtitle E of Title XIV creates many new obligations for mortgage servicers. Subtitle E permits, but does not require, the Board (in the case of TILA amendments) and the CFPB (in the case of RESPA amendments) to issue interpretive regulations. This lack of a requirement for implementing regulations has led one leading legal publisher to read sections 1461 through 1463 of Dodd-Frank as immediately effective under section 4 of Dodd-Frank (i.e., on July 21, 2010). See “Dodd-Frank Wall Street Reform and Consumer Protection Act: Law, Explanation and Analysis,” Paras 6675, 6680, 6685, 6690, Wolters Kluwer, July 2010.

If the servicing requirements of Title XIV are immediately effective, then urgent compliance efforts are immediately needed, and the potential civil liability is material. If the Board believes that section 1004(c)(2) reflects a Congressional intent that there should be implementing regulations for all of Title XIV, at least to specify effective dates, the Board should consider an implementing rule under TILA or some other interpretive announcement to that effect. The CFPB could follow in July with a similar rule relating to RESPA.

Thank you for suggesting that I put these comments in writing.

Richard P. Hackett, Esq.  
Pierce Atwood LLP  
Portland Office:  
One Monument Square  
Portland, Maine 04101  
207-791-1280  
fax: 207-791-1350

Boston Office:  
160 Federal Street, 10th Floor  
Boston, Massachusetts 02110  
857-277-6902  
fax: 617-426-2321  
rhackett@pierceanwood.com  
<http://www.pierceanwood.com>