



# Federal Register

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Tuesday,  
June 9, 2009

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## Part II

### Department of the Treasury

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Office of the Comptroller of the  
Currency

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### Federal Reserve System

### Federal Deposit Insurance Corporation

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### Department of the Treasury

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Office of Thrift Supervision

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### Farm Credit Administration

### National Credit Union Administration

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12 CFR Parts 34, 208, 365, et al.  
Registration of Mortgage Loan  
Originators; Proposed Rule

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Part 34**

[Docket ID OCC–2009–0005]

RIN 1557–AD23

**FEDERAL RESERVE SYSTEM****12 CFR Part 208**

[Docket No. R–1357]

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 365**

RIN 3064–AD43

**DEPARTMENT OF THE TREASURY****Office of Thrift Supervision****12 CFR Part 563**

[Docket No. 2009–0004]

RIN 1550–AC33

**FARM CREDIT ADMINISTRATION****12 CFR Part 610**

RIN 3052–AC52

**NATIONAL CREDIT UNION ADMINISTRATION****12 CFR Part 761**

RIN 3133–AD59

**Registration of Mortgage Loan Originators**

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); Farm Credit Administration (FCA); and National Credit Union Administration (NCUA).

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:** The OCC, Board, FDIC, OTS, FCA, and NCUA (collectively, the Agencies) are proposing amendments to their rules to implement the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act). The S.A.F.E. 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 FCA

(collectively, Agency-regulated institutions) 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 implements these requirements. It also provides that Agency-regulated institutions must require their employees who act as residential mortgage loan originators to comply with the S.A.F.E. Act's requirements to register and obtain a unique identifier and must adopt and follow written policies and procedures designed to assure compliance with these requirements.

**DATES:** Comments must be received on or before July 9, 2009. Comments on the Paperwork Reduction Act analysis set forth in Part II of the Regulatory Analysis Section of this **Federal Register** notice must be received on or before August 10, 2009.

**ADDRESSES:** Commenters that direct comments to more than one Agency may send comments to any of the Agencies and need not send copies of the same comment letter to all of the Agencies. Commenters are encouraged to use the title “Registration of Mortgage Loan Originators” to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

*Office of the Comptroller of the Currency:* Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Registration of Mortgage Loan Originators” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—“Regulations.gov”:* Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC–2009–0005” to submit or view public comments and to view supporting and related materials for this proposal. The “How to Use This Site” link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *E-mail:* [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

- *Fax:* (202) 874–5274.

- *Hand Delivery/Courier:* 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

*Instructions:* You must include “OCC” as the agency name and “Docket Number OCC–2009–0005” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposal by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Document Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC–2009–0005” to view public comments for this rulemaking action.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

*Board of Governors of the Federal Reserve System:* You may submit comments, identified by Docket No. R–1357, by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail*: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov).

Include the docket number in the subject line of the message.

- *Fax*: (202) 452-3819 or (202) 452-3102.

- *Mail*: Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

#### *Federal Deposit Insurance Corporation*

You may submit comments, identified by RIN number, by any of the following methods:

- *Agency Web site*: <http://www.FDIC.gov/regulations/laws/federal/notices.html>. Follow instructions for submitting comments on the Agency Web site.

- *E-mail*: [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include the RIN number on the subject line of the message.

- *Mail*: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery*: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

*Instructions*: All comments received must include the agency name and RIN for this rulemaking and will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided.

*Office of Thrift Supervision*: You may submit comments, identified by OTS-2009-0004, by any of the following methods:

- *Federal eRulemaking Portal*—"Regulations.gov": Go to <http://www.regulations.gov>, under the "more Search Options" tab click next to the "Advanced Docket Search" option where indicated, select "Office of Thrift Supervision" from the agency dropdown menu, then click "Submit." In the "Docket ID" column, select "OTS-2009-0004" to submit or view public

comments and to view supporting and related materials for this proposed rulemaking. The "How to Use This Site" link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *E-mail address*: [regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov). Please include OTS-2009-0004 in the subject line of the message and include your name and telephone number in the message.

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

- *Facsimile*: (202) 906-6518.

- *Hand Delivery/Courier*: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS-2009-0004.

- *Instructions*: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

- *Viewing Comments On-Site*: You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906-6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

*Farm Credit Administration*: We offer a variety of methods to receive your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site or the Federal eRulemaking Portal. As faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer

accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail*: Send us an e-mail at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).

- *FCA Web site*: <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

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

You may review copies of comments we received at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

#### *National Credit Union Administration*

You may submit comments by any of the following methods (please send comments by one method only):

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *NCUA Web Site*: [http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.

- *E-mail*: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include "[Your name] Comments on Notice of Proposed Rulemaking Part 761, Registration of Mortgage Loan Originators" in the e-mail subject line.

- *Fax*: (703) 518-6319. Use the subject line described above for e-mail.

- *Mail*: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

- *Hand Delivery/Courier*: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration. Deliver to guard station in the lobby of 1775 Duke Street, Alexandria, VA 22314-3428, on business days between 8 a.m. and 5 p.m.

• *Public inspection:* All public comments are available on the agency's Web site at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, VA 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Michele Meyer, Assistant Director, and Heidi Thomas, Special Counsel, Legislative and Regulatory Activities, (202) 874-5090, and Nan Goulet, Senior Advisor, Large Bank Supervision, (202) 874-5224, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*BOARD:* Anne Zorc, Counsel, Legal Division, (202) 452-3876, Virginia Gibbs, Senior Supervisory Analyst, (202) 452-2521, and Stanley Rediger, Supervisory Financial Analyst, (202) 452-2629, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

*FDIC:* Thomas F. Lyons, Examination Specialist, (202) 898-6850, Victoria Pawelski, Policy Analyst, (202) 898-3571, or John P. Kotsiras, Financial Analyst, (202) 898-6620, Division of Supervision and Consumer Protection; or Richard Foley, Counsel, (202) 898-3784, or Kimberly A. Stock, Counsel, (202) 898-3815, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*OTS:* Charlotte M. Bahin, Special Counsel (Special Projects), (202) 906-6452, Vicki Hawkins-Jones, Special Counsel, Regulations and Legislation Division, (202) 906-7034, Debbie Merkle, Project Manager, Credit Risk, (202) 906-5688, and Rhonda Daniels, Senior Compliance Program Analyst, Consumer Regulations, (202) 906-7158, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

*FCA:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA, (703) 883-4414, TTY (703) 883-4434; Richard A. Katz, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020; or Jennifer Cohn, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

*NCUA:* Regina Metz, Staff Attorney, Office of General Counsel, at the above address or 703-518-6561; or Roger Blake, Program Officer, Division of Supervision, Examination & Insurance, at the above address or 703-518-6385.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Statutory Requirements*

The S.A.F.E. Act,<sup>1</sup> enacted on July 30, 2008, mandates a nationwide licensing and/or registration system for mortgage loan originators. Specifically, the Act requires all States to provide for a licensing regime for mortgage loan originators within one year of enactment (or two years for States whose legislatures meet biennially) and prohibits an individual employed by a State-regulated institution from engaging in the business of residential mortgage loan origination without first obtaining and maintaining a license and registration and obtaining a unique identifier (State licensing).<sup>2</sup>

With respect to mortgage loan originators employed by Agency-regulated institutions, the Act requires the OCC, Board, FDIC, OTS and NCUA,<sup>3</sup> through the Federal Financial Institutions Examination Council (FFIEC), and the FGA to develop and maintain a Federal registration system, and to implement this system by July 29, 2009 (Federal registration). The S.A.F.E. Act specifically prohibits an individual employed by an Agency-regulated institution from engaging in the business of residential mortgage loan origination without first obtaining and maintaining annually a registration as a registered mortgage loan originator and obtaining a unique identifier. This rulemaking implements these

<sup>1</sup> The S.A.F.E. Act was enacted as part of the Housing and Economic Recovery Act of 2008, Public Law 110-289, Division A, Title V, sections 1501-1517, 122 Stat. 2654, 2810-2824 (July 30, 2008), *codified at* 12 U.S.C. 5101-5116. Citations in this preamble are to the "S.A.F.E. Act" by section number in the public law.

<sup>2</sup> If the Secretary of Housing and Urban Development (HUD) determines that any State fails, within the statutorily prescribed time frame, to establish a licensing regime that meets the requirements of the S.A.F.E. Act, the Secretary is required to establish a system for the licensing and registration of mortgage loan originators in that State. S.A.F.E. Act at section 1508. HUD has reviewed the model legislation developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to assist States in meeting the minimum requirements of the S.A.F.E. Act and found it to meet these requirements. See 74 FR 312 (Jan. 5, 2009) and <http://www.hud.gov/offices/hsg/sfh/mps/smlact.cfm>.

<sup>3</sup> The OCC, Board, FDIC, OTS, and NCUA are referred to both in the S.A.F.E. Act and in this rulemaking as the "Federal banking agencies."

requirements for Agency-regulated institutions.

The S.A.F.E. Act requires that Federal registration and State licensing and registration must be accomplished through the Registry. The S.A.F.E. Act provides that the objectives of the Registry, among other things, are to aggregate and improve the flow of information to and between regulators; provide increased accountability and tracking of mortgage loan originators; enhance consumer protections; reduce fraud in the residential mortgage loan origination process; and provide consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators.<sup>4</sup>

The S.A.F.E. Act specifically requires the Agencies to jointly develop and maintain a system for registering mortgage loan originators employed by Agency-regulated institutions with the Registry. In connection with this registration, the Agencies at a minimum must furnish or cause to be furnished to the Registry information concerning the mortgage loan originator's identity, including: (1) Fingerprints for submission to the Federal Bureau of Investigation (FBI) and any other relevant governmental agency for a State and national criminal background check; and (2) personal history and experience, including authorization for the Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.<sup>5</sup>

*B. Implementing the Requirements for Federal Registration*

The Registry is a Web-based system developed and maintained by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). The Registry was launched in January of 2008 for State licensing and registration purposes in participating States.<sup>6</sup> Mortgage loan originators in

<sup>4</sup> See S.A.F.E. Act at section 1502.

<sup>5</sup> *Id.* at section 1507(a).

<sup>6</sup> As of the date of this proposal, 26 States use this system to manage the processing of their mortgage licenses. This system is owned and operated by the State Regulatory Registry LLC (SRR), a limited-liability company established by CSBS as a wholly-owned subsidiary to develop and operate nationwide systems for State regulators in the financial services industry, and has been built and is maintained by the Financial Industry Regulatory Authority (FINRA), which operates similar systems in the securities industry. To obtain more information on this system, see <http://www.stateregulatoryregistry.org>. (For purposes of this rulemaking, reference to the Registry refers, as

those States complete a single uniform form (known as the MU4) electronically. The data provided on the form is stored electronically in a secure, centralized repository available to State mortgage regulators who use it to process license applications and for supervisory purposes.

The Federal banking agencies, through the FFIEC, and the FCA are working with CSBS to modify the Registry so that it can accept registrations from mortgage loan originators employed by Agency-regulated institutions. As indicated above, the Registry currently supports the licensing of State mortgage lending institutions and their mortgage loan originators, a process that involves State authorization of individuals to engage in mortgage loan origination. It was not originally designed to support the Federal registration of Agency-regulated institution employees, who do not need additional authorization from the appropriate Federal agency to engage in mortgage loan origination activities. Furthermore, the S.A.F.E. Act requires new enhancements to the current system, such as public access to certain mortgage loan originator data and processing of fingerprints through the Registry. These differences between the current Registry and the Federal registration system required by the S.A.F.E. Act, as well as the resulting modifications necessary to support both State licensing and Federal registration functions, require careful analysis and raise complex legal and system development issues that the Agencies are addressing through both this rulemaking and modifications to the Registry. These issues include: Consistency of data requirements for mortgage loan originators subject to Agency jurisdiction and those subject to State jurisdiction; modification to Web-page navigation in the current system; registration functionality for the anticipated hundreds of thousands of Federal registrants; Federal procurement and contracting issues; data privacy and security requirements; and protocols for submitting mortgage loan originators' fingerprints to the FBI. Furthermore, the modified system is expected to support mortgage loan originators who move between the Federal registration and the State licensing regimes due to employment changes or who are licensed under one or more State regimes and also registered under the Federal regime.<sup>7</sup> The Agencies and

CSBS have made substantial progress in resolving these issues, and the Agencies expect to enter into an agreement with the Registry that will provide for appropriate consultation between the Agencies and the Registry concerning registrant information requirements and fees, system functionality and security, and other operational matters. However, final determination of system costs, funding, design, development and deployment will not be completed until after the Agencies adopt a final rule establishing registration requirements.

This proposal provides for a 180-day period within which to complete initial registrations after the Registry is capable of accepting registrations from employees of Agency-regulated institutions. During this period, employees of Agency-regulated institutions would not be subject to sanctions if they originate residential mortgage loans without having completed their registration. The Agencies expect that this time period would provide mortgage loan originators and the Agency-regulated institutions that employ them adequate opportunity to prepare for the registrations required under this proposal. The Agencies intend to make a formal public announcement, in advance, of the date when the Registry will begin accepting registrations from employees of Agency-regulated institutions.

When fully operational, mortgage loan originators and their Agency-regulated institution employers are expected to have access to the Registry, seven days a week, to establish and maintain their registrations. Furthermore, the CSBS plans to phase-in system enhancements to provide consumers with access to certain information from the Registry in order for them to obtain information on State-licensed and Federally-registered mortgage loan originators.

As indicated above, and consistent with the S.A.F.E. Act, the Registry will not screen or approve registrations received from employees of Agency-regulated institutions. Instead, it will be the repository of, and conduit for, information on those employees who are mortgage loan originators at Agency-regulated institutions. As provided in § \_\_.104(d) and (h) of the proposed rule, it will be the responsibility of the Agency-regulated institution to review its employees' submissions as well as any reports received from the Registry.

the State licensing and registration regime. For example, employees who act as mortgage loan originators for a bank and a nondepository subsidiary of a bank holding company would be subject to both regimes.

## II. Overview of the Proposal

The proposed rule implements the S.A.F.E. Act's requirements with respect to Agency-regulated institutions. It requires individuals employed by these institutions who act as mortgage loan originators to register with the Registry, obtain unique identifiers, and maintain their registrations. The proposal also directs Agency-regulated institutions to require compliance with these requirements. Furthermore, the proposal requires Agency-regulated institutions to adopt and follow written policies and procedures to assure such compliance.

A detailed section-by-section description of this proposal with a request for comments is set forth below.

## III. Section-by-Section Description of the Proposed Rule

### *Section \_\_.101—Authority, Purpose, and Scope*

Section \_\_.101<sup>8</sup> states that this rule implements the S.A.F.E. Act's Federal registration requirements, which apply to individuals who originate residential mortgage loans, and describes the objectives of the S.A.F.E. Act's registration mandate. This section also identifies the entities that employ individual mortgage loan originators—entities referred to in this preamble discussion as Agency-regulated institutions—and that also are covered by this proposal. Under the S.A.F.E. Act, a mortgage loan originator must be Federally-registered if that individual is an employee of a depository institution, an employee of any subsidiary owned and controlled by a depository institution and regulated by a Federal banking agency, or an employee of an institution regulated by the FCA. Collectively, the Agencies' proposed rule applies to a depository institution, any subsidiary of a depository institution that is regulated by a Federal banking agency, and an institution regulated by the FCA. Section 1503(2) of the S.A.F.E. Act provides that "depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act (FDI Act),<sup>9</sup> and

<sup>8</sup> Because each Agency's proposed rule will amend a different part of the Code of Federal Regulations but will have a similar numbering, relevant sections are cited, for example, as "§ \_\_.101" unless otherwise noted.

<sup>9</sup> Section 3 of the FDI Act defines "depository institution" as any bank or savings association. The term "bank" in section 3 of the FDI Act means any national bank, State bank, Federal branch, and insured branch and includes any former savings association. The term "savings association" means any Federal savings association, state savings association, and any corporation other than a bank that the FDIC and the OTS jointly determine to be

applicable, to the system itself and to CSBS and SRR.)

<sup>7</sup> The Agencies note that some employees of Agency-regulated institutions may also be subject to

includes any credit union. The Agencies note that because the definition of “depository institution” in the FDI Act and in the S.A.F.E. Act does not include bank or savings association holding companies or their non-depository subsidiaries, employees of these entities who act as mortgage loan originators are not covered by the Federal registration requirement and, therefore, must comply with State registration and licensing requirements.

Each Agency’s proposed rule indicates the specific entities covered by the proposal. With respect to the OCC, this rule applies to national banks, Federal branches and agencies of foreign banks, their operating subsidiaries, and their employees who are mortgage loan originators.<sup>10</sup> For the Board, this rule applies to member banks of the Federal Reserve System (other than national banks), their respective subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)); and branches and agencies of foreign banks (other than Federal branches, Federal agencies and insured State branches of foreign banks) and commercial lending companies owned or controlled by foreign banks<sup>11</sup> and their employees who act as mortgage loan originators. For the FDIC, this rule applies to insured State

operating in substantially the same manner as a savings association. 12 U.S.C. 1813.

<sup>10</sup>The S.A.F.E. Act’s definition of depository institution includes Federal branches of foreign banks but not Federal agencies of foreign banks. However, the OCC has applied the Federal registration requirements to these entities because they are Federally regulated and have the authority to originate residential mortgage loans and, therefore, should not be treated differently from other Federally regulated or Federally insured institutions.

<sup>11</sup>The Board notes that it proposes to cover branches and agencies of foreign banks (other than Federal branches, Federal agencies and insured State branches of foreign banks); and commercial lending companies owned or controlled by foreign banks pursuant to its authority under the International Banking Act (IBA) (Chapter 32 of Title 12) to issue such rules it deems necessary in order to perform its respective duties and functions under the chapter and to administer and carry out the provisions and purposes of the chapter and prevent evasions thereof. 12 U.S.C. 3108(a). The Board notes that the IBA provides, in relevant part, that the above entities shall conduct their operations in the United States in full compliance with provisions of any law of the United States which imposes requirements that protect the rights of consumers in financial transactions, to the extent that the branch, agency, or commercial lending company engages in activities that are subject to such laws, and apply to State-chartered banks, doing business in the State in which such branch or agency or commercial lending company, as the case may be, is doing business. 12 U.S.C. 3106a(b)(1). Under the Board’s proposal the above entities would be subject to the same Federal registration requirements as Federal branches, Federal agencies and insured State branches of foreign banks, which are covered in the OCC and FDIC rules, respectively.

nonmember banks (including State-licensed insured branches of foreign banks) and their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers) and their employees who are mortgage loan originators. For the OTS, this rule applies to savings associations and their operating subsidiaries, and their employees who are mortgage loan originators. For the FCA, this rule applies to Farm Credit System (FCS or System) institutions that originate residential mortgage loans under sections 1.9(3), 1.11 and 2.4(a)(2) and (b) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2017(3), 2019, and 2075(a)(2) and (b), and their employees who are mortgage loan originators.<sup>12</sup> For the NCUA, this rule applies to Federally-insured credit unions and their employees who are mortgage loan originators.

Section 1507 of the S.A.F.E. Act requires the Federal banking agencies to make such *de minimis* exceptions “as may be appropriate” to the Act’s requirements to register and obtain a unique identifier.<sup>13</sup> Section \_\_\_\_ .101(c)(2) of 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 excepted from registration pursuant to this section, in the aggregate, acted as a mortgage loan originator in connection with 25 or fewer residential mortgage loans.<sup>14</sup> An employee must register with

<sup>12</sup>Some FCS associations may not exercise their statutory authority to make residential mortgage loans, and FCS banks no longer engage in residential mortgage origination activities because they have transferred their direct lending authority to their affiliated associations. The FCA emphasizes that employees of FCS banks and associations that do not engage in residential mortgage loan origination activities are not subject to the registration requirements of the S.A.F.E. and these regulations. The Federal Agricultural Mortgage Corporation (Farmer Mac) is an FCS institution that among other activities operates a secondary market for rural residential mortgage loans. The FCA determines that Farmer Mac employees are not subject to the registration requirements of the S.A.F.E. Act and these implementing regulations because Farmer Mac does not engage in mortgage loan origination activities for rural residents. The Farmer Mac secondary market is modeled after Fannie Mae and Freddie Mac, and the provisions of the S.A.F.E. Act do not expressly apply to employees at Fannie Mae and Freddie Mac.

<sup>13</sup>See S.A.F.E. Act at sections 1507(c) (*de minimis* exceptions), 1504(a)(1)(A) (requirement to register), 1504(a)(2) (requirement to obtain a unique identifier).

<sup>14</sup>For example, assume an Agency-regulated institution has six employees, A, B, C, D, E, and F

the Registry prior to engaging in mortgage loan origination activity that exceeds either the individual or aggregate limit. The Agencies solicit comment on whether the proposed exception adequately and appropriately covers circumstances that are truly *de minimis* and whether any *de minimis* exception is appropriate.<sup>15</sup>

In addition, the Agencies specifically invite comment on: whether the individual and institution-wide limits on the number of residential mortgage loans for which employees may act as a mortgage loan originator without registering and obtaining a unique identifier are appropriate; whether the proposed exception is adequately structured to prevent manipulation or “gaming” of the registration requirements; whether an institution should aggregate its residential mortgage loans with its subsidiaries when calculating the number of mortgage loans originated for purposes of this exception; whether monitoring for compliance with the proposed exception would be unduly burdensome for Agency-regulated institutions, and if so, how such burden could be minimized; and whether the proposed exception is consistent with the

who are not registered loan originators for an Agency-regulated institution. Employees A, B, C, and D have acted as mortgage loan originators on five mortgage loans each during the same 12-month period, while employee E has acted as a mortgage loan originator with respect to four mortgage loans during this same time. Employee F has not acted as a mortgage loan originator during this 12-month period. The institution has not exceeded its aggregate exception limit of 25 mortgage loans. Employees A, B, C, and D must register before acting as a mortgage loan originator with respect to any additional mortgage loan during this 12-month period because any one of them would exceed the individual exception limit of five mortgage loans each. Employee E, who has acted as a mortgage loan originator with respect to four loans may act as a mortgage loan originator with respect to one more loan because he or she would not exceed the individual exception limit of five mortgage loans and the institution would not exceed the aggregate exception limit of 25 mortgage loans. After employee E acts as a mortgage loan originator with respect to his or her fifth loan, and the 25th loan for the institution, the exception in \_\_\_\_ .101(c) is no longer available to any employee (A, B, C, D, E, or F) who acts as a mortgage loan originator at the institution during this 12-month period.

<sup>15</sup>The FCA joins the Federal banking agencies in proposing a *de minimis* exception pursuant to its authority under section 5.17(a)(11) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2252(a)(11) to “exercise such incidental powers as may be necessary or appropriate to fulfill its duties \* \* \*” In this case, the FCA is exercising its incidental powers to fulfill the requirement in the S.A.F.E. Act that it work together the Federal banking agencies to develop and maintain a system for registering residential mortgage loan originators at Agency-regulated institutions with the Registry. A coordinated and uniform approach to the *de minimis* exception among the Agencies is appropriate because it best fulfills the objectives of the S.A.F.E. Act.

consumer protection and fraud prevention purposes of the S.A.F.E. Act.

The Agencies also solicit comment on whether an asset-based threshold is appropriate or whether other types of limits or thresholds, or other ways of structuring a *de minimis* exception, would be more appropriate. For example, should the proposed *de minimis* exception be applicable only to Agency-regulated institutions with total assets that do not exceed the amount that the Board establishes annually for banks, savings associations, and credit unions as an exception from the Home Mortgage Disclosure Act (HMDA)?<sup>16</sup>

Furthermore, please provide comment on whether alternatively, or in addition to the foregoing, a *de minimis* exception should be crafted to be event specific. For example, a *de minimis* exception might provide that the registration requirements would not apply to an employee who does not regularly function as a mortgage loan originator and who originates no more than a small number of loans within a 12-month period during the absence (such as vacation or illness) of the individual that regularly functions as the Agency-regulated institution's mortgage loan originator.

The Agencies note that the *de minimis* exception contained in the proposed rule would be voluntary; it would not prevent a mortgage loan originator who meets the criteria for the exception from registering with the Registry if the originator chooses to do so or if his or her employer requires registration.

#### Section \_\_.102—Definitions

Section \_\_.102 defines the various terms used in the proposal. If a term is defined in the S.A.F.E. Act, the proposal generally incorporates that definition. The proposal has adopted other definitions used by the Registry in order to promote consistency and comparability, insofar as is feasible, between Federal registration requirements and the States' licensing requirements.

**Annual renewal period.** The proposal requires that a mortgage loan originator renew his or her registration annually during the annual renewal period. The annual renewal period is November 1 through December 31 of each calendar year and a registered mortgage loan originator must renew during this

period regardless of the date of the initial registration. For example, an employee who registered in October 2010 would have to renew between November 1, 2010 and December 31, 2010. This is the same annual renewal period provided to State mortgage loan originators by the Registry. However, the Agencies and the Registry are discussing whether an alternate annual renewal period for Agency-regulated institutions at a different time of year from the annual renewal period of the State mortgage loan originators may be more desirable from a technical and operational standpoint. For example the final rule may designate the annual renewal period during another two-month time period during the year instead of the proposed renewal period. Furthermore, the Agencies are considering whether the rule should provide for a method in which the rule's registration requirements may be temporarily waived, or the initial registration or renewal period extended, in case of emergency, systems malfunction, or other event beyond the control of the Agency-regulated institution or the mortgage loan originator.

**Mortgage loan originator.** The proposed definition of "mortgage loan originator" is based on the definition of the term "loan originator" included in the S.A.F.E. Act at section 1503(3). 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. The term does not include: (1) Any individual who performs purely administrative or clerical tasks on behalf of an individual who is a mortgage loan originator; (2) any individual performing only real estate brokerage activities (as defined in section 1503(3)(D) of the S.A.F.E. Act)<sup>17</sup> and is

<sup>17</sup> The S.A.F.E. Act defines "real estate brokerage activity" to mean any activity that involves offering or providing real estate brokerage services to the public, including: (i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction); (iv) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and (v) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), or (iv). S.A.F.E. Act at § 1503(3)(D). Nothing in this proposal would constitute an authorization for Agency-regulated institutions to engage in real estate brokerage, or any other activity, for which the

licensed or registered as a real estate broker in accordance with applicable State law, unless the individual is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and meets the definition of mortgage loan originator; or (3) any individual or entity solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).<sup>18</sup> For purposes of this definition, the proposal defines "administrative or clerical tasks" to mean: (1) The receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan; and (2) communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan. The Agencies note that the appendix to the proposal includes examples of the types of activities the Agencies consider to be both within and outside the scope of residential mortgage loan origination activities.

To the extent it is within the scope of the S.A.F.E. Act, the Agencies are requesting comment on whether the definition of "mortgage loan originator" should cover individuals who modify existing residential mortgage loans. If so, the Agencies seek comment on whether these individuals should be excluded from the definition. For example, the Agencies are considering whether the final rule should exclude from this definition persons who modify an existing residential mortgage loan, pursuant to applicable law, provided this modification does not constitute a refinancing (that is, the satisfaction or extinguishment of the original obligation and replacement by a new obligation) and is completed in accordance with a contract between the parties, including any workout agreement.

institution does not have independent authority pursuant to Federal or State law, as applicable.

<sup>18</sup> "Timeshare plan" is defined in 11 U.S.C. 101(53D) as an interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A "timeshare interest" is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.

<sup>16</sup> For 2009, that amount is \$39 million. See 73 FR 78616 (Dec. 23, 2008). Pursuant to the HMDA (12 U.S.C. 2808) and Board Regulation C (12 CFR 203.2(e)(1)(i)), the asset-size threshold is adjusted annually based on year-to-year changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers.

The Agencies seek comment on whether an exclusion for individuals who modify existing residential mortgage loans would be appropriate in light of the S.A.F.E. Act's objectives of providing increased accountability and tracking of the mortgage loan originators, enhancing consumer protection, reducing fraud in the residential mortgage loan origination process, and providing consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators. Comment is also requested on whether the final rule should delay the registration requirement for individuals engaged in loan modifications for only a specified period in light of current economic conditions and the national importance of encouraging mortgage lenders to engage in foreclosure mitigation activities.

Moreover, the Agencies solicit comment on whether individuals who engage in approving mortgage loan assumptions should be excluded from the proposed definition of "mortgage loan originator" and whether such approach is consistent with the S.A.F.E. Act's objectives.

In particular, commenters are encouraged to: (1) Describe the extent to which loan modification and assumption activities are staffed and managed separately from loan origination activities within the institution; (2) provide the number of employees who engage in loan modifications or assumptions and do not otherwise act as mortgage loan originators; (3) describe the types of contact that staff engaged only in modifications or assumptions has with customers and the extent to which such staff initiate contact with customers; (4) discuss whether loan modification staff ever process loan refinancings; and (5) discuss the extent of the information that is gathered from customers in the context of the loan modifications and assumptions. With respect to loan modifications, describe what staff would handle the transaction if the modification process becomes a refinancing of a loan or if a new borrower is added in addition to the original borrower (*i.e.*, adding a cosigner).

With respect to assumptions, describe: (1) Whether the loan transactions offered by your institution are typically assumable; (2) the types of assumptions that are permitted, if any; (3) the type of contact between the employee and the new borrower; and (4) differences, if any, between

underwriting practices for a loan assumption transaction and a new loan origination. Comment is also specifically requested on whether the exclusion of personnel solely engaged in loan modifications and loan assumptions affects a consumer's ability to assess the competency and credentials of these personnel, keeping in mind the consumer protection and fraud prevention purposes of the S.A.F.E. Act.

To the extent it is within the scope of the S.A.F.E. Act, the Agencies also seek comment on whether individuals who engage in certain refinancing transactions should be excluded from the definition of mortgage loan originator (and, correspondingly whether certain types of refinancing transactions should be excluded from the definition of residential mortgage loan). Specifically, should an individual who engages in refinancings that do not involve a cash-out and are with the same lender be excluded from the definition of mortgage loan originator? With respect to these specific types of refinancing transactions, the Agencies request comment on: (1) Whether such transactions have similar results for borrowers as loan modifications; (2) whether employees engaged in such refinancing transactions also engage in other mortgage loan origination activities; (3) the types of contact that employees who engage in these types of refinancings have with customers; (4) the extent to which such staff initiate contact with customers; and (5) the extent of the information that is gathered from customers in the context of these types of refinancing transactions.

Furthermore, the Agencies seek comment on whether individuals who engage in loan modification and limited refinancing activities should be excluded from the definition of mortgage loan originator only if the transactions meet additional criteria. For example, should an individual who engages only in loan modification activities be excluded from the definition of mortgage loan originator only if the modification meets specific criteria such as a lower interest rate, reduced payment, elimination of an impending adjustment to the rate, or reduction in principal? Comment is requested on criteria that should be considered by the Agencies, if any.

*Nationwide Mortgage Licensing System and Registry or Registry.* The proposal's definition of these terms is based on the definition included in the S.A.F.E. Act. Specifically, these terms mean the system developed and maintained by the CSBS and the

AARMR for the State licensing and registration of State-licensed mortgage loan originators and the registration of mortgage loan originators pursuant to section 1507 of the S.A.F.E. Act. The Registry currently supports the licensing and registration of State mortgage loan originators. As explained above, the Agencies are working with the CSBS to modify the Registry to support the registration of mortgage loan originators employed by Agency-regulated institutions.

*Registered mortgage loan originator.* Pursuant to section 1503(7) of the S.A.F.E. Act, the proposal defines this term to mean any individual who meets the definition of mortgage loan originator and is an employee of an Agency-regulated institution and is registered pursuant to the requirements of this rule with, and maintains a unique identifier through, the Registry. This definition is the same as that included in the S.A.F.E. Act, except that the Agencies have modified it to apply only to individuals registered pursuant to regulations issued by the Agencies.

*Residential mortgage loan.* As in the S.A.F.E. Act, the proposal defines "residential mortgage loan" as any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act (TILA)<sup>19</sup> or residential real estate upon which is constructed or intended to be constructed a dwelling. In addition, the proposal specifically includes in this definition refinancings, reverse mortgages, home equity lines of credit and other first and second lien loans secured by a dwelling in order to clarify that originators of these types of loans are covered by the rule's requirements.

The FCA emphasizes that section 1503(8) of the S.A.F.E. Act and 102(f) do not amend or supersede sections 1.11(b) and 2.4(b) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2019(b) and 2075(b), and their implementing regulation, 12 CFR 613.3030(c), which establish the purposes for which FCS institutions may originate residential mortgage loans for eligible rural home borrowers.

<sup>19</sup>TILA defines "dwelling" as a residential structure or mobile home which contains one-to-four family housing units, or individual units of condominiums or cooperatives. 15 U.S.C. 1602(v). Board regulations and commentary include in this definition any residential structure that contains one to four units, whether or not that structure is attached to real property, and includes an individual condominium unit, cooperative unit, mobile home, trailer, and boat if they are in fact used as a residence. See 12 CFR 226.2(a)(19) (Regulation Z).



*Unique Identifier.* The proposal's definition of this term is identical to that included in section 1503(12) of the S.A.F.E. Act. Specifically, the proposal defines "unique identifier" to mean a number or other identifier that: (1) Permanently identifies a registered mortgage loan originator; (2) is assigned by protocols established by the Registry and the Agencies to facilitate electronic tracking of mortgage loan originators, and uniform identification of, and public access to, the employment history of, and the publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators; and (3) must not be used for purposes other than those set forth in the S.A.F.E. Act.

In section \_\_.103(d), the proposal uses the terms "control" and "financial services-related" in the descriptions of the information that is required of an employee who is a mortgage loan originator. These terms are currently defined in the web-based form collecting information on State-licensed mortgage loan originators. In order to promote consistency of the information collected for Agency-regulated and State-licensed mortgage loan originators, the Agencies intend that the Registry's definitions of those terms will also be used in the web-based form collecting information on Agency-regulated mortgage loan originators and, therefore have not defined them in this rulemaking.<sup>20</sup>

#### Section \_\_.103—Registration of Mortgage Loan Originators

The S.A.F.E. Act specifically prohibits an individual who is an employee of an Agency-regulated institution from engaging in the business of a loan

<sup>20</sup> The Registry currently defines "control" as the power, directly or indirectly, to direct the management or policies of a company or business, whether through ownership of securities, by contract, or otherwise. Any person who is a general partner or executive officer, including Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director and individuals with similar status or functions; directly or indirectly has the right to vote 10 percent or more of a class of a voting security or has the power to sell or direct the sale of 10 percent or more of a class of voting securities; or, in the case of a partnership, has the right to receive upon dissolution, or has contributed, 10 percent or more of the capital, is presumed to control that company. The Agencies have requested that this definition be revised to include "Chief Credit Officer." The Registry's current definition of "Financial services-related" means pertaining to securities, commodities, banking, insurance, consumer lending, or real estate (including, but not limited to, acting or being associated with a bank or savings association, credit union, mortgage lender, mortgage broker, real estate salesperson or agent, closing agent, title company, or escrow agent). The Agencies have requested that this definition be revised to include "Farm Credit System institution" and "appraiser."

originator without registering as a loan originator with the Registry, maintaining annually such registration, and obtaining a unique identifier through the Registry.<sup>21</sup> As described more specifically below, under § \_\_.103 of the proposal, both the individual employee and the employing institution are responsible for complying with these requirements. In addition, the proposal requires that both the employee and the employing institution must submit information to the Registry for each registration to be complete.

*Employee registration requirement.* In general, proposed § \_\_.103(a)(1) requires employees of Agency-regulated institutions who act as a mortgage loan originator to register with the Registry, maintain their registration, and obtain a unique identifier. The Agencies note that this requirement would not apply if the employee is subject to a *de minimis* exception. This section further provides that any employee who is not in compliance with the registration and unique identifier requirements set forth in this subpart, by the expiration of the implementation periods specified in § \_\_.103(a)(3) and (a)(4)(ii), as applicable, is in violation of the S.A.F.E. Act and this rule. The OCC, Board, FDIC, and OTS have the authority to take enforcement actions against their respective Agency-regulated institutions and individual employees of those institutions who violate the S.A.F.E. Act and the final rule, pursuant to 12 U.S.C. 1818. The FCA has authority to take enforcement actions against Farm Credit System institutions and individual employees who violate the S.A.F.E. Act and the final rule pursuant to title V, Part C of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2261 *et seq.* The NCUA has the authority to take enforcement actions against federally-insured credit unions and their employees who violate the S.A.F.E. Act and the final rule under 12 U.S.C. 1786.

*Institution requirement.* Unless the *de minimis* exception applies, paragraph (a)(2) of § \_\_.103 provides that an Agency-regulated institution must require its employees who are mortgage loan originators to register with the Registry, maintain this registration, and obtain a unique identifier in compliance with this subpart. This provision also prohibits an Agency-regulated institution from permitting its employees to act as mortgage loan originators unless registered with the Registry pursuant to this subpart, after the implementation periods specified in §§ \_\_.103(a)(3) and (a)(4)(ii), as applicable, expire.

<sup>21</sup> See S.A.F.E. Act at section 1504(a).

*Implementation period for initial registrations.* The proposal provides a grace period for initial registrations. Pursuant to paragraph (a)(3) of this section, an employee is not required to register, and therefore can continue to originate residential mortgage loans without complying with the rule's registration requirement, 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 of an Agency-regulated institution who is subject to the registration requirements is prohibited from originating residential mortgage loans without first meeting the registration requirements. The Registry, in consultation with the Agencies, is considering a staggered registration process for some of the larger Agency-regulated institutions in order to spread out the registration of mortgage loan originators throughout this implementation period. This could reduce the number of originators registering at any one time, thereby enabling the Registry to accommodate all registrations in a timely and efficient manner.

The Agencies seek comment on whether the 180-day implementation period will provide Agency-regulated institutions and their employees with adequate time to complete the initial registration process. The Agencies also inquire as to whether an alternative schedule for implementation and initial registrations would be appropriate, what such an alternative schedule should be, and why it is more appropriate than the implementation period proposed by the Agencies. In addition, the Agencies request comment on whether, and how, a staggered registration process should be developed.

The Agencies recognize that Agency-regulated institutions and mortgage loan originators need certainty as to when the Registry is available to start accepting registrations and the date that the 180-day clock starts to run. Therefore, the Agencies will provide a coordinated and simultaneous advance notice to Agency-regulated institutions of when the Registry will begin accepting Federal registrations through appropriate means, such as a **Federal Register** publication, Web-site notice, or agency bulletin.

*Special rule for previously registered employees.* Under paragraph (a)(4) of § \_\_.103, properly registered or licensed mortgage loan originators will not have to re-register when they change employment by moving from one Agency-regulated institution to another or from a State-regulated institution to

an Agency-regulated institution, regardless of whether the change in employment is made voluntarily, through an acquisition or merger of the employee's prior employer, or through a reorganization where previously State-licensed mortgage loan originators become subject to the registration requirements of Agency-regulated institutions. Specifically, this provision provides that if a new employee of an Agency-regulated institution had previously registered with, and obtained a unique identifier from, the Registry prior to becoming an employee of that institution and has maintained that registration (or license, if previously employed by a State-regulated entity), the registration requirements of this subpart are deemed to be met provided that: (1) The employee's employment information in the Registry is updated; (2) new fingerprints of the employee are provided to the Registry for a new background check, except in the case of mergers, acquisitions or reorganizations; (3) information concerning the new employing institution is provided to the Registry pursuant to § \_\_.103(e)(1)(i), to the extent the institution has not previously met these requirements, and (e)(2)(i);<sup>22</sup> and (4) the registration is maintained pursuant to the requirements of paragraph (b) of this section as of the date that the employee is employed by the institution.

In order to reduce regulatory burden and to prevent an interruption in mortgage origination activity, this provision provides a 60-day grace period to comply with these requirements when a registered mortgage loan originator becomes an employee of an Agency-regulated institution as a result of an acquisition, merger, or reorganization. The Agencies seek comment on whether this grace period is appropriate.

Continuing a mortgage loan originator's registration from one employer to another will reduce regulatory burden on Agency-regulated institutions as well as the residential mortgage industry. In addition, because an employee's unique identifier and background information in the Registry will remain the same, consumers will be able to locate a mortgage loan originator who has changed employers. The Agencies note that the registration of a

mortgage loan originator who leaves any employer will be inactive until he or she is hired by a new institution, his or her record is updated in accordance with the final rule's requirements, and the new employer acknowledges employing the mortgage loan originator through the Registry. The individual will be prohibited from acting as a mortgage loan originator at an Agency-regulated institution until such time as the registration is reactivated, unless covered by the 60-day grace period.

*Maintaining Registration.* Under § \_\_.103(b), a registered mortgage loan originator must renew his or her registration with the Registry during the annual renewal period (November 1–December 31). To renew, 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 at an Agency-regulated institution until such time as the registration requirements are met. All employee data that has been provided to the Registry about the employee will remain in the Registry even when the employee is in inactive status. Inactive mortgage loan originators will not be assigned a new unique identifier if they re-register.

In addition to the annual renewal, a registration must be updated within 30 days of the occurrence of any of the following events: (1) A change in the employee's name, (2) the registrant ceases to be an employee of the institution; or (3) any of the employee's responses to the information required for registration pursuant to paragraphs (d)(1)(iii) through (xi) become inaccurate. These annual renewal and updating requirements are similar to what is required currently for State-licensed mortgage loan originators.

This paragraph also provides that any employee who registers with the Registry must maintain his or her registration unless the employee is no longer a mortgage loan originator. As a result of this provision, once an employee registers as a loan originator with the Registry, the employee will be required to continue this registration until he or she is no longer engaged in the activity of a mortgage loan originator, even if, in any particular year, the employee originates fewer mortgage loans than the number specified in the *de minimis* exception provision. The purpose of this requirement is to avoid the creation of a timing loophole that could allow

mortgage loan originators to avoid registration requirements.

The Agencies specifically request comment on whether the proposed initial registration requirements as well as the requirements for maintaining registration are adequate and feasible for Agency-regulated institutions and their employees who are mortgage loan originators, yet serve the consumer protection purposes enumerated in the S.A.F.E. Act.

*Effective date of registrations and renewals.* Paragraph (c) of this section provides that an initial registration is effective on the date that the registrant receives notification from the Registry that all employee and institution information required by paragraphs (d) and (e) of this section has been submitted and the registration is complete.

A renewal or update pursuant to paragraph (b) is effective on the date the registrant receives notification from the Registry that all applicable information required by paragraphs (b) and (e) of this section has been submitted and the renewal or update is complete.

Except as provided by the 180-day implementation period in § \_\_.103(a)(3) or the 60-day grace period provided in § \_\_.103(a)(4), an employee must not engage in mortgage origination if his or her registration is not yet effective or has not been renewed pursuant to this rule.

*Required employee information.* Paragraph (d) of § \_\_.103 lists the categories of information that mortgage loan originators, or the employing Agency-regulated institution on behalf of the mortgage loan originator, will be required to submit to the Registry. The Registry's registration form will more specifically identify the information required.

Specifically, the proposal requires the employee to submit information regarding his or her identity (name and former names, Social Security number, gender, date of birth, and place of birth) and home and business contact information; date the employee became an employee of the Agency-regulated institution; financial services-related employment and financial history for the past 10 years; criminal history involving felonies and certain misdemeanors; history of financial services-related civil actions, arbitrations and regulatory and disciplinary actions or orders; financial services-related professional license revocations or suspensions; voluntary or involuntary employment terminations based on violations of law or industry standards of conduct; and certain actions listed above that are pending

<sup>22</sup> These provisions require: The institution's name, main office address, IRS Employer Tax Identification Number, Research Statistics Supervision Discount (RSSD) number; primary Federal regulator, contact information for individuals at the institution for Registry purposes; and confirmation that it employs the registrant. Information regarding an institution's RSSD number is available from the Board.

against the employee. As explained below, the Agency-regulated institution must have policies and procedures in place for confirming the adequacy and accuracy of employee registrations.

The employee also must provide fingerprints, in digital form if practicable, and any appropriate identifying information to the Registry for submission to the FBI and any other Federal or State governmental agency or entity authorized to do a criminal history background check.<sup>23</sup> The Agencies expect that the Registry will submit fingerprints to the FBI for a criminal history background check in connection with the registration of each mortgage loan originator of an Agency-regulated institution. The Agencies, however, are not requiring employees to obtain new fingerprints for submission to the Registry if the employing Agency-regulated institution has the employee's fingerprints on file, provided that the fingerprints submitted to the Registry were taken less than three years prior to the employee's registration with the Registry. If the Agency-regulated institution has such fingerprints on file, the Registry plans to use these fingerprints to run the required criminal history background check on the mortgage loan originator.

It is the Agencies' understanding that the Registry plans to support digital fingerprinting by October 2009 and likely before the initiation of the proposed rule's implementation period. As digital fingerprints are preferable to paper fingerprints, the proposed rule provides that registrants should submit digital fingerprints to the Registry, if practicable. If digital fingerprints are not available, the Registry will accept fingerprint cards, and will convert these cards to a digital format. The Agencies encourage the use of digital fingerprints and note that the proposal's permission to submit fingerprints in paper form is intended to enable smaller institutions without the capability or feasibility to obtain digital fingerprints to comply with this requirement.

The Agencies specifically seek comment on whether the three-year age limit for existing fingerprints is appropriate and whether Agency-regulated institutions currently have fingerprints of their employees on file, and if so, whether they are in digital or paper form.

*Employee authorization and attestation.* Paragraph (d)(2) of § \_\_.103 requires the employee, not the

employing Agency-regulated institution, to attest to the correctness of all such information submitted to the Registry pursuant to paragraph (d)(1), and to provide authorization for the Registry and the employing Agency-regulated institution to obtain information related to any administrative, civil or criminal findings to which the employee is a party.

In order to provide relevant information to consumers and to implement the purposes of the S.A.F.E. Act, paragraph (d)(2) requires the employee, not the employing Agency-regulated institution, to authorize the Registry to make available to the public the following information submitted to the Registry: His or her name; other names used; name of current employer(s); current principal business location(s) and business contact information; 10 years of relevant employment history; and publicly adjudicated or pending disciplinary and enforcement actions and arbitrations against the employee. The Agencies envision that this information will be made public in two phases. The first phase, implemented at the time the Registry begins accepting Federal registrations, would provide for public accessibility of the employee's name; other names used; name of current employer(s); current principal business location(s) and business contact information; and employment history. The remaining categories of information (publicly adjudicated or pending disciplinary and enforcement actions and arbitrations against the employee) would be made public at a later date, once the Registry, in consultation with the Agencies, has designed and implemented a system through which the registrant may provide additional explanatory information to accompany a positive response to any of the disclosure questions regarding criminal history or the other information requested in paragraphs (d)(1)(iii) through (xi). The Agencies note that once the Registry makes this enhancement, registered mortgage loan originators can provide this explanatory language at any time or during the annual renewal process, and that this explanatory language may be made public. Additionally, relevant nonpublic information submitted to the Registry will be accessible to the Agencies and State mortgage regulators, as appropriate.

The institution may provide the employee information required under § \_\_.103(d)(1) to the Registry or require the employee to provide the information to the Registry. Regardless of the manner that the information is

provided, the requirements of the rule remain the same: The employee must attest to the correctness of the information required by § \_\_.103(d) and the institution must implement policies and procedures to confirm the adequacy and accuracy of employee registrations, including updates and renewals.

The Agencies have limited the required information to what is necessary to meet the objectives of the S.A.F.E. Act for the registration of residential mortgage loan originators employed by Agency-regulated institutions and to what is required by the Registry's current data collection form for State mortgage loan originators, Form MU4. The Agencies believe that both the State-licensing and Agency-registration requirements should collect similar information from mortgage loan originators in order to effectively track loan originators, reduce regulatory burden on mortgage loan originators who move between institutions with differing charters and regulators, and permit consumers to review similar information on mortgage loan originators regardless of the originator's regulator. The Agencies and CSBS have worked together to identify what information should be required for registration and will continue to do so going forward.

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

*Required Agency-regulated institution information.* Paragraph (e)(1) of § \_\_.103 requires the employing Agency-regulated institution to submit certain information to the Registry as a base record in connection with the initial registration of one or more mortgage loan originators. Specifically, the Agency-regulated institution must provide its name, main office address, primary Federal regulator, Employer Identification Number (EIN) issued by the Internal Revenue Service, primary point of contact information, and contact information for "system administrators." If the Agency-regulated institution is a subsidiary, it also must indicate that it is a subsidiary and provide the name of its parent institution, as explained further below.

System administrators will have the authority to enter data required in paragraph (e) of this section on the Registry and will be responsible for keeping institution information and the list of employees registered with the Registry current, provided these individuals do not act as mortgage loan originators. The system administrators

<sup>23</sup> Further information on the Registry's fingerprint and background check procedures may be found on the Registry's Web site at <http://www.stateregulatoryregistry.org/NMLS/>.

may delegate their authority and assign as many additional system users as necessary to comply with the registration requirements of the S.A.F.E. Act and the final rule, provided the delegated administrators meet this paragraph's requirements. The primary point of contact also can be one of the system administrators.

In addition, paragraph (e)(1) requires an Agency-regulated institution to provide its Research Statistics Supervision Discount (RSSD) number. The RSSD database is maintained by the Board. The Agencies expect to provide the Registry with an extract of the Board's database, indexed by RSSD number, to facilitate an Agency-regulated institution's authorized access to the Registry and its establishment of a new base record. Upon receiving the information for a new base record from an Agency-regulated institution, the Registry will confirm the information by comparing the application with data supplied by the Agencies. The Agencies will establish a mechanism by which Agency-regulated institutions that do not have an RSSD number will be added to the RSSD database. However, an operating subsidiary of an Agency-regulated institution will not be required to obtain an RSSD number. Instead, if an operating subsidiary does not have an RSSD number, the operating subsidiary will provide its parent institution's RSSD number and indicate that it is an operating subsidiary of the parent. The Agencies seek comment on the proposal to require Agency-regulated institutions to submit their RSSD number, and operating subsidiaries, if necessary, to submit their parent institution's RSSD number, to facilitate an Agency-regulated institution's authorized access to the Registry and its establishment of a base record, and as identifying data for validating the base record.

Paragraph (e)(1)(ii) of this section requires the Agency-regulated institution to update any information it has submitted within 30 days of the date that the information becomes inaccurate.

Paragraph (e)(2) of this section requires an Agency-regulated institution to provide information to the Registry for each employee who acts as a mortgage loan originator. The Agency-regulated institution must: (1) After all the information required by paragraph (d) of this section has been submitted to the Registry, confirm that it employs the registrant; and (2) within 30 days of the date the registrant ceases to be an employee of the institution, provide notification that it no longer employs the registrant and the date the registrant

ceased being an employee. This information will link the registering mortgage loan originator to the Agency-regulated institution in order to confirm that the registration of the employee is valid and legitimate. The Agencies note that the Registry's system protocols will not permit the Agency-regulated institution to confirm that it employs the registrant unless all of the employee's information required by paragraph (d) of this section has been submitted to the Registry.

The Agencies anticipate that some Agency-regulated institutions may 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. The Agencies also recognize the initial volume of new registrants could be burdensome on both the registrants and on the staff charged with completing the registrations. To mitigate this burden, 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 would not eliminate completely 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. Typical automated human resources systems likely will not contain all of the employee information required to be submitted to the Registry Under § \_\_\_\_.103(d) of this proposed rule. As a result, the institution would need to gather the missing information from each potential registrant and then format it for the batch processing, which may create some registration burden on administrative staff and lead to possible delays, errors, or omissions.

Alternatively, if the Agencies specify a limited set of standard data elements that are likely to be contained in an institution's automated human resources system, such as name and employment date, for the batch file, individual employees would still be required to access the Registry to provide any missing information and complete the registration process. In either case, employees would still be responsible for accessing their record in the Registry to attest to the accuracy of the information submitted on their behalf by the employing institution and authorize background checks and public access to certain employee information.

The Agencies seek comment on batch processing and welcome suggestions for workable alternative approaches that could mitigate the initial registration

burden on Agency-regulated institutions and their employees. Comment is also sought on the appropriateness of having one employee input registration information into the Registry on another employee's behalf.

#### Section \_\_\_\_.104 Policies and Procedures

Proposed § \_\_\_\_.104 requires Agency-regulated institutions that employ mortgage loan originators to adopt and follow written policies and procedures designed to assure compliance with the requirements of the final rule. This requirement applies to all Agency-regulated institutions that employ individuals who act as mortgage loan originators, regardless of the application of any *de minimis* exception to their employees. This section requires that these policies and procedures must be appropriate to the nature, size, complexity and scope of the mortgage lending activities of the Agency-regulated institution and must at a minimum include the following eight provisions.

First, these policies and procedures must establish a process for identifying which employees of the institution are required to be registered mortgage loan originators.

Second, the policies and procedures must require that all employees of the institution who are mortgage loan originators be informed of the registration requirements of the S.A.F.E. Act and this rule and be instructed on how to comply with these requirements and procedures, including registering as a mortgage loan originator prior to engaging in any mortgage loan origination activity.

Third, the policies and procedures must establish procedures to comply with the unique identifier requirements in § \_\_\_\_.105.

Fourth, these policies and procedures must establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparison with the institution's records. The Agencies do not expect Agency-regulated institutions, however, to obtain private database searches on their pre-existing employees to confirm employee information. Instead, institutions should compare the information supplied by the employee for purposes of registering with the Registry with the information contained in the institution's own records.

Fifth, these policies and procedures must establish reasonable procedures and tracking systems for monitoring compliance with registration requirements and procedures. Agency-

regulated institutions will be expected to be able to demonstrate compliance with the requirements of the S.A.F.E. Act and the final rule, such as by maintaining appropriate records.

Sixth, the policies and procedures must provide for periodic independent testing of the Agency-regulated institution's policies and procedures for compliance with the S.A.F.E. Act and the final rule, including the registration and renewal requirements, and for such testing to be conducted by institution personnel or by an outside party.

Seventh, the policies and procedures must provide for appropriate action in the case of any employee who fails to comply with the registration requirements of the S.A.F.E. Act, this rule, or the related policies and procedures of the institution, including prohibiting such employees from acting as mortgage loan originators or other appropriate disciplinary actions.

Eighth, the policies and procedures must establish a process for reviewing the criminal background history reports on employees received from the FBI through the Registry and taking appropriate action consistent with applicable law and rules with respect to these reports. Moreover, an Agency-regulated institution must maintain such records or reports and document any action taken with respect to applicable employees. Institutions should maintain these records consistent with applicable recordkeeping requirements, if any.

The Agencies specifically request comment on the difficulty of establishing suitable policies and procedures including the amount of time and resources needed for their adoption and implementation. The Agencies note that these policies and procedures should be in place at an institution prior to the registration of its employees pursuant to this rule.

#### *Section \_\_\_\_ .105 Use of Unique Identifier*

Section \_\_\_\_ .105(a) of the proposal requires an Agency-regulated 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 note that an Agency-regulated institution may comply with this requirement in a number of ways. For example, the institution may choose to direct consumers to a listing of registered mortgage loan originators and their unique identifiers on its Web site; post this information prominently in a publicly accessible place, such as a branch office lobby or lending office reception area; or establish 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.<sup>24</sup>

Section \_\_\_\_ .105(b) requires a registered mortgage loan originator to provide the originator's 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 intend § \_\_\_\_ .105(b)(3) of the rule to cover written communication from the originator specifically for his or her customers and not written materials distributed by the Agency-regulated institution for general use by its customers.

Although a mortgage loan originator may change his or her name, change employment, or move, the unique identifier assigned to the originator by the Registry at the originator's initial registration will remain the same. Once public access to the Registry is fully functional, the unique identifier will enable consumer access to an individual mortgage loan originator's profile stored in the Registry, including the mortgage loan originator's registration information, any State licenses held (active or inactive), employment history and other information of interest to the consumer. If a mortgage loan originator is simultaneously employed by more than one State or Agency-regulated institution, that information also will be readily visible to the consumer. Therefore, as this unique identifier will enable a consumer to obtain important information concerning a mortgage loan originator from the Registry, a mortgage loan originator and the employing institution must ensure that the consumer has access to it.

The Agencies seek comment regarding the adequacy and appropriateness of these unique identifier requirements with respect to the consumer protection and anti-fraud purposes of the S.A.F.E. Act. The Agencies also seek comment on whether the proposed rule adequately ensures that consumers will be made aware that they have the opportunity to access information about the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a prospective, current, or former mortgage

loan originator. Furthermore, the Agencies seek comment on the specific difficulties that an institution or its employees may have in complying with these requirements and whether there may be circumstances when a registered mortgage loan originator would not be able to provide the unique identifier to a consumer before acting as a mortgage loan originator.

#### *Appendix—Examples of Mortgage Loan Originators*

As an aid in the understanding, and to provide examples of the definition of mortgage loan originator, the proposed rule includes an Appendix that provides examples of the type of activities that would cause an employee to fall within or outside the definition of mortgage loan originator. The examples in this Appendix are not all inclusive; they illustrate only the issue described and do not illustrate any other issues that may arise in this proposal. The Agencies request comment on whether the examples are helpful, and if other examples should be added to this Appendix or provided to the public by other means.

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. The Agencies also seek comment on: (1) The activities conducted by employees with respect to mortgage loan pre-approval; and (2) the typical duties of fulfillment staff that do not involve mortgage loan origination activities.

#### **IV. Request for Comments**

The Agencies encourage comment on any aspect of this proposal and especially on those issues specifically noted in this preamble.

Agency-regulated institutions are encouraged to identify how many of their employees would qualify as residential mortgage loan originators under this definition, and therefore, would be required to register under this proposed rule. Please provide specific information on the number of employees engaged in mortgage loan origination, with both actual count and as a percentage of total employees, and

<sup>24</sup> The Agencies note that the Federal Housing Finance Agency (FHFA) has directed Fannie Mae and Freddie Mac to require all mortgage loan applications taken on and after January 1, 2010 to include the mortgage loan originator's unique identifier. See FNMA LL 02-2009: New Mortgage Loan Data Requirements (02/13/09).

the number of full-time equivalents (FTEs) engaged in this activity as reported on an institution's Consolidated Reports of Condition and Income (Call reports) or Thrift Financial Reports, as applicable. It would also be very helpful for Agency-regulated institutions to identify the internal departments to which these employees are assigned, and whether they are engaged in activities other than residential mortgage loan origination. Specifically, please discuss the estimated numbers of employees who act as mortgage loan originators who work in the mortgage loan function and those that work in divisions outside of the mortgage loan origination function. Please also describe any activities related to mortgage loan origination in which the staff outside the mortgage loan function engages. Please describe whether fulfillment staff or other employees who are not loan officers act as mortgage loan originators, and the estimated numbers of such employees that the institution would need to register under the proposed rule. This information will enable the Agencies to estimate the number of employees who will seek registration for purposes of evaluating system administration needs and determining if the proposed 180-day implementation period is adequate to allow for initial registration. This information will also assist the Agencies in preparing final analyses of the impact of these registrations under the Regulatory Flexibility Act, Paperwork Reduction Act, Executive Order 12866, and the Unfunded Mandates Reform Act of 1995, as applicable.

#### *Solicitation of Comments on Use of Plain Language*

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Agencies invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation

easier to understand? If so, what changes to the format would make the regulation easier to understand?

- What else could we do to make the regulation easier to understand?

#### **Regulatory Analysis**

##### *A. Regulatory Flexibility Act*

*OCC:* Pursuant to § 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under § 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

We have estimated that this proposal will not have a significant economic impact on a substantial number of small entities. Specifically, we estimate that 653 small national banks are likely to be impacted by the NPRM, with an average total compliance cost per bank estimated at \$18,800. We base this analysis using the impact of the proposed rule on compliance costs as a percent of labor costs, as well as compliance costs as a percent of noninterest expenses. Therefore, pursuant to § 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

*Board:* Pursuant to § 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under § 603 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

The proposed rule applies to all banks that are members of the Federal Reserve System (other than national banks) and certain of their respective subsidiaries, branches and Agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), and commercial lending companies owned or controlled by foreign banks. Under regulations issued by the Small Business Administration,<sup>25</sup> a small entity includes banking organizations with assets of \$175 million or less (a small banking organization). As of December 31, 2008, there were approximately 501 of the institutions listed above that are small

banking organizations. The Board believes that there is no significant economic impact. Compliance costs are estimated to be less than 4% of profits for state member banks. For the other small banking organizations, the Board believes these entities would fall below the *de minimis* exceptions in Section \_\_\_\_\_.101(c)(2) of the proposed rule since originating residential mortgages is not part of their primary business. The agencies proposed the *de minimis* exception in an effort to reduce compliance costs on small businesses. Therefore, pursuant to § 605(b) of the RFA, the Board hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

*FDIC:* In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601-612 (RFA), an agency must publish an initial regulatory flexibility analysis with its proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with less than \$175 million in assets). The FDIC hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Approximately 3,274 FDIC-supervised banks are small entities. However, the proposed rule would not apply to approximately 2,430 of those small entities because they originate 25 or fewer residential mortgage loans annually and therefore would qualify for the *de minimis* exception. Only approximately 844 small entities supervised by the FDIC—about 26% of FDIC-supervised small entities—would be subject to the requirements of the proposed rule. For those 844 small entities, the estimated initial costs for complying with the proposed rule would represent, on average, approximately 0.7% of total non-interest expenses, and the annual compliance costs would represent, on average, approximately 0.3% of total non-interest expenses.

*OTS:* Pursuant to § 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under § 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

<sup>25</sup> See 13 CFR 121.201.

We have estimated that this proposal will not have a significant economic impact on a substantial number of small entities. Specifically, we estimate that 385 small savings associations are likely to be impacted by the NPRM, with an average total compliance cost per savings association estimated at \$13,311. Therefore, pursuant to § 605(b) of the RFA, the OTS hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

**FCA:** Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

**NCUA:** In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612 (RFA), an agency must publish an initial regulatory flexibility analysis with its proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include federally insured credit unions with less than \$10 million in assets). NCUA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Approximately 3,231 federally insured credit unions are small entities. However, the proposed rule would not apply to approximately 3,190 of those small entities because they originate 25 or fewer residential mortgage loans annually and therefore would qualify for the de minimis exception. Only approximately 41 small federally insured credit unions, about 1.3% of small entities, would be subject to the requirements of the proposed rule.

### B. Paperwork Reduction Act

#### Request for Comment on Proposed Information Collection

In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 ("PRA"), the Federal banking agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management

and Budget ("OMB") control number. The information collection requirements contained in this joint notice of proposed rulemaking have been submitted by the OCC, FDIC, OTS, and NCUA to OMB for review and approval under section 3506 of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320). The FCA collects information from Farm Credit System institutions, which are Federal instrumentalities, in the FCA's capacity as their safety and soundness regulator, and, therefore, OMB approval is not required for this collection. The Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. The proposed rule contains requirements subject to the PRA. The requirements are found in 12 CFR \_\_\_\_\_.103(a)–(b), (d)–(e), \_\_\_\_\_.104, and \_\_\_\_\_.105.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Federal banking agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

**NCUA:** Request for comments related to the number of respondents who are mortgage loan originators—Some federally insured credit unions use a credit committee comprised of unpaid volunteers to make lending decisions, including decisions on mortgage loans to members. NCUA requests comments on whether these credit committee members who work for a credit union in an unpaid capacity and approve mortgage loans must register. In addition, NCUA requests comments on whether only some of these credit committee members must register, and if so, which ones and why.

All comments will become a matter of public record. Comments should be addressed to:

**OCC:** Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–AD23, 250 E Street, SW., Washington, DC

20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You can inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

**Board:** You may submit comments, identified by Docket No. R–1357, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments on the <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.

- **FAX:** 202–452–3819 or 202–452–3102.

- **Mail:** Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FDIC:** You may submit written comments, identified by the RIN, by any of the following methods:

- **Agency Web Site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments on the FDIC Web site.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include RIN 3064–AD43 on the subject line of the message.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street, NW., Washington, DC 20429.

- **Hand Delivery/Courier:** Guard station at the rear of the 550 17th Street

Building (located on F Street) on business days between 7 a.m. and 5 p.m.

*Instructions:* All comments received will be posted generally without change to <http://www.fdic.gov/regulations/laws/federal/propose/html> including any personal information provided.

*OTS:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906-6518; or send an e-mail to [infocollection.comments@ots.treas.gov](mailto:infocollection.comments@ots.treas.gov). OTS will post comments and the related index on the OTS Internet site at <http://www.ots.treas.gov>. In addition, interested persons may inspect the comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906-7755.

*NCUA:* You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *NCUA Web Site:* <http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html>. Follow the instructions for submitting comments.

- *E-mail:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include "[Your name] Comments on Notice of Proposed Rulemaking Part 761 Registration of Mortgage Loan Originators" in the e-mail subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for e-mail.

- *Mail:* Address to Jeryl Fish, Deputy Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

- *Hand Delivery/Courier:* Same as mail address. Additionally, you should send a copy of your comments to the OMB Desk Officer for the Federal banking agencies, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., 10235, Washington, DC 20503, or by fax to (202) 395-6974.

Proposed Information Collection

*Title of Information Collection:* Registration of Mortgage Loan Originators.

*Frequency of Response:* On occasion; Annual.

*Affected Public:*

*OCC:* National banks, Federal branches and agencies of foreign banks,

their operating subsidiaries, and employees who are loan originators.

*Board:* Member banks of the Federal Reserve System (other than national banks), their respective subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act; and branches and agencies of foreign banks (other than Federal branches, Federal agencies and insured State branches of foreign banks) and commercial lending companies owned or controlled by foreign banks and their employees who act as mortgage loan originators.

*FDIC:* State nonmember banks (including State-licensed insured branches of foreign banks) and their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers) and their employees who are mortgage loan originators.

*OTS:* Savings associations and their operating subsidiaries, and their employees who are mortgage loan originators.

*NCUA:* Federally chartered credit unions and their employees who are mortgage loan originators.

*Abstract:*

Unless the de minimis exception or a different implementation period applies, § \_\_.103(a) would require an employee of a depository institution who engages in the business of a mortgage loan originator (MLO) to register with the Registry, maintain such registration, and obtain a unique identifier. Under § \_\_.103(b), a depository institution would require each such registration to be renewed annually and updated within 30 days of the occurrence of specified events. Section \_\_.103(d) describes the categories of information that an employee, or the employing depository institution on the employee's behalf, must submit to the Registry, with the employee's attestation as to the correctness of the information supplied, and his/her authorization to obtain further information. Section \_\_.103(e) specifies institution and employee information that a depository institution would submit to the Registry in connection with the initial registration of one or more MLOs, and thereafter to update. Section \_\_.104 would require that an agency-regulated institution employing MLOs adopt and follow written policies and procedures, at a minimum addressing certain specified areas, but otherwise appropriate to the nature, size and complexity of their mortgage lending activities. Section \_\_.105 would require a depository institution to make the unique identifier(s) of its registered MLO(s)

available to consumers in a manner and method practicable to the institution. It would also require a registered MLO to provide his or her unique identifier to a consumer upon request, before acting as a MLO, and through the originator's initial written communication with a consumer, if any.

*Estimated Burden:*

*OCC*

*Number of Bank Respondents:* 1,771 (1,464 national banks; 307 operating subsidiaries).

*Burden per Bank for Initial Set up:* 351 hours (220 hours to implement policies and procedures and establish tracking and compliance systems; 131 hours to establish reporting, filing, and information dissemination systems).

*Total Bank Burden for Initial Set up:* 621,621.

*Number of MLO Employees for Initial Set up:* 117,772.

*Burden per MLO Employee for Initial Set up:* 3.50 hours (2.50 hours to provide information to Registry, and 1 hour to provide Unique Identifier to a consumer, upon request and at initial contact).

*Total Burden for MLO Employees for Initial Set up:* 412,202 hours.

*Number of MLO Employees for Registration Update:* 58,886.

*Burden per MLO Employee for Registration Update:* 0.25 hours.

*Total Burden for MLO Employees for Registration Update:* 14,721.5 hours.

*Total OCC Annual Burden:* 1,048,544.5 hours.

*Board*

*Number of Bank Respondents:* 2,382.

*Burden per Bank for Initial Set up:* 351 hours (220 hours to implement policies and procedures and establish tracking and compliance systems; 131 hours to establish reporting, filing, and information dissemination systems).

*Total Bank Burden for Initial Set up:* 836,082 hours.

*Number of MLO Employees for Initial Set up:* 27,000.

*Burden per MLO Employee for Initial Set up:* 3.50 hours (2.50 hours to provide information to Registry, and 1 hour to provide Unique Identifier to a consumer).

*Total Burden for MLO Employees for Initial Set up:* 94,500 hours.

*Number of MLO Employees for Registration Update:* 13,500.

*Burden per MLO Employee for Registration Update:* 0.25 hours.

*Total Burden for MLO Employees for Registration Update:* 3,375 hours.

*Total Board Annual Burden:* 933,957 hours.



**FDIC**

*Number of Bank Respondents:* 5,371.

*Burden per Bank for Initial Set up:* 351 hours (220 hours to implement policies and procedures and establish tracking and compliance systems; 131 hours to establish reporting, filing, and information dissemination systems).

*Total Bank Burden for Initial Set up:* 1,885,221 hours.

*Number of MLO Employees for Initial Set up:* 49,719.

*Burden per MLO Employee for Initial Set up:* 3.50 hours (2.50 hours to provide information to Registry, and 1 hour to provide Unique Identifier to a consumer, upon request and at initial contact).

*Total Burden for MLO Employees for Initial Set up:* 174,016.5 hours.

*Number of MLO Employees for Registration Update:* 24,860.

*Burden per MLO Employee for Registration Update:* 0.25 hours.

*Total Burden for MLO Employees for Registration Update:* 6,215 hours.

*Total FDIC Annual Burden:* 2,065,452.5 hours.

**OTS**

*Number of Savings Association Respondents:* 1,022 (802 savings associations; 220 operating subsidiaries).

*Burden per Savings Association for Initial Set up:* 351 hours (220 hours to implement policies and procedures and establish tracking and compliance systems; 131 hours to establish reporting, filing, and information dissemination systems).

*Total Savings Association Burden for Initial Set up:* 358,722.

*Number of MLO Employees for Initial Set up:* 48,958.

*Burden per MLO Employee for Initial Set up:* 3.50 hours (2.50 hours to provide information to Registry, and 1 hour to provide Unique Identifier to a consumer, upon request and at initial contact).

*Total Burden for MLO Employees for Initial Set up:* 171,353 hours.

*Number of MLO Employees for Registration Update:* 24,479.

*Burden per MLO Employee for Registration Update:* 0.25 hours.

*Total Burden for MLO Employees for Registration Update:* 6,120 hours.

*Total OTS Annual Burden:* 536,195 hours.

**NCUA**

*Number of Credit Union Respondents:* 2,834 credit unions.

*Burden per Credit Union for Initial Set up:* 351 hours (220 hours to implement policies and procedures and

establish tracking and compliance systems; 131 hours to establish reporting, filing, and information dissemination systems).

*Total Credit Union Burden for Initial Set up:* 994,734 hours.

*Number of MLO Employees for Initial Set up:* 23,539.

*Burden per MLO Employee for Initial Set up:* 3.50 hours (2.25 hours to provide information to Registry, and 1 hour to provide Unique Identifier to a consumer, upon request and at initial contact).

*Total Burden for MLO Employees for Initial Set up:* 82,386.5 hours.

*Number of MLO Employees for Registration Update:* 11,770.

*Burden per MLO Employee for Registration Update:* 0.25 hours.

*Total Burden for MLO Employees for Registration Update:* 2,942.50 hours.

*Total NCUA Annual Burden:* 1,080,063 hours.

**C. OCC AND OTS Executive Order 12866 Determination**

The OCC and the OTS have determined that this proposal is not a significant regulatory action under Executive Order 12866. We have concluded that the changes made by this rule will not have an annual effect on the economy of \$100 million or more. The OCC and the OTS further conclude that this proposal does not meet any of the other standards for a significant regulatory action set forth in Executive Order 12866.

**D. OCC and OTS Unfunded Mandates Reform Act of 1995 Determination**

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), requires the OCC and OTS to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. However, this requirement does not apply to regulations that incorporate requirements specifically set forth in law. Because this proposed rule implements the S.A.F.E. Act, the OTS and OCC have not conducted an Unfunded Mandates Analysis for this rulemaking.

**E. NCUA Executive Order 13132 Determination**

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory

agency as defined in 44 U.S.C. 3502(5) voluntarily complies with the Executive Order. The proposed rule applies to federally insured credit unions and would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

**F. NCUA: The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families**

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

**List of Subjects****12 CFR Part 34**

Mortgages, National banks, Reporting and recordkeeping requirements.

**12 CFR Part 208**

Accounting, Agriculture, Banks, Banking, Confidential business information, Consumer protection, Crime, Currency, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

**12 CFR Part 365**

Banks, Banking, Mortgages.

**12 CFR Part 563**

Accounting, Administrative practice and procedure, Advertising, Conflict of interests, Crime, Currency, Holding companies, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

**12 CFR Part 610**

Banks, Banking, Consumer protection, Loan programs—housing and community development, Mortgages, Reporting and recordkeeping requirements, Rural areas.

**12 CFR Part 761**

Credit unions, Mortgages, Reporting and recordkeeping requirements.

## Office of the Comptroller of the Currency

### 12 CFR Chapter I

#### Authority and Issuance

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 is revised to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 29, 93a, 371, 1701j-3, 1828(o), 3331 *et seq.*, and 5101 *et seq.*

2. Add Subpart F to part 34 to read as follows:

#### Subpart F—Registration of Residential Mortgage Loan Originators

Sec.

34.101 Authority, purpose, and scope.

34.102 Definitions.

34.103 Registration of mortgage loan originators.

34.104 Policies and procedures.

34.105 Use of unique identifier.

Appendix A to Subpart F of Part 34—

Examples of Mortgage Loan Originator Activities

#### Subpart F—Registration of Residential Mortgage Loan Originators

##### § 34.101 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act) (Pub. L. 110–289, 122 Stat. 2654, 12 U.S.C. 5101 *et seq.*).

(b) *Purpose.* This subpart implements the S.A.F.E. Act's Federal registration requirement for mortgage loan originators. The S.A.F.E. Act provides that the objectives of this registration include aggregating and improving the flow of information to and between regulators; providing increased accountability and tracking of mortgage loan originators; enhancing consumer protections; reducing fraud in the residential mortgage loan origination process; and providing consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators.

(c) *Scope—(1) In general.* This subpart applies to national banks, Federal branches and agencies of foreign banks, their operating subsidiaries (collectively referred to in this subpart as national banks), and their employees who act as mortgage loan originators.

(2) *Exception.* (i) This subpart and the requirements of sections 1504(a)(1)(A) and (2) of the S.A.F.E. Act do not apply to any employee of a national bank if during the past 12 months:

(A) The employee acted as a mortgage loan originator for 5 or fewer residential mortgage loans; and

(B) The national bank employs mortgage loan originators who, while excepted from registration pursuant to paragraph (c)(2)(i)(A) of this section, in the aggregate, acted as a mortgage loan originator in connection with 25 or fewer residential mortgage loans.

(ii) Prior to engaging in mortgage loan origination activity that exceeds either the individual or the aggregate exception limit, a national bank employee must register with the Registry pursuant to this subpart.

##### § 34.102 Definitions.

For purposes of this subpart F, the following definitions apply:

(a) *Annual renewal period* means November 1 through December 31 of each year.

(b)(1) *Mortgage loan originator*<sup>3</sup> means 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.

(2) The term *mortgage loan originator* does not include:

(i) An individual who performs purely administrative or clerical tasks on behalf of an individual who is described in paragraph (b)(1) of this section;

(ii) An individual who only performs real estate brokerage activities (as defined in section 1503(3)(D) of the S.A.F.E. Act) and is licensed or registered as a real estate broker in accordance with applicable State law, unless the individual is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and meets the definition of mortgage loan originator in paragraph (b)(1) of this section; or

(iii) An individual or entity solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(3) *Administrative or clerical tasks* means the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to

<sup>3</sup>The Appendix to this subpart provides examples of activities that would, and would not, cause an employee to fall within this section's definition of mortgage loan originator.

obtain information necessary for the processing or underwriting of a residential mortgage loan.

(c) *Nationwide Mortgage Licensing System and Registry* or *Registry* means the system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed mortgage loan originators and the registration of mortgage loan originators pursuant to section 1507 of the S.A.F.E. Act.

(d) *Registered mortgage loan originator* or *registrant* means any individual who:

(1) Meets the definition of mortgage loan originator and is an employee of a national bank; and

(2) Is registered pursuant to this subpart with, and maintains a unique identifier through, the Registry.

(e) *Residential mortgage loan* means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v)) or residential real estate upon which is constructed or intended to be constructed a dwelling, and includes refinancings, reverse mortgages, home equity lines of credit and other first and second lien loans that meet the qualifications listed in this definition.

(f) *Unique identifier* means a number or other identifier that:

(1) Permanently identifies a registered mortgage loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry, the Federal banking agencies, and the Farm Credit Administration to facilitate:

(i) Electronic tracking of mortgage loan originators; and

(ii) Uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators; and

(3) Must not be used for purposes other than those set forth under the S.A.F.E. Act.

##### § 34.103 Registration of mortgage loan originators.

(a) *Registration requirement—(1) Employee registration.* Each employee of a national bank who acts as a mortgage loan originator must register with the Registry, obtain a unique identifier, and maintain this registration in accordance with the requirements of this subpart. Any such employee who is not in compliance with the registration and

unique identifier requirements set forth in this subpart is in violation of the S.A.F.E. Act and this subpart.

(2) *National bank requirement*—(i) *In general.* A national bank that employs one or more individuals who act as a residential mortgage loan originator must require each employee who is a mortgage loan originator to register with the Registry, maintain this registration, and obtain a unique identifier in accordance with the requirements of this subpart.

(ii) *Prohibition.* A national bank must not permit an employee of the bank who is subject to the registration requirements of this subpart to act as a mortgage loan originator unless such employee is registered with the Registry pursuant to this subpart.

(3) *Implementation period for initial registration.* An employee of a national bank who is a mortgage loan originator must complete an initial registration with the Registry pursuant to this subpart within 180 days from the date that the OCC provides public notice that the Registry is accepting registrations.

(4) *Employees previously registered or licensed through the Registry*—(i) *In general.* If an employee of a national bank was registered or licensed through, and obtained a unique identifier from, the Registry prior to becoming an employee of the bank and has maintained this registration or license, the registration requirements of the S.A.F.E. Act and this subpart are deemed to be met, provided that:

(A) The employment information in paragraphs (d)(1)(i)(C) and (d)(1)(ii) of this section is updated and the requirements of paragraph (d)(2) of this section are met;

(B) New fingerprints of the employee are submitted to the Registry for a background check, as required by paragraph (d)(1)(xii) of this section;

(C) The national bank information required in paragraphs (e)(1)(i) (to the extent the bank has not previously met these requirements) and (e)(2)(i) of this section is submitted to the Registry; and

(D) The registration is maintained pursuant to paragraphs (b) and (e)(1)(ii) of this section, as of the date that the employee is employed by the bank.

(ii) *Implementation period for certain acquisitions, mergers or reorganizations.* When registered or licensed mortgage loan originators become national bank employees as a result of an acquisition, merger or reorganization transaction, the bank and employees must comply with the requirements of paragraphs (a)(4)(i)(A), (C), and (D) of this section within 60 days from the effective date of the acquisition, merger, or reorganization.

(b) *Maintaining registration.* (1) A mortgage loan originator who is registered with the Registry pursuant to paragraph (a) of this section must:

(i) Renew the registration during the annual renewal period, confirming the responses set forth in paragraphs (d)(1)(i) through (xi) of this section remain accurate and complete, and updating this information, as appropriate; and

(ii) Update the registration within 30 days of any of the following events:

(A) A change in the name of the registrant;

(B) The registrant ceases to be an employee of the national bank; or

(C) The information required under paragraphs (d)(1)(iii) through (xi) of this section becomes inaccurate, incomplete, or out-of-date.

(2) A registered mortgage loan originator must maintain his or her registration, notwithstanding the originator's subsequent qualification for the exception set forth in § 34.101(c)(2), unless the individual is no longer engaged in the activity of a mortgage loan originator.

(c) *Effective dates*—(1) *Initial registration.* An initial registration pursuant to paragraph (a) of this section is effective on the date the registrant receives notification from the Registry that all information required by paragraphs (d) and (e) of this section has been submitted and the registration is complete.

(2) *Renewals or updates.* A renewal or update pursuant to paragraph (b) of this section is effective on the date the registrant receives notification from the Registry that all applicable information required by paragraphs (b) and (e) of this section has been submitted and the renewal or update is complete.

(d) *Required employee information*—(1) *In general.* For purposes of the registration required by this section, a national bank must require each employee who is a mortgage loan originator to submit to the Registry, or must submit on behalf of the employee, the following categories of information to the extent this information is collected by the Registry:

(i) Identifying information, including the employee's:

(A) Name and any other names used;

(B) Home address;

(C) Address of the employee's principal business location and business contact information;

(D) Social security number;

(E) Gender; and

(F) Date and place of birth;

(ii) Financial services-related employment history for the 10 years prior to the date of registration or

renewal, including the date the employee became an employee of the bank;

(iii) Financial information for the 10 years prior to the date of registration or renewal constituting a history of any personal bankruptcy; business bankruptcy based upon events that occurred while the employee exercised control over an organization; denied, paid out, or revoked bonds; or unsatisfied judgments or liens against the employee;

(iv) Felony convictions or other final criminal actions involving a felony against the employee or organizations controlled by the employee; or misdemeanor convictions or other final misdemeanor actions against the employee or organizations controlled by the employee involving financial services, a financial services-related business, dishonesty, or breach of trust;

(v) Civil judicial actions against the employee in connection with financial services-related activities, dismissals with settlements, judicial findings that the employee violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement;

(vi) Actions or orders by a State or Federal regulatory agency or foreign financial regulatory authority that:

(A) Found the employee to have made a false statement or omission or been dishonest, unfair or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked or restricted;

(B) Are entered against the employee in connection with a financial services-related activity;

(C) Denied, suspended, or revoked the employee's registration or license to engage in a financial services-related activity; disciplined the employee or otherwise by order prevented the employee from associating with a financial services-related business or restricted the employee's activities; or

(D) Barred the employee from association with an entity regulated by the agency or authority or from engaging in a financial services-related business;

(vii) Final orders issued by a State or Federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct;

(viii) Revocation or suspension of the employee's authorization to act as an attorney, accountant, or State or Federal contractor;

(ix) Customer-initiated financial services-related arbitration or civil action against the employee that required action, including settlements;

(x) Disclosure of any voluntary or involuntary employment terminations resulting from allegations accusing the employee of violating a statute, regulation, or industry standard of conduct; fraud; dishonesty; theft; or the wrongful taking of property;

(xi) Any pending actions against the employee that could result in an action listed in paragraphs (d)(1)(iii) through (ix) of this section; and

(xii) Fingerprints of the employee, in digital form if practicable, collected by the employing institution less than three years prior to registration and any appropriate identifying information for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information in connection with a State and national criminal history background check.

(2) *Employee authorization and attestation.* An employee registering as a mortgage loan originator or renewing his or her registration under this subpart must:

(i) Authorize the Registry and the employing institution to obtain information related to any administrative, civil or criminal findings, to which the employee is a party, made by any governmental jurisdiction;

(ii) Attest to the correctness of all information required by paragraph (d) of this section, whether submitted by the employee or on behalf of the employee by the employing bank; and

(iii) Authorize the Registry to make available to the public information required by paragraphs (d)(1)(i)(A) and (C), (d)(1)(ii), (iv)–(ix) and (xi) of this section.

(e) *Required bank information.* A national bank must submit the following information to the Registry.

(1) *Bank record.* (i) In connection with the initial registration of one or more mortgage loan originators:

(A) Name and main office address;

(B) Internal Revenue Service Employer Tax Identification Number (EIN);

(C) Research Statistics Supervision and Discount (RSSD) number, as issued by the Board of Governors of the Federal Reserve System;

(D) Identification of its primary Federal regulator;

(E) Name(s) and contact information of the individual(s) with authority to act as the bank's primary point of contact for the Registry;

(F) Name(s) and contact information of the individual(s) with authority to enter data required in paragraph (e) of this section on the Registry and who may delegate this authority to other bank employees, provided this individual and any delegated employee does not act as a mortgage loan originator; and

(G) If a subsidiary of a national bank, indication that it is a subsidiary and the name of its parent bank.

(ii) A national bank must update the information required by this paragraph (e) within 30 days of the date that this information becomes inaccurate.

(2) *Employee information.* In connection with the registration of each employee who acts as a mortgage loan originator:

(i) After the information required by paragraph (d) of this section has been submitted to the Registry, confirmation that it employs the registrant; and

(ii) Within 30 days of the date the registrant ceases to be an employee of the bank, notification that it no longer employs the registrant and the date the registrant ceased being an employee.

#### **§ 34.104 Policies and procedures.**

A national bank that employs mortgage loan originators must adopt and follow written policies and procedures designed to assure compliance with this subpart. These policies and procedures must be appropriate to the nature, size, complexity and scope of the mortgage lending activities of the bank. At a minimum, these policies and procedures must:

(a) Establish a process for identifying which employees of the bank are required to be registered mortgage loan originators;

(b) Require that all employees of the national bank who are mortgage loan originators be informed of the registration requirements of the S.A.F.E. Act and this subpart and be instructed on how to comply with such requirements and procedures;

(c) Establish procedures to comply with the unique identifier requirements in § 34.105;

(d) Establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparisons with its own records;

(e) Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;

(f) Provide for independent testing for compliance with this subpart to be conducted by bank personnel or by an outside party;

(g) Provide for appropriate action in the case of any employee who fails to comply with the registration requirements of the S.A.F.E. Act, this subpart, or the bank's related policies and procedures, including prohibiting such employees from acting as mortgage loan originators or other appropriate disciplinary actions; and

(h) Establish a process for reviewing employee criminal history background reports received from the Registry in connection with § 34.103(d)(1)(xii), taking appropriate action consistent with applicable law and rules with respect to these reports, and for maintaining records of these reports and actions taken with respect to applicable employees.

#### **§ 34.105 Use of unique identifier.**

(a) The national bank shall make the unique identifier(s) of its registered mortgage loan originator(s) available to consumers in a manner and method practicable to the institution.

(b) A registered mortgage loan originator shall provide his or her unique identifier to a consumer:

(1) Upon request;

(2) Before acting as a mortgage loan originator; and

(3) Through the originator's initial written communication with a consumer, if any.

#### **Appendix A to Subpart F of Part 34— Examples of Mortgage Loan Originator Activities**

This Appendix provides examples to aid in the understanding of activities that would cause an employee of a national bank to fall within or outside the definition of mortgage loan originator. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this subpart. For the purposes of the examples below, the term "loan" refers to a residential mortgage loan.

(a) *Taking a loan application.* The following examples illustrate when an employee takes or does not take, a loan application.

(1) Taking an application includes: Receiving information that is sufficient to determine whether the consumer qualifies for a loan, even if the employee has had no contact with the consumer and is not responsible for further verification of information.

(2) Taking an application does not include any of the following activities performed solely or in combination:

(i) Contacting a consumer to verify the information in the loan application by obtaining documentation, such as tax returns or payroll receipts;

(ii) Receiving a loan application through the mail and forwarding it, without review, to loan approval personnel; or

(iii) Assisting a consumer who is filling out an application by clarifying what type of

information is necessary for the application or otherwise explaining the loan application process in response to consumer inquiries.

(b) *Offering or negotiating terms of a loan:* The following examples are designed to illustrate when an employee offers or negotiates terms of a loan, and conversely, what does not constitute offering or negotiating terms of a loan.

(1) Offering or negotiating the terms of a loan includes:

(i) Presenting a loan offer to a consumer for acceptance, either verbally or in writing, even if further verification of information is necessary and the offer is conditional; or

(ii) Responding to a consumer's request for a lower rate or lower points on a pending loan application by presenting to the consumer a revised loan offer, either verbally or in writing, that includes a lower interest rate or lower points than the original offer.

(2) Offering or negotiating terms of a loan does not include solely or in combination:

(i) Providing general explanations in response to consumer queries regarding qualification for a specific loan product, such as explaining loan terminology (*i.e.*, debt-to-income ratio) or lending policies (*i.e.*, the loan-to-value ratio policy of the national bank);

(ii) In response to a consumer's request, informing a consumer of the loan rates that are publicly available such as on the national bank's Web site for specific types of loan products without communicating to the consumer whether qualifications are met for that loan product;

(iii) Collecting information about a consumer in order to provide the consumer with information on loan products for which the consumer generally may qualify, without presenting a specific loan offer to the consumer for acceptance, either verbally or in writing;

(iv) Arranging the loan closing or other aspects of the loan process, including communicating with a consumer about those arrangements, provided that communication with the consumer only verifies loan terms already offered or negotiated; or

(v) Providing a consumer with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the bank.

(c) The following examples illustrate when an employee does or does not offer or negotiate terms of a loan "for compensation or gain."

(1) Offering or negotiating terms of a loan for compensation or gain includes engaging in any of the activities in paragraph (b)(1) of this Appendix in the course of carrying out employment duties, even if the employee does not receive a referral fee or commission or other special compensation for the loan.

(2) Offering or negotiating terms of a loan for compensation or gain does not include engaging in a seller-financed transaction for the employee's personal property that does not involve the national bank.

## Federal Reserve System

### 12 CFR Chapter II

#### Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the

Code of Federal Regulations is proposed to be amended as follows:

#### PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

**Authority:** 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3106a(b)(1), 3108(a), 3310, 3331–3351, and 3906–3909, 5101 *et seq.*, 15 U.S.C. 78b, 781(b), 781(g), 781(i), 780–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Subpart I, consisting of §§ 208.100 and 208.101, is redesignated as Subpart J, consisting of §§ 208.110 and 208.111.

3. New subpart I is added to read as follows:

#### Subpart I—Registration of Residential Mortgage Loan Originators

Sec.

208.101 Authority, purpose, and scope.

208.102 Definitions.

208.103 Registration of mortgage loan originators.

208.104 Policies and procedures.

208.105 Use of unique identifier.

Appendix A to Subpart I of Part 208—

Examples of Mortgage Loan Originator Activities

#### Subpart I—Registration of Residential Mortgage Loan Originators

##### § 208.101 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (Board) pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act) (Pub. L. 110–289, 122 Stat. 2654, 12 U.S.C. 5101 *et seq.*), 12 U.S.C. 248(a), 3106a(b)(1), and 3108(a).

(b) *Purpose.* This subpart implements the S.A.F.E. Act's Federal registration requirement for mortgage loan originators. The S.A.F.E. Act provides that the objectives of this registration include aggregating and improving the flow of information to and between regulators; providing increased accountability and tracking of mortgage loan originators; enhancing consumer protections; reducing fraud in the residential mortgage loan origination process; and providing consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators.

(c) *Scope—(1) In general.* This subpart applies to member banks of the Federal Reserve System (other than national banks); their respective subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)); branches and agencies of foreign banks (other than federal branches, Federal agencies and insured state branches of foreign banks), and commercial lending companies owned or controlled by foreign banks (collectively referred to in this subpart as banks), and their employees who act as mortgage loan originators.

(2) *Exception.* (i) This subpart and the requirements of sections 1504(a)(1)(A) and (2) of the S.A.F.E. Act do not apply to any employee of a bank if during the past 12 months:

(A) The employee acted as a mortgage loan originator for 5 or fewer residential mortgage loans; and

(B) The bank employs mortgage loan originators who, while excepted from registration pursuant to paragraph (c)(2)(i)(A) of this section, in the aggregate, acted as a mortgage loan originator in connection with 25 or fewer residential mortgage loans.

(ii) Prior to engaging in mortgage loan origination activity that exceeds either the individual or the aggregate exception limit, a bank employee must register with the Registry pursuant to this subpart.

##### § 208.102 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Annual renewal period* means November 1 through December 31 of each year.

(b)(1) *Mortgage loan originator*<sup>7</sup> means 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.

(2) The term *mortgage loan originator* does not include:

(i) An individual who performs purely administrative or clerical tasks on behalf of an individual who is described in paragraph (b)(1) of this section;

(ii) An individual who only performs real estate brokerage activities (as defined in section 1503(3)(D) of the S.A.F.E. Act) and is licensed or registered as a real estate broker in accordance with applicable State law, unless the individual is compensated by

<sup>7</sup> The Appendix to this subpart provides examples of activities that would, and would not, cause an employee to fall within this section's definition of mortgage loan originator.

a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and meets the definition of mortgage loan originator in paragraph (b)(1) of this section; or

(iii) An individual or entity solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(3) *Administrative or clerical tasks* means the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(c) *Nationwide Mortgage Licensing System and Registry* or *Registry* means the system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed mortgage loan originators and the registration of mortgage loan originators pursuant to section 1507 of the S.A.F.E. Act.

(d) *Registered mortgage loan originator* or *registrant* means any individual who:

(1) Meets the definition of mortgage loan originator and is an employee of a bank; and

(2) Is registered pursuant to this subpart with, and maintains a unique identifier through, the Registry.

(e) *Residential mortgage loan* means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v)) or residential real estate upon which is constructed or intended to be constructed a dwelling, and includes refinancings, reverse mortgages, home equity lines of credit and other first and second lien loans that meet the qualifications listed in this definition.

(f) *Unique identifier* means a number or other identifier that:

(1) Permanently identifies a registered mortgage loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry, the Federal banking agencies, and the Farm Credit Administration to facilitate:

(i) Electronic tracking of mortgage loan originators; and

(ii) Uniform identification of, and public access to, the employment history of and the publicly adjudicated

disciplinary and enforcement actions against mortgage loan originators; and

(3) Must not be used for purposes other than those set forth under the S.A.F.E. Act.

### **§ 208.103 Registration of mortgage loan originators.**

(a) *Registration requirement*—(1) *Employee registration.* Each employee of a bank who acts as a mortgage loan originator must register with the Registry, obtain a unique identifier, and maintain this registration in accordance with the requirements of this subpart. Any such employee who is not in compliance with the registration and unique identifier requirements set forth in this subpart is in violation of the S.A.F.E. Act and this subpart.

(2) *Bank requirement*—(i) *In general.* A bank that employs one or more individuals who act as a residential mortgage loan originator must require each employee who is a mortgage loan originator to register with the Registry, maintain this registration, and obtain a unique identifier in accordance with the requirements of this subpart.

(ii) *Prohibition.* A bank must not permit an employee of the bank who is subject to the registration requirements of this subpart to act as a mortgage loan originator unless such employee is registered with the Registry pursuant to this subpart.

(3) *Implementation period for initial registration.* An employee of a bank who is a mortgage loan originator must complete an initial registration with the Registry pursuant to this subpart within 180 days from the date that the Board provides public notice that the Registry is accepting registrations.

(4) *Employees previously registered or licensed through the Registry*—(i) *In general.* If an employee of a bank was registered or licensed through, and obtained a unique identifier from, the Registry prior to becoming an employee of the bank and has maintained this registration or license, the registration requirements of the S.A.F.E. Act and this subpart are deemed to be met, provided that:

(A) The employment information in paragraphs (d)(1)(i)(C) and (d)(1)(ii) of this section is updated and the requirements of paragraph (d)(2) of this section are met;

(B) New fingerprints of the employee are submitted to the Registry for a background check, as required by paragraph (d)(1)(xii) of this section;

(C) The bank information required in paragraphs (e)(1)(i) (to the extent the bank has not previously met these requirements) and (e)(2)(i) of this section is submitted to the Registry; and

(D) The registration is maintained pursuant to paragraphs (b) and (e)(1)(ii) of this section, as of the date that the employee is employed by the bank.

(ii) *Implementation period for certain acquisitions, mergers or reorganizations.* When registered or licensed mortgage loan originators become bank employees as a result of an acquisition, merger or reorganization transaction, the bank and employees must comply with the requirements of paragraphs (a)(4)(i)(A), (C), and (D) of this section within 60 days from the effective date of the acquisition, merger, or reorganization.

(b) *Maintaining registration.* (1) A mortgage loan originator who is registered with the Registry pursuant to paragraph (a) of this section must:

(i) Renew the registration during the annual renewal period, confirming the responses set forth in paragraphs (d)(1)(i) through (xi) of this section remain accurate and complete, and updating this information, as appropriate; and

(ii) Update the registration within 30 days of any of the following events:

(A) A change in the name of the registrant;

(B) The registrant ceases to be an employee of the bank; or

(C) The information required under paragraphs (d)(1)(iii) through (xi) of this section becomes inaccurate, incomplete, or out-of-date.

(2) A registered mortgage loan originator must maintain his or her registration, notwithstanding the originator's subsequent qualification for the exception set forth in § 208.101(c)(2), unless the individual is no longer engaged in the activity of a mortgage loan originator.

(c) *Effective dates*—(1) *Initial registration.* An initial registration pursuant to paragraph (a) of this section is effective on the date the registrant receives notification from the Registry that all information required by paragraphs (d) and (e) of this section has been submitted and the registration is complete.

(2) *Renewals or updates.* A renewal or update pursuant to paragraph (b) of this section is effective on the date the registrant receives notification from the Registry that all applicable information required by paragraphs (b) and (e) of this section has been submitted and the renewal or update is complete.

(d) *Required employee information*—(1) *In general.* For purposes of the registration required by this section, a bank must require each employee who is a mortgage loan originator to submit to the Registry, or must submit on behalf of the employee, the following categories of information to the extent

this information is collected by the Registry:

(i) Identifying information, including the employee's:

(A) Name and any other names used;

(B) Home address;

(C) Address of the employee's principal business location and business contact information;

(D) Social security number;

(E) Gender; and

(F) Date and place of birth;

(ii) Financial services-related employment history for the 10 years prior to the date of registration or renewal, including the date the employee became an employee of the bank;

(iii) Financial information for the 10 years prior to the date of registration or renewal constituting a history of any personal bankruptcy; business bankruptcy based upon events that occurred while the employee exercised control over an organization; denied, paid out, or revoked bonds; or unsatisfied judgments or liens against the employee;

(iv) Felony convictions or other final criminal actions involving a felony against the employee or organizations controlled by the employee; or misdemeanor convictions or other final misdemeanor actions against the employee or organizations controlled by the employee involving financial services, a financial services-related business, dishonesty, or breach of trust;

(v) Civil judicial actions against the employee in connection with financial services-related activities, dismissals with settlements, judicial findings that the employee violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement;

(vi) Actions or orders by a State or Federal regulatory agency or foreign financial regulatory authority that:

(A) Found the employee to have made a false statement or omission or been dishonest, unfair or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked or restricted;

(B) Are entered against the employee in connection with a financial services-related activity;

(C) Denied, suspended, or revoked the employee's registration or license to engage in a financial services-related activity; disciplined the employee or otherwise by order prevented the employee from associating with a

financial services-related business or restricted the employee's activities; or

(D) Barred the employee from association with an entity regulated by the agency or authority or from engaging in a financial services-related business;

(vii) Final orders issued by a State or Federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct;

(viii) Revocation or suspension of the employee's authorization to act as an attorney, accountant, or State or Federal contractor;

(ix) Customer-initiated financial services-related arbitration or civil action against the employee that required action, including settlements;

(x) Disclosure of any voluntary or involuntary employment terminations resulting from allegations accusing the employee of violating a statute, regulation, or industry standard of conduct; fraud; dishonesty; theft; or the wrongful taking of property;

(xi) Any pending actions against the employee that could result in an action listed in paragraphs (d)(1)(iii) through (ix) of this section; and

(xii) Fingerprints of the employee, in digital form if practicable, collected by the employing institution less than three years prior to registration and any appropriate identifying information for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information in connection with a State and national criminal history background check.

(2) *Employee authorization and attestation.* An employee registering as a mortgage loan originator or renewing his or her registration under this subpart must:

(i) Authorize the Registry and the employing institution to obtain information related to any administrative, civil or criminal findings, to which the employee is a party, made by any governmental jurisdiction;

(ii) Attest to the correctness of all information required by paragraph (d) of this section, whether submitted by the employee or on behalf of the employee by the employing bank; and

(iii) Authorize the Registry to make available to the public information required by paragraphs (d)(1)(i)(A) and (C), (d)(1)(ii), (iv)–(ix) and (xi) of this section.

(e) *Required bank information.* A bank must submit the following information to the Registry.

(1) *Bank record.* (i) In connection with the initial registration of one or more mortgage loan originators:

(A) Name and main office address;

(B) Internal Revenue Service Employer Tax Identification Number (EIN);

(C) Research Statistics Supervision and Discount (RSSD) number, as issued by the Board;

(D) Identification of its primary Federal regulator;

(E) Name(s) and contact information of the individual(s) with authority to act as the bank's primary point of contact for the Registry;

(F) Name(s) and contact information of the individual(s) with authority to enter data required in paragraph (e) of this section on the Registry and who may delegate this authority to other bank employees, provided this individual and any delegated employee does not act as a mortgage loan originator; and

(G) If a subsidiary of a bank, indication that it is a subsidiary and the name of its parent bank.

(ii) A bank must update the information required by this paragraph (e) within 30 days of the date that this information becomes inaccurate.

(2) *Employee information.* In connection with the registration of each employee who acts as a mortgage loan originator:

(i) After the information required by paragraph (d) of this section has been submitted to the Registry, confirmation that it employs the registrant; and

(ii) Within 30 days of the date the registrant ceases to be an employee of the bank, notification that it no longer employs the registrant and the date the registrant ceased being an employee.

#### § 208.104 Policies and procedures.

A bank that employs mortgage loan originators must adopt and follow written policies and procedures designed to assure compliance with this subpart. These policies and procedures must be appropriate to the nature, size, complexity and scope of the mortgage lending activities of the bank. At a minimum, these policies and procedures must:

(a) Establish a process for identifying which employees of the bank are required to be registered mortgage loan originators;

(b) Require that all employees of the bank who are mortgage loan originators be informed of the registration requirements of the S.A.F.E. Act and this subpart and be instructed on how to comply with such requirements and procedures;

(c) Establish procedures to comply with the unique identifier requirements in § 208.105;

(d) Establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparisons with its own records;

(e) Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;

(f) Provide for independent testing for compliance with this subpart to be conducted by bank personnel or by an outside party;

(g) Provide for appropriate action in the case of any employee who fails to comply with the registration requirements of the S.A.F.E. Act, this subpart, or the bank's related policies and procedures, including prohibiting such employees from acting as mortgage loan originators or other appropriate disciplinary actions; and

(h) Establish a process for reviewing employee criminal history background reports received from the Registry in connection with § 208.103(d)(1)(xii), taking appropriate action consistent with applicable law and rules with respect to these reports, and for maintaining records of these reports and actions taken with respect to applicable employees.

#### § 208.105 Use of unique identifier.

(a) The bank shall make the unique identifier(s) of its registered mortgage loan originator(s) available to consumers in a manner and method practicable to the institution.

(b) A registered mortgage loan originator shall provide his or her unique identifier to a consumer:

(1) Upon request;

(2) Before acting as a mortgage loan originator; and

(3) Through the originator's initial written communication with a consumer, if any.

#### Appendix A to Subpart I of Part 208—Examples of Mortgage Loan Originator Activities

This Appendix provides examples to aid in the understanding of activities that would cause an employee of a bank to fall within or outside the definition of mortgage loan originator. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this subpart. For the purposes of the examples below, the term "loan" refers to a residential mortgage loan.

(a) *Taking a loan application:* The following examples illustrate when an employee takes, or does not take, a loan application.

(1) Taking an application includes: receiving information that is sufficient to determine whether the consumer qualifies for a loan, even if the employee has had no contact with the consumer and is not responsible for further verification of information.

(2) Taking an application does not include any of the following activities performed solely or in combination:

(i) Contacting a consumer to verify the information in the loan application by obtaining documentation, such as tax returns or payroll receipts;

(ii) Receiving a loan application through the mail and forwarding it, without review, to loan approval personnel; or

(iii) Assisting a consumer who is filling out an application by clarifying what type of information is necessary for the application or otherwise explaining the loan application process in response to consumer inquiries.

(b) *Offering or negotiating terms of a loan:*

The following examples are designed to illustrate when an employee offers or negotiates terms of a loan, and conversely, what does not constitute offering or negotiating terms of a loan.

(1) Offering or negotiating the terms of a loan includes:

(i) Presenting a loan offer to a consumer for acceptance, either verbally or in writing, even if further verification of information is necessary and the offer is conditional; or

(ii) Responding to a consumer's request for a lower rate or lower points on a pending loan application by presenting to the consumer a revised loan offer, either verbally or in writing, that includes a lower interest rate or lower points than the original offer.

(2) Offering or negotiating terms of a loan does not include solely or in combination:

(i) Providing general explanations in response to consumer queries regarding qualification for a specific loan product, such as explaining loan terminology (*i.e.*, debt-to-income ratio) or lending policies (*i.e.*, the loan-to-value ratio policy of the bank);

(ii) In response to a consumer's request, informing a consumer of the loan rates that are publicly available such as on the bank's Web site for specific types of loan products without communicating to the consumer whether qualifications are met for that loan product;

(iii) Collecting information about a consumer in order to provide the consumer with information on loan products for which the consumer generally may qualify, without presenting a specific loan offer to the consumer for acceptance, either verbally or in writing;

(iv) Arranging the loan closing or other aspects of the loan process, including communicating with a consumer about those arrangements, provided that communication with the consumer only verifies loan terms already offered or negotiated; or

(v) Providing a consumer with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the bank.

(c) The following examples illustrate when an employee does or does not offer or negotiate terms of a loan "for compensation or gain."

(1) Offering or negotiating terms of a loan for compensation or gain includes engaging in any of the activities in paragraph (b)(1) of this Appendix in the course of carrying out employment duties, even if the employee does not receive a referral fee or commission or other special compensation for the loan.

(2) Offering or negotiating terms of a loan for compensation or gain does not include engaging in a seller-financed transaction for the employee's personal property that does not involve the bank.

4. Section 208.111 is amended by redesignating footnotes 7 and 8 as footnotes 8 and 9, respectively, and by revising newly designated footnote 9 to read as follows:

#### § 208.111 Obligations concerning institutional customers.

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<sup>9</sup> See footnote 8 in paragraph (d) of this section.

#### Federal Deposit Insurance Corporation 12 CFR Chapter III

##### Authority and Issuance

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation proposes to amend subchapter B of chapter III of title 12 of the Code of Federal Regulations by amending part 365 as follows:

#### PART 365—REAL ESTATE LENDING STANDARDS

1. The authority citation for part 365 is revised to read as follows:

**Authority:** 12 U.S.C. 1828(o) and 5101 *et seq.*

2. Sections 365.1 and 365.2 and Appendix A are placed under a new subpart A, and the heading for new subpart A is added to read as follows:

##### Subpart A—Real Estate Lending Standards

#### § 365.1 [Amended]

3. Section 365.1 is amended by removing "part" and adding "subpart" in its place.

4. Appendix A to Part 365 is redesignated as Appendix A to Subpart A of Part 365, and the heading is revised to read as follows:

##### Appendix A to Subpart A of Part 365—Interagency Guidelines for Real Estate Lending Policies

5. New subpart B is added to read as follows:

##### Subpart B—Registration of Mortgage Loan Originators

Sec.

365.101 Authority, purpose, and scope.

365.102 Definitions.

365.103 Registration of mortgage loan originators.



365.104 Policies and procedures.  
 365.105 Use of unique identifier.  
 Appendix A to Subpart B of Part 365—  
 Examples of Mortgage Loan Originator  
 Activities.

### Subpart B—Registration of Residential Mortgage Loan Originators

#### § 365.101 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act) (Pub. L. 110–289, 122 Stat. 2654, 12 U.S.C. 5101 *et seq.*).

(b) *Purpose.* This subpart implements the S.A.F.E. Act's Federal registration requirement for mortgage loan originators. The S.A.F.E. Act provides that the objectives of this registration include aggregating and improving the flow of information to and between regulators; providing increased accountability and tracking of mortgage loan originators; enhancing consumer protections; reducing fraud in the residential mortgage loan origination process; and providing consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators.

(c) *Scope—(1) In general.* This subpart applies to insured state nonmember banks (including state-licensed insured branches of foreign banks) and their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers) (collectively referred to in this subpart as insured state nonmember banks), and their employees who act as mortgage loan originators.

(2) *Exception.* (i) This subpart and the requirements of sections 1504(a)(1)(A) and (2) of the S.A.F.E. Act do not apply to any employee of an insured state nonmember bank if during the past 12 months:

(A) The employee acted as a mortgage loan originator for 5 or fewer residential mortgage loans; and

(B) The insured state nonmember bank employs mortgage loan originators who, while excepted from registration pursuant to paragraph (c)(2)(i)(A) of this section, in the aggregate, acted as a mortgage loan originator in connection with 25 or fewer residential mortgage loans.

(ii) Prior to engaging in mortgage loan origination activity that exceeds either the individual or the aggregate exception limit, an insured state nonmember bank employee must register with the Registry pursuant to this subpart.

#### § 365.102 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Annual renewal period* means November 1 through December 31 of each year.

(b)(1) *Mortgage loan originator*<sup>1</sup> means 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.

(2) The term *mortgage loan originator* does not include:

(i) An individual who performs purely administrative or clerical tasks on behalf of an individual who is described in paragraph (b)(1) of this section;

(ii) An individual who only performs real estate brokerage activities (as defined in section 1503(3)(D) of the S.A.F.E. Act) and is licensed or registered as a real estate broker in accordance with applicable State law, unless the individual is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and meets the definition of mortgage loan originator in paragraph (b)(1) of this section; or

(iii) An individual or entity solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(3) *Administrative or clerical tasks* means the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(c) *Nationwide Mortgage Licensing System and Registry* or *Registry* means the system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed mortgage loan originators and the registration of mortgage loan originators pursuant to section 1507 of the S.A.F.E. Act.

(d) *Registered mortgage loan originator* or *registrant* means any individual who:

(1) Meets the definition of mortgage loan originator and is an employee of an insured state nonmember bank; and

<sup>1</sup>The Appendix to this subpart provides examples of activities that would, and would not, cause an employee to fall within this section's definition of mortgage loan originator.

(2) Is registered pursuant to this subpart with, and maintains a unique identifier through, the Registry.

(e) *Residential mortgage loan* means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v)) or residential real estate upon which is constructed or intended to be constructed a dwelling, and includes refinancings, reverse mortgages, home equity lines of credit and other first and second lien loans that meet the qualifications listed in this definition.

(f) *Unique identifier* means a number or other identifier that:

(1) Permanently identifies a registered mortgage loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry, the Federal banking agencies, and the Farm Credit Administration to facilitate:

(i) Electronic tracking of mortgage loan originators; and

(ii) Uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators; and

(3) Must not be used for purposes other than those set forth under the S.A.F.E. Act.

#### § 365.103 Registration of mortgage loan originators.

(a) *Registration requirement—(1) Employee registration.* Each employee of an insured state nonmember bank who acts as a mortgage loan originator must register with the Registry, obtain a unique identifier, and maintain this registration in accordance with the requirements of this subpart. Any such employee who is not in compliance with the registration and unique identifier requirements set forth in this subpart is in violation of the S.A.F.E. Act and this subpart.

(2) *Insured state nonmember bank requirement—(i) In general.* An insured state nonmember bank that employs one or more individuals who act as a residential mortgage loan originator must require each employee who is a mortgage loan originator to register with the Registry, maintain this registration, and obtain a unique identifier in accordance with the requirements of this subpart.

(ii) *Prohibition.* An insured state nonmember bank must not permit an employee of the bank who is subject to the registration requirements of this subpart to act as a mortgage loan

originator unless such employee is registered with the Registry pursuant to this subpart.

(3) *Implementation period for initial registration.* An employee of an insured state nonmember bank who is a mortgage loan originator must complete an initial registration with the Registry pursuant to this subpart within 180 days from the date that the FDIC provides public notice that the Registry is accepting registrations.

(4) *Employees previously registered or licensed through the Registry—(i) In general.* If an employee of an insured state nonmember bank was registered or licensed through, and obtained a unique identifier from, the Registry prior to becoming an employee of the bank and has maintained this registration or license, the registration requirements of the S.A.F.E. Act and this subpart are deemed to be met, provided that:

(A) The employment information in paragraphs (d)(1)(i)(C) and (d)(1)(ii) of this section is updated and the requirements of paragraph (d)(2) of this section are met;

(B) New fingerprints of the employee are submitted to the Registry for a background check, as required by paragraph (d)(1)(xii) of this section;

(C) The insured state nonmember bank information required in paragraphs (e)(1)(i) (to the extent the bank has not previously met these requirements) and (e)(2)(i) of this section is submitted to the Registry; and

(D) The registration is maintained pursuant to paragraphs (b) and (e)(1)(ii) of this section, as of the date that the employee is employed by the bank.

(ii) *Implementation period for certain acquisitions, mergers or reorganizations.* When registered or licensed mortgage loan originators become insured state nonmember bank employees as a result of an acquisition, merger or reorganization transaction, the bank and employees must comply with the requirements of paragraphs (a)(4)(i)(A), (C), and (D) of this section within 60 days from the effective date of the acquisition, merger, or reorganization.

(b) *Maintaining registration.* (1) A mortgage loan originator who is registered with the Registry pursuant to paragraph (a) of this section must:

(i) Renew the registration during the annual renewal period, confirming the responses set forth in paragraphs (d)(1)(i) through (xi) of this section remain accurate and complete, and updating this information, as appropriate; and

(ii) Update the registration within 30 days of any of the following events:

(A) A change in the name of the registrant;

(B) The registrant ceases to be an employee of the insured state nonmember bank; or

(C) The information required under paragraphs (d)(1)(iii) through (xi) of this section becomes inaccurate, incomplete, or out-of-date.

(2) A registered mortgage loan originator must maintain his or her registration, notwithstanding the originator's subsequent qualification for the exception set forth in § 365.101(c)(2), unless the individual is no longer engaged in the activity of a mortgage loan originator.

(c) *Effective dates—(1) Initial registration.* An initial registration pursuant to paragraph (a) of this section is effective on the date the registrant receives notification from the Registry that all information required by paragraphs (d) and (e) of this section has been submitted and the registration is complete.

(2) *Renewals or updates.* A renewal or update pursuant to paragraph (b) of this section is effective on the date the registrant receives notification from the Registry that all applicable information required by paragraphs (b) and (e) of this section has been submitted and the renewal or update is complete.

(d) *Required employee information—(1) In general.* For purposes of the registration required by this section, an insured state nonmember bank must require each employee who is a mortgage loan originator to submit to the Registry, or must submit on behalf of the employee, the following categories of information to the extent this information is collected by the Registry:

(i) Identifying information, including the employee's:

(A) Name and any other names used;

(B) Home address;

(C) Address of the employee's principal business location and business contact information;

(D) Social security number;

(E) Gender; and

(F) Date and place of birth;

(ii) Financial services-related employment history for the 10 years prior to the date of registration or renewal, including the date the employee became an employee of the bank;

(iii) Financial information for the 10 years prior to the date of registration or renewal constituting a history of any personal bankruptcy; business bankruptcy based upon events that occurred while the employee exercised control over an organization; denied, paid out, or revoked bonds; or unsatisfied judgments or liens against the employee;

(iv) Felony convictions or other final criminal actions involving a felony against the employee or organizations controlled by the employee; or misdemeanor convictions or other final misdemeanor actions against the employee or organizations controlled by the employee involving financial services, a financial services-related business, dishonesty, or breach of trust;

(v) Civil judicial actions against the employee in connection with financial services-related activities, dismissals with settlements, judicial findings that the employee violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement;

(vi) Actions or orders by a State or Federal regulatory agency or foreign financial regulatory authority that:

(A) Found the employee to have made a false statement or omission or been dishonest, unfair or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked or restricted;

(B) Are entered against the employee in connection with a financial services-related activity;

(C) Denied, suspended, or revoked the employee's registration or license to engage in a financial services-related activity; disciplined the employee or otherwise by order prevented the employee from associating with a financial services-related business or restricted the employee's activities; or

(D) Barred the employee from association with an entity regulated by the agency or authority or from engaging in a financial services-related business;

(vii) Final orders issued by a State or Federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct;

(viii) Revocation or suspension of the employee's authorization to act as an attorney, accountant, or State or Federal contractor;

(ix) Customer-initiated financial services-related arbitration or civil action against the employee that required action, including settlements;

(x) Disclosure of any voluntary or involuntary employment terminations resulting from allegations accusing the employee of violating a statute, regulation, or industry standard of conduct; fraud; dishonesty; theft; or the wrongful taking of property;

(xi) Any pending actions against the employee that could result in an action

listed in paragraphs (d)(1)(iii) through (ix) of this section; and

(xii) Fingerprints of the employee, in digital form if practicable, collected by the employing institution less than three years prior to registration and any appropriate identifying information for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information in connection with a State and national criminal history background check.

(2) *Employee authorization and attestation.* An employee registering as a mortgage loan originator or renewing his or her registration under this subpart must:

(i) Authorize the Registry and the employing institution to obtain information related to any administrative, civil or criminal findings, to which the employee is a party, made by any governmental jurisdiction;

(ii) Attest to the correctness of all information required by paragraph (d) of this section, whether submitted by the employee or on behalf of the employee by the employing bank; and

(iii) Authorize the Registry to make available to the public information required by paragraphs (d)(1)(i)(A) and (C), (d)(1)(ii), (iv)–(ix) and (xi) of this section.

(e) *Required bank information.* An insured state nonmember bank must submit the following information to the Registry.

(1) *Bank record.* (i) In connection with the initial registration of one or more mortgage loan originators:

(A) Name and main office address;  
(B) Internal Revenue Service Employer Tax Identification Number (EIN);

(C) Research Statistics Supervision and Discount (RSSD) number, as issued by the Board of Governors of the Federal Reserve System;

(D) Identification of its primary Federal regulator;

(E) Name(s) and contact information of the individual(s) with authority to act as the bank's primary point of contact for the Registry;

(F) Name(s) and contact information of the individual(s) with authority to enter data required in paragraph (e) of this section on the Registry and who may delegate this authority to other bank employees, provided this individual and any delegated employee does not act as a mortgage loan originator; and

(G) If a subsidiary of an insured state nonmember bank, indication that it is a subsidiary and the name of its parent bank.

(ii) An insured state nonmember bank must update the information required by this paragraph (e) within 30 days of the date that this information becomes inaccurate.

(2) *Employee information.* In connection with the registration of each employee who acts as a mortgage loan originator:

(i) After the information required by paragraph (d) of this section has been submitted to the Registry, confirmation that it employs the registrant; and

(ii) Within 30 days of the date the registrant ceases to be an employee of the bank, notification that it no longer employs the registrant and the date the registrant ceased being an employee.

#### **§ 365.104 Policies and procedures.**

An insured state nonmember bank that employs mortgage loan originators must adopt and follow written policies and procedures designed to assure compliance with this subpart. These policies and procedures must be appropriate to the nature, size, complexity and scope of the mortgage lending activities of the bank. At a minimum, these policies and procedures must:

(a) Establish a process for identifying which employees of the bank are required to be registered mortgage loan originators;

(b) Require that all employees of the insured state nonmember bank who are mortgage loan originators be informed of the registration requirements of the S.A.F.E. Act and this subpart and be instructed on how to comply with such requirements and procedures;

(c) Establish procedures to comply with the unique identifier requirements in § 365.105;

(d) Establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparisons with its own records;

(e) Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;

(f) Provide for independent testing for compliance with this subpart to be conducted by bank personnel or by an outside party;

(g) Provide for appropriate action in the case of any employee who fails to comply with the registration requirements of the S.A.F.E. Act, this subpart, or the bank's related policies and procedures, including prohibiting such employees from acting as mortgage loan originators or other appropriate disciplinary actions; and

(h) Establish a process for reviewing employee criminal history background

reports received from the Registry in connection with § 365.103(d)(1)(xii), taking appropriate action consistent with applicable law and rules with respect to these reports, and for maintaining records of these reports and actions taken with respect to applicable employees.

#### **§ 365.105 Use of unique identifier.**

(a) An insured state nonmember bank shall make the unique identifier(s) of its registered mortgage loan originator(s) available to consumers in a manner and method practicable to the institution.

(b) A registered mortgage loan originator shall provide his or her unique identifier to a consumer:

(1) Upon request;

(2) Before acting as a mortgage loan originator; and

(3) Through the originator's initial written communication with a consumer, if any.

#### **Appendix A to Subpart B of Part 365— Examples of Mortgage Loan Originator Activities**

This Appendix provides examples to aid in the understanding of activities that would cause an employee of an insured state nonmember bank to fall within or outside the definition of mortgage loan originator. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this subpart. For the purposes of the examples below, the term "loan" refers to a residential mortgage loan.

(a) *Taking a loan application:* The following examples illustrate when an employee takes or does not take, a loan application.

(1) Taking an application includes: Receiving information that is sufficient to determine whether the consumer qualifies for a loan, even if the employee has had no contact with the consumer and is not responsible for further verification of information.

(2) Taking an application does not include any of the following activities performed solely or in combination:

(i) Contacting a consumer to verify the information in the loan application by obtaining documentation, such as tax returns or payroll receipts;

(ii) Receiving a loan application through the mail and forwarding it, without review, to loan approval personnel; or

(iii) Assisting a consumer who is filling out an application by clarifying what type of information is necessary for the application or otherwise explaining the loan application process in response to consumer inquiries.

(b) *Offering or negotiating terms of a loan:* The following examples are designed to illustrate when an employee offers or negotiates terms of a loan, and conversely, what does not constitute offering or negotiating terms of a loan.

(1) Offering or negotiating the terms of a loan includes:

(i) Presenting a loan offer to a consumer for acceptance, either verbally or in writing, even if further verification of information is necessary and the offer is conditional; or

(ii) Responding to a consumer's request for a lower rate or lower points on a pending loan application by presenting to the consumer a revised loan offer, either verbally or in writing, that includes a lower interest rate or lower points than the original offer.

(2) Offering or negotiating terms of a loan does not include solely or in combination:

(i) Providing general explanations in response to consumer queries regarding qualification for a specific loan product, such as explaining loan terminology (*i.e.*, debt-to-income ratio) or lending policies (*i.e.*, the loan-to-value ratio policy of the insured state nonmember bank);

(ii) In response to a consumer's request, informing a consumer of the loan rates that are publicly available such as on the insured state nonmember bank's Web site for specific types of loan products without communicating to the consumer whether qualifications are met for that loan product;

(iii) Collecting information about a consumer in order to provide the consumer with information on loan products for which the consumer generally may qualify, without presenting a specific loan offer to the consumer for acceptance, either verbally or in writing;

(iv) Arranging the loan closing or other aspects of the loan process, including communicating with a consumer about those arrangements, provided that communication with the consumer only verifies loan terms already offered or negotiated; or

(v) Providing a consumer with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the bank.

(c) The following examples illustrate when an employee does or does not offer or negotiate terms of a loan "for compensation or gain."

(1) Offering or negotiating terms of a loan for compensation or gain includes engaging in any of the activities in paragraph (b)(1) of this Appendix in the course of carrying out employment duties, even if the employee does not receive a referral fee or commission or other special compensation for the loan.

(2) Offering or negotiating terms of a loan for compensation or gain does not include engaging in a seller-financed transaction for the employee's personal property that does not involve the insured state nonmember bank.

## Office of Thrift Supervision

### 12 CFR Chapter V

#### Authority and Issuance

For the reasons set forth in the preamble, chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

**Authority:** 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806, 5101 *et seq.*; 31 U.S.C. 5318; 42 U.S.C. 4106.

2. Add Subpart D to part 563 to read as follows:

#### Subpart D—Registration of Residential Mortgage Loan Originators

Sec.

563.101 Authority, purpose, and scope.

563.102 Definitions.

563.103 Registration of mortgage loan originators.

563.104 Policies and procedures.

563.105 Use of unique identifier.

Appendix A to Subpart D of Part 563—  
Examples of Mortgage Loan Originator Activities.

#### Subpart D—Registration of Residential Mortgage Loan Originators

##### § 563.101 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act) (Pub. L. 110–289, 122 Stat. 2654, 12 U.S.C. 5101 *et seq.*).

(b) *Purpose.* This subpart implements the S.A.F.E. Act's Federal registration requirement for mortgage loan originators. The S.A.F.E. Act provides that the objectives of this registration include aggregating and improving the flow of information to and between regulators; providing increased accountability and tracking of mortgage loan originators; enhancing consumer protections; reducing fraud in the residential mortgage loan origination process; and providing consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators.

(c) *Scope—(1) In general.* This subpart applies to savings associations and their operating subsidiaries (collectively referred to in this subpart as savings associations), and their employees who act as mortgage loan originators.

(2) *Exception.* (i) This subpart and the requirements of section 1504(a)(1)(A) and (2) of the S.A.F.E. Act do not apply to any employee of a savings association if during the past 12 months:

(A) The employee acted as a mortgage loan originator for 5 or fewer residential mortgage loans; and

(B) The savings association does not employ mortgage loan originators who, while excepted from registration pursuant to paragraph (c)(2)(i)(A) of this section, in the aggregate, acted as a mortgage loan originator in connection with more than 25 residential mortgage loans.

(ii) Prior to engaging in mortgage loan origination activity that exceeds either the individual or the aggregate exception limit, a savings association employee must register with the Registry pursuant to this subpart.

##### § 563.102 Definitions.

For purposes of this subpart D, the following definitions apply:

(a) *Annual renewal period* means November 1 through December 31 of each year.

(b)(1) *Mortgage loan originator*<sup>1</sup> means 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.

(2) The term *mortgage loan originator* does not include:

(i) An individual who performs purely administrative or clerical tasks on behalf of an individual who is described in paragraph (b)(1) of this section;

(ii) An individual who only performs real estate brokerage activities (as defined in section 1503(3)(D) of the S.A.F.E. Act) and is licensed or registered as a real estate broker in accordance with applicable State law, unless the individual is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and meets the definition of mortgage loan originator in paragraph (b)(1) of this section; or

(iii) An individual or entity solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(3) *Administrative or clerical tasks* means the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(c) *Nationwide Mortgage Licensing System and Registry* or *Registry* means the system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed mortgage loan originators and the registration of mortgage loan originators pursuant to section 1507 of the S.A.F.E. Act.

<sup>1</sup> The Appendix to this subpart provides examples of activities that would, and would not, cause an employee to fall within this section's definition of mortgage loan originator.

(d) *Registered mortgage loan originator* or *registrant* means any individual who:

(1) Meets the definition of mortgage loan originator and is an employee of a savings association; and

(2) Is registered pursuant to this subpart with, and maintains a unique identifier through, the Registry.

(e) *Residential mortgage loan* means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling, and includes refinancings, reverse mortgages, home equity lines of credit and other first and second lien loans that meet the qualifications listed in this definition.

(f) *Unique identifier* means a number or other identifier that:

(1) Permanently identifies a registered mortgage loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry, the Federal banking agencies, and the Farm Credit Administration to facilitate:

(i) Electronic tracking of mortgage loan originators; and

(ii) Uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators; and

(3) Must not be used for purposes other than those set forth under the S.A.F.E. Act.

#### **§ 563.103 Registration of mortgage loan originators.**

(a) *Registration requirement*—(1) *Employee registration.* Each employee of a savings association who acts as a mortgage loan originator must register with the Registry, obtain a unique identifier, and maintain this registration in accordance with the requirements of this subpart. Any such employee who is not in compliance with the registration and unique identifier requirements set forth in this subpart is in violation of the S.A.F.E. Act and this subpart.

(2) *Savings association requirement*—(i) *In general.* A savings association that employs one or more individuals who act as a residential mortgage loan originator must require each employee who is a mortgage loan originator to register with the Registry, maintain this registration, and obtain a unique identifier in accordance with the requirements of this subpart.

(ii) *Prohibition.* A savings association must not permit an employee of the

association who is subject to the registration requirements of this subpart to act as a mortgage loan originator unless such employee is registered with the Registry pursuant to this subpart.

(3) *Implementation period for initial registration.* An employee of a savings association who is a mortgage loan originator must complete an initial registration with the Registry pursuant to this subpart within 180 days from the date that the OTS provides public notice that the Registry is accepting registrations.

(4) *Employees previously registered or licensed through the Registry*—(i) *In general.* If an employee of a savings association was registered or licensed through, and obtained a unique identifier from, the Registry prior to becoming an employee of the association and has maintained this registration or license, the registration requirements of the S.A.F.E. Act and this subpart are deemed to be met, provided that:

(A) The employment information in paragraphs (d)(1)(i)(C) and (d)(1)(ii) of this section is updated and the requirements of paragraph (d)(2) of this section are met;

(B) New fingerprints of the employee are submitted to the Registry for a background check, as required by paragraph (d)(1)(xii);

(C) The savings association information required in paragraphs (e)(1)(i) (to the extent the association has not previously met these requirements) and (e)(2)(i) of this section is submitted to the Registry; and

(D) The registration is maintained pursuant to paragraphs (b) and (e)(1)(ii) of this section, as of the date that the employee is employed by the association.

(ii) *Implementation period for certain acquisitions, mergers or reorganizations.* When registered or licensed mortgage loan originators become savings association employees as a result of an acquisition, merger or reorganization transaction, the association and employees must comply with the requirements of paragraphs (a)(4)(i)(A), (C), and (D) of this section within 60 days from the effective date of the acquisition, merger, or reorganization.

(b) *Maintaining registration.* (1) A mortgage loan originator who is registered with the Registry pursuant to paragraph (a) of this section must:

(i) Renew the registration during the annual renewal period, confirming the responses set forth in paragraphs (d)(1)(i) through (xi) of this section remain accurate and complete, and updating this information, as appropriate; and

(ii) Update the registration within 30 days of any of the following events:

(A) A change in the name of the registrant;

(B) The registrant ceases to be an employee of the savings association; or

(C) The information required under paragraphs (d)(1)(iii) through (xi) of this section becomes inaccurate, incomplete, or out-of-date.

(2) A registered mortgage loan originator must maintain his or her registration, notwithstanding the originator's subsequent qualification for the exception set forth in § 563.101(c)(2), unless the individual is no longer engaged in the activity of a mortgage loan originator.

(c) *Effective dates*—(1) *Initial registration.* An initial registration pursuant to paragraph (a) of this section is effective on the date the registrant receives notification from the Registry that all information required by paragraphs (d) and (e) of this section has been submitted and the registration is complete.

(2) *Renewals or updates.* A renewal or update pursuant to paragraph (b) of this section is effective on the date the registrant receives notification from the Registry that all applicable information required by paragraphs (b) and (e) and of this section has been submitted and the renewal or update is complete.

(d) *Required employee information*—(1) *In general.* For purposes of the registration required by this section, a savings association must require each employee who is a mortgage loan originator to submit to the Registry, or must submit on behalf of the employee, the following categories of information to the extent this information is collected by the Registry:

(i) Identifying information, including the employee's:

(A) Name and any other names used;

(B) Home address;

(C) Address of the employee's principal business location and business contact information;

(D) Social security number;

(E) Gender; and

(F) Date and place of birth;

(ii) Financial services-related employment history for the 10 years prior to the date of registration or renewal, including the date the employee became an employee of the association;

(iii) Financial information for the 10 years prior to the date of registration or renewal constituting a history of any personal bankruptcy; business bankruptcy based upon events that occurred while the employee exercised control over an organization; denied, paid out, or revoked bonds; or

unsatisfied judgments or liens against the employee;

(iv) Felony convictions or other final criminal actions involving a felony against the employee or organizations controlled by the employee; or misdemeanor convictions or other final misdemeanor actions against the employee or organizations controlled by the employee involving financial services, a financial services-related business, dishonesty, or breach of trust;

(v) Civil judicial actions against the employee in connection with financial services-related activities, dismissals with settlements, judicial findings that the employee violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement;

(vi) Actions or orders by a State or Federal regulatory agency or foreign financial regulatory authority that:

(A) Found the employee to have made a false statement or omission or been dishonest, unfair or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked or restricted;

(B) Are entered against the employee in connection with a financial services-related activity;

(C) Denied, suspended, or revoked the employee's registration or license to engage in a financial services-related activity; disciplined the employee or otherwise by order prevented the employee from associating with a financial services-related business or restricted the employee's activities; or

(D) Barred the employee from association with an entity regulated by the agency or authority or from engaging in a financial services-related business;

(vii) Final orders issued by a State or Federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct;

(viii) Revocation or suspension of the employee's authorization to act as an attorney, accountant, or State or Federal contractor;

(ix) Customer-initiated financial services-related arbitration or civil action against the employee that required action, including settlements;

(x) Disclosure of any voluntary or involuntary employment terminations resulting from allegations accusing the employee of violating a statute, regulation, or industry standard of conduct; fraud; dishonesty; theft; or the wrongful taking of property;

(xi) Any pending actions against the employee that could result in an action listed in paragraphs (d)(1)(iii) through (ix) of this section; and

(xii) Fingerprints of the employee, in digital form if practicable, collected by the employing savings association less than three years prior to registration and any appropriate identifying information for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information in connection with a State and national criminal history background check;

(2) *Employee authorization and attestation.* An employee registering as a mortgage loan originator or renewing his or her registration under this subpart must:

(i) Authorize the Registry and the employing institution to obtain information related to any administrative, civil or criminal findings, to which the employee is a party, made by any governmental jurisdiction;

(ii) Attest to the correctness of all information required by paragraph (d) of this section, whether submitted by the employee or on behalf of the employee by the employing savings association; and

(iii) Authorize the Registry to make available to the public information required by paragraphs (d)(1)(i)(A) and (C), (d)(1)(ii), (iv), (v), (vi), (vii), (viii), (ix), and (xi) of this section.

(e) *Required savings association information.* A savings association must submit the following information to the Registry.

(1) *Savings association record.* (i) In connection with the initial registration of one or more mortgage loan originators:

(A) Name and main office address;

(B) Internal Revenue Service Employer Tax Identification Number (EIN);

(C) Research Statistics Supervision and Discount (RSSD) number, as issued by the Board of Governors of the Federal Reserve System;

(D) Identification of its primary Federal regulator;

(E) Name(s) and contact information of the individual(s) with authority to act as the savings association's primary point of contact for the Registry;

(F) Name(s) and contact information of the individual(s) with authority to enter data required in paragraph (e) of this section on the Registry and who may delegate this authority to other savings association employees, provided this individual and any delegated employee does not act as a mortgage loan originator;

(G) If an operating subsidiary of a savings association, indication that it is a subsidiary and the name of its parent savings association.

(ii) A savings association must update the information required by this paragraph (e) within 30 days of the date that this information becomes inaccurate.

(2) *Employee information.* In connection with the registration of each employee who acts as a mortgage loan originator:

(i) After the information required by paragraph (d) of this section has been submitted to the Registry, confirmation that it employs the registrant; and

(ii) Within 30 days of the date the registrant ceases to be an employee of the savings association, notification that it no longer employs the registrant and the date the registrant ceased being an employee.

#### § 563.104 Policies and procedures.

A savings association that employs mortgage loan originators must adopt and follow written policies and procedures designed to assure compliance with this subpart. These policies and procedures must be appropriate to the nature, size, complexity and scope of the mortgage lending activities of the savings association. At a minimum, these policies and procedures must:

(a) Establish a process for identifying which employees of the savings association are required to be registered mortgage loan originators;

(b) Require that all employees of the savings association who are mortgage loan originators be informed of the registration requirements of the S.A.F.E. Act and this subpart and be instructed on how to comply with such requirements and procedures;

(c) Establish procedures to comply with the unique identifier requirements in § 563.105;

(d) Establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparisons with its own records;

(e) Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;

(f) Provide for independent testing for compliance with this subpart to be conducted by savings association personnel or by an outside party;

(g) Provide for appropriate action in the case of any employee who fails to comply with the registration requirements of the S.A.F.E. Act, this subpart, or the savings association's related policies and procedures,

including prohibiting such employees from acting as mortgage loan originators or other appropriate disciplinary actions; and

(h) Establish a process for reviewing employee criminal history background reports received from the Registry in connection with § 563.103(d)(1)(xii) of this section, taking appropriate action consistent with applicable law and rules with respect to these reports, and for maintaining records of these reports and actions taken with respect to applicable employees.

#### § 563.105 Use of unique identifier.

(a) The savings association shall make the unique identifier(s) of its registered mortgage loan originator(s) available to consumers in a manner and method practicable to the institution.

(b) A registered mortgage loan originator shall provide his or her unique identifier to a consumer:

- (1) Upon request;
- (2) Before acting as a mortgage loan originator; and
- (3) Through the originator's initial written communication with a consumer, if any.

#### Appendix A to Subpart D of Part 563—Examples of Mortgage Loan Originator Activities

This Appendix provides examples to aid in the understanding of activities that would cause an employee of a savings association to fall within or outside the definition of mortgage loan originator. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this subpart. For the purposes of the examples below, the term "loan" refers to a residential mortgage loan.

(a) *Taking a loan application.* The following examples illustrate when an employee takes or does not take, a loan application.

(1) Taking an application includes: receiving information that is sufficient to determine whether the consumer qualifies for a loan, even if the employee has had no contact with the consumer and is not responsible for further verification of information.

(2) Taking an application does not include any of the following activities performed solely or in combination:

- (i) Contacting a consumer to verify the information in the loan application by obtaining documentation, such as tax returns or payroll receipts;
- (ii) Receiving a loan application through the mail and forwarding it, without review, to loan approval personnel; or
- (iii) Assisting a consumer who is filling out an application by clarifying what type of information is necessary for the application or otherwise explaining the loan application process in response to consumer inquiries.

(b) *Offering or negotiating terms of a loan.* The following examples are designed to

illustrate when an employee offers or negotiates terms of a loan, and conversely, what does not constitute offering or negotiating terms of a loan.

(1) Offering or negotiating the terms of a loan includes:

(i) Presenting a loan offer to a consumer for acceptance, either verbally or in writing, even if further verification of information is necessary and the offer is conditional; or

(ii) Responding to a consumer's request for a lower rate or lower points on a pending loan application by presenting to the consumer a revised loan offer, either verbally or in writing, that includes a lower interest rate or lower points than the original offer.

(2) Offering or negotiating terms of a loan does not include solely or in combination:

(i) Providing general explanations in response to consumer queries regarding qualification for a specific loan product, such as explaining loan terminology (*i.e.*, debt-to-income ratio) or lending policies (*i.e.*, the loan-to-value ratio policy of the savings association);

(ii) In response to a consumer's request, informing a consumer of the loan rates that are publicly available such as on the savings association's Web site for specific types of loan products without communicating to the consumer whether qualifications are met for that loan product;

(iii) Collecting information about a consumer in order to provide the consumer with information on loan products for which the consumer generally may qualify, without presenting a specific loan offer to the consumer for acceptance, either verbally or in writing;

(iv) Arranging the loan closing or other aspects of the loan process, including communicating with a consumer about those arrangements, provided that communication with the consumer only verifies loan terms already offered or negotiated; or

(v) Providing a consumer with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the savings association.

(c) The following examples illustrate when an employee does or does not offer or negotiate terms of a loan "for compensation or gain."

(1) Offering or negotiating terms of a loan for compensation or gain includes engaging in any of the activities in paragraph (b)(1) of this Appendix in the course of carrying out employment duties, even if the employee does not receive a referral fee or commission or other special compensation for the loan.

(2) Offering or negotiating terms of a loan for compensation or gain does not include engaging in a seller-financed transaction for the employee's personal property that does not involve the savings association.

#### Farm Credit Administration

##### 12 CFR Chapter VI

##### Authority and Issuance

For the reasons set forth in the preamble, chapter VI of title 12 of the Code of Federal Regulations is proposed to be amended by adding new part 610 to chapter VI to read as follows:

#### PART 610—REGISTRATION OF MORTGAGE LOAN ORIGINATORS

Sec.

610.101 Authority, purpose, and scope.

610.102 Definitions.

610.103 Registration of mortgage loan originators.

610.104 Policies and procedures.

610.105 Use of unique identifier.

Appendix A to Part 610—Examples of Mortgage Loan Originator Activities

**Authority:** Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 1.13, 2.2, 2.4, 2.12, 5.9, 5.17, 7.2, 7.6, 7.8 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2021, 2073, 2075, 2093, 2243, 2252, 2279a–2, 2279b, 2279c–10); and Secs. 1501 *et seq.* of the S.A.F.E. Act (12 U.S.C. 5101 *et seq.*)

#### § 610.101 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act) (Pub. L. 110–289, 122 Stat. 2654 (2008), 12 U.S.C. 5101 *et seq.*).

(b) *Purpose.* This part implements the S.A.F.E. Act's Federal registration requirement for mortgage loan originators. The S.A.F.E. Act provides that the objectives of this registration include aggregating and improving the flow of information to and between regulators; providing increased accountability and tracking of mortgage loan originators; enhancing consumer protections; reducing fraud in the residential mortgage loan origination process; and providing consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators.

(c) *Scope*—(1) *In general.* This part applies to any Farm Credit System lending institution that actually originates residential mortgage loans pursuant to its authority under sections 1.9(3), 1.11, or 2.4(a) and (b) of the Farm Credit Act of 1971, as amended, and their employees who act as mortgage loan originators.

(2) *Exception.* (i) This part and the requirements of sections 1504(a)(1)(A) and (2) of the S.A.F.E. Act do not apply to any employee of a Farm Credit System institution if during the past 12 months:

(A) The employee acted as a mortgage loan originator for 5 or fewer residential mortgage loans; and

(B) The Farm Credit System institution employs mortgage loan originators who, while excepted from registration pursuant to paragraph (c)(2)(i)(A) of this section, in the

aggregate, acted as a mortgage loan originator in connection with 25 or fewer residential mortgage loans.

(ii) Prior to engaging in mortgage loan origination activity that exceeds either the individual or the aggregate exception limit, a Farm Credit System institution employee must register with the Registry pursuant to this part.

#### **§ 610.102 Definitions.**

For purposes of this part, the following definitions apply:

(a) *Annual renewal period* means November 1 through December 31 of each year.

(b)(1) *Mortgage loan originator*<sup>1</sup> means 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.

(2) The term *mortgage loan originator* does not include:

(i) An individual who performs purely administrative or clerical tasks on behalf of an individual who is described in paragraph (b)(1) of this section;

(ii) An individual who only performs real estate brokerage activities (as defined in section 1503(3)(D) of the S.A.F.E. Act) and is licensed or registered as a real estate broker in accordance with applicable State law, unless the individual is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and meets the definition of mortgage loan originator in paragraph (b)(1) of this section; or

(iii) An individual or entity solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(3) *Administrative or clerical tasks* means the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(c) *Nationwide Mortgage Licensing System and Registry* or *Registry* means the system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed mortgage loan originators and the registration of

mortgage loan originators pursuant to section 1507 of the S.A.F.E. Act.

(d) *Registered mortgage loan originator* or *registrant* means any individual who:

(1) Meets the definition of mortgage loan originator and is an employee of a Farm Credit System institution; and

(2) Is registered pursuant to this part with, and maintains a unique identifier through, the Registry.

(e) *Residential mortgage loan* means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v)) or residential real estate upon which is constructed or intended to be constructed a dwelling, and includes refinancings, reverse mortgages, home equity lines of credit and other first and second lien loans that meet the qualifications listed in this definition. This definition does not amend or supersede § 613.3030(c) of this chapter.

(f) *Unique identifier* means a number or other identifier that:

(1) Permanently identifies a registered mortgage loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry, the Federal banking agencies, and the Farm Credit Administration to facilitate:

(i) Electronic tracking of mortgage loan originators; and

(ii) Uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators; and

(3) Must not be used for purposes other than those set forth under the S.A.F.E. Act.

#### **§ 610.103 Registration of mortgage loan originators.**

(a) *Registration requirement—(1) Employee registration.* Each employee of a Farm Credit System institution who acts as a mortgage loan originator must register with the Registry, obtain a unique identifier, and maintain this registration in accordance with the requirements of this part. Any such employee who is not in compliance with the registration and unique identifier requirements set forth in this part is in violation of the S.A.F.E. Act and this part.

(2) *Farm Credit System institution requirement—(i) In general.* A Farm Credit System institution that employs one or more individuals who act as a residential mortgage loan originator must require each employee who is a

mortgage loan originator to register with the Registry, maintain this registration, and obtain a unique identifier in accordance with the requirements of this part.

(ii) *Prohibition.* A Farm Credit System institution must not permit an employee who is subject to the registration requirements of this part to act as a mortgage loan originator unless such employee is registered with the Registry pursuant to this part.

(3) *Implementation period for initial registration.* An employee of a Farm Credit System institution who is a mortgage loan originator must complete an initial registration with the Registry pursuant to this part within 180 days from the date that the Farm Credit Administration provides public notice that the Registry is accepting registrations.

(4) *Employees previously registered or licensed through the Registry—(i) In general.* If an employee of a Farm Credit System institution was registered or licensed through, and obtained a unique identifier from, the Registry prior to becoming an employee of the Farm Credit System institution and has maintained this registration or license, the registration requirements of the S.A.F.E. Act and this part are deemed to be met, provided that:

(A) The employment information in paragraphs (d)(1)(i)(C) and (d)(1)(ii) of this section is updated and the requirements of paragraph (d)(2) of this section are met;

(B) New fingerprints of the employee are submitted to the Registry for a background check, as required by paragraph (d)(1)(xii) of this section;

(C) The Farm Credit System institution information required in paragraphs (e)(1)(i) (to the extent the Farm Credit System institution has not previously met these requirements) and (e)(2)(i) of this section is submitted to the Registry; and

(D) The registration is maintained pursuant to paragraphs (b) and (e)(1)(ii) of this section, as of the date that the employee is employed by the Farm Credit System institution.

(ii) *Implementation period for certain acquisitions, mergers or reorganizations.* When registered or licensed mortgage loan originators become employees of another Farm Credit System institution as a result of a consolidation, merger or reorganization transaction, the Farm Credit System institution and employee must comply with the requirements of paragraphs (a)(4)(i)(A), (C), and (D) of this section within 60 days from the effective date of the consolidation, merger, or reorganization.

<sup>1</sup> The Appendix to this part provides examples of activities that would, and would not, cause an employee to fall within this section's definition of mortgage loan originator.



(b) *Maintaining registration.* (1) A mortgage loan originator who is registered with the Registry pursuant to paragraph (a) of this section must:

(i) Renew the registration during the annual renewal period, confirming the responses set forth in paragraphs (d)(1)(i) through (xi) of this section remain accurate and complete, and updating this information, as appropriate; and

(ii) Update the registration within 30 days of any of the following events:

(A) A change in the name of the registrant;

(B) The registrant ceases to be an employee of the Farm Credit System institution; or

(C) The information required under paragraphs (d)(1)(iii) through (xi) of this section becomes inaccurate, incomplete, or out-of-date.

(2) A registered mortgage loan originator must maintain his or her registration, notwithstanding the originator's subsequent qualification for the exception set forth in § 610.101(c)(2), unless the individual is no longer engaged in the activity of a mortgage loan originator.

(c) *Effective dates—(1) Initial registration.* An initial registration pursuant to paragraph (a) of this section is effective on the date the registrant receives notification from the Registry that all information required by paragraphs (d) and (e) of this section has been submitted and the registration is complete.

(2) *Renewals or updates.* A renewal or update pursuant to paragraph (b) of this section is effective on the date the registrant receives notification from the Registry that all applicable information required by paragraphs (b) and (e) of this section has been submitted and the renewal or update is complete.

(d) *Required employee information—*

(1) *In general.* For purposes of the registration required by this section, a Farm Credit System institution must require each employee who is a mortgage loan originator to submit to the Registry, or must submit on behalf of the employee, the following categories of information to the extent this information is collected by the Registry:

(i) Identifying information, including the employee's:

(A) Name and any other names used;

(B) Home address;

(C) Address of the employee's principal business location and business contact information;

(D) Social security number;

(E) Gender; and

(F) Date and place of birth;

(ii) Financial services-related employment history for the 10 years

prior to the date of registration or renewal, including the date the employee became an employee of the Farm Credit System institution;

(iii) Financial information for the 10 years prior to the date of registration or renewal constituting a history of any personal bankruptcy; business bankruptcy based upon events that occurred while the employee exercised control over an organization; denied, paid out, or revoked bonds; or unsatisfied judgments or liens against the employee;

(iv) Felony convictions or other final criminal actions involving a felony against the employee or organizations controlled by the employee; or misdemeanor convictions or other final misdemeanor actions against the employee or organizations controlled by the employee involving financial services, a financial services-related business, dishonesty, or breach of trust;

(v) Civil judicial actions against the employee in connection with financial services-related activities, dismissals with settlements, judicial findings that the employee violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement;

(vi) Actions or orders by a State or Federal regulatory agency or foreign financial regulatory authority that:

(A) Found the employee to have made a false statement or omission or been dishonest, unfair or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked or restricted;

(B) Are entered against the employee in connection with a financial services-related activity;

(C) Denied, suspended, or revoked the employee's registration or license to engage in a financial services-related activity; disciplined the employee or otherwise by order prevented the employee from associating with a financial services-related business or restricted the employee's activities; or

(D) Barred the employee from association with an entity regulated by the agency or authority or from engaging in a financial services-related business;

(vii) Final orders issued by a State or Federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct;

(viii) Revocation or suspension of the employee's authorization to act as an

attorney, accountant, or State or Federal contractor;

(ix) Customer-initiated financial services-related arbitration or civil action against the employee that required action, including settlements;

(x) Disclosure of any voluntary or involuntary employment terminations resulting from allegations accusing the employee of violating a statute, regulation, or industry standard of conduct; fraud; dishonesty; theft; or the wrongful taking of property;

(xi) Any pending actions against the employee that could result in an action listed in paragraphs (d)(1)(iii) through (ix) of this section; and

(xii) Fingerprints of the employee, in digital form if practicable, collected by the employing institution less than three years prior to registration and any appropriate identifying information for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information in connection with a State and national criminal history background check.

(2) *Employee authorization and attestation.* An employee registering as a mortgage loan originator or renewing his or her registration under this part must:

(i) Authorize the Registry and the employing institution to obtain information related to any administrative, civil or criminal findings, to which the employee is a party, made by any governmental jurisdiction;

(ii) Attest to the correctness of all information required by paragraph (d) of this section, whether submitted by the employee or on behalf of the employee by the employing Farm Credit System institution; and

(iii) Authorize the Registry to make available to the public information required by paragraphs (d)(1)(i)(A) and (C), (d)(1)(ii), (iv)–(ix) and (xi) of this section.

(e) *Required information.* A Farm Credit System institution must submit the following information to the Registry.

(1) *Farm Credit System institution record.* (i) In connection with the initial registration of one or more mortgage loan originators:

(A) Name and main office address;

(B) Internal Revenue Service Employer Tax Identification Number (EIN);

(C) Research Statistics Supervision and Discount (RSSD) number, as issued by the Board of Governors of the Federal Reserve System;

(D) Identification of its primary Federal regulator;

(E) Name(s) and contact information of the individual(s) with authority to act as the Farm Credit System institution's primary point of contact for the Registry;

(F) Name(s) and contact information of the individual(s) with authority to enter data required in paragraph (e) of this section on the Registry and who may delegate this authority to other employees of the Farm Credit System institution, provided this individual and any delegated employee does not act as a mortgage loan originator; and

(G) If an operating subsidiary of an agricultural credit association, indication that it is a subsidiary and the name of its parent agricultural credit association.

(ii) A Farm Credit System institution must update the information required by this paragraph (e) within 30 days of the date that this information becomes inaccurate.

(2) *Employee information.* In connection with the registration of each employee who acts as a mortgage loan originator:

(i) After the information required by paragraph (d) of this section has been submitted to the Registry, confirmation that it employs the registrant; and

(ii) Within 30 days of the date the registrant ceases to be an employee of the Farm Credit System institution, notification that it no longer employs the registrant and the date the registrant ceased being an employee.

#### **§ 610.104 Policies and procedures.**

A Farm Credit System institution that employs mortgage loan originators must adopt and follow written policies and procedures designed to assure compliance with this part. These policies and procedures must be appropriate to the nature, size, complexity and scope of the mortgage lending activities of the Farm Credit System institution. At a minimum, these policies and procedures must:

(a) Establish a process for identifying which employees of the Farm Credit System institution are required to be registered mortgage loan originators;

(b) Require that all employees of the Farm Credit System institution who are mortgage loan originators be informed of the registration requirements of the S.A.F.E. Act and this part and be instructed on how to comply with such requirements and procedures;

(c) Establish procedures to comply with the unique identifier requirements in § 610.105;

(d) Establish reasonable procedures for confirming the adequacy and accuracy of employee registrations,

including updates and renewals, by comparisons with its own records;

(e) Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;

(f) Provide for independent testing for compliance with this part to be conducted by Farm Credit System institution personnel or by an outside party;

(g) Provide for appropriate action in the case of any employee who fails to comply with the registration requirements of the S.A.F.E. Act, this part, or the Farm Credit System institution's related policies and procedures, including prohibiting such employees from acting as mortgage loan originators or other appropriate disciplinary actions; and

(h) Establish a process for reviewing employee criminal history background reports received from the Registry in connection with § 610.103(d)(1)(xii), taking appropriate action consistent with applicable law and rules with respect to these reports, and for maintaining records of these reports and actions taken with respect to applicable employees.

#### **§ 610.105 Use of unique identifier.**

(a) The Farm Credit System institution shall make the unique identifier(s) of its registered mortgage loan originator(s) available to consumers in a manner and method practicable to the institution.

(b) A registered mortgage loan originator shall provide his or her unique identifier to a consumer:

(1) Upon request;

(2) Before acting as a mortgage loan originator; and

(3) Through the originator's initial written communication with a consumer, if any.

#### **Appendix A to Part 610—Examples of Mortgage Loan Originator Activities**

This Appendix provides examples to aid in the understanding of activities that would cause an employee of a Farm Credit System institution to fall within or outside the definition of mortgage loan originator. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this part. For the purposes of the examples below, the term "loan" refers to a residential mortgage loan.

(a) *Taking a loan application:* The following examples illustrate when an employee takes or does not take, a loan application.

(1) Taking an application includes: receiving information that is sufficient to determine whether the consumer qualifies for a loan, even if the employee has had no contact with the consumer and is not

responsible for further verification of information.

(2) Taking an application does not include any of the following activities performed solely or in combination:

(i) Contacting a consumer to verify the information in the loan application by obtaining documentation, such as tax returns or payroll receipts;

(ii) Receiving a loan application through the mail and forwarding it, without review, to loan approval personnel; or

(iii) Assisting a consumer who is filling out an application by clarifying what type of information is necessary for the application or otherwise explaining the loan application process in response to consumer inquiries.

(b) *Offering or negotiating terms of a loan:* The following examples are designed to illustrate when an employee offers or negotiates terms of a loan, and conversely, what does not constitute offering or negotiating terms of a loan.

(1) Offering or negotiating the terms of a loan includes:

(i) Presenting a loan offer to a consumer for acceptance, either verbally or in writing, even if further verification of information is necessary and the offer is conditional; or

(ii) Responding to a consumer's request for a lower rate or lower points on a pending loan application by presenting to the consumer a revised loan offer, either verbally or in writing, that includes a lower interest rate or lower points than the original offer.

(2) Offering or negotiating terms of a loan does not include solely or in combination:

(i) Providing general explanations in response to consumer queries regarding qualification for a specific loan product, such as explaining loan terminology (*i.e.*, debt-to-income ratio) or lending policies (*i.e.*, the loan-to-value ratio policy of the Farm Credit System institution);

(ii) In response to a consumer's request, informing a consumer of the loan rates that are publicly available such as on the Farm Credit System institution's Web site for specific types of loan products without communicating to the consumer whether qualifications are met for that loan product;

(iii) Collecting information about a consumer in order to provide the consumer with information on loan products for which the consumer generally may qualify, without presenting a specific loan offer to the consumer for acceptance, either verbally or in writing;

(iv) Arranging the loan closing or other aspects of the loan process, including communicating with a consumer about those arrangements, provided that communication with the consumer only verifies loan terms already offered or negotiated; or

(v) Providing a consumer with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the Farm Credit System institution.

(c) The following examples illustrate when an employee does or does not offer or negotiate terms of a loan "for compensation or gain."

(1) Offering or negotiating terms of a loan for compensation or gain includes engaging in any of the activities in paragraph (b)(1) of this Appendix in the course of carrying out

employment duties, even if the employee does not receive a referral fee or commission or other special compensation for the loan.

(2) Offering or negotiating terms of a loan for compensation or gain does not include engaging in a seller-financed transaction for the employee's personal property that does not involve the Farm Credit System institution.

## National Credit Union Administration 12 CFR Chapter VII

### Authority and Issuance

For the reasons stated in the preamble, the National Credit Union Administration proposes to amend chapter VII of title 12 of the Code of Federal Regulations to add a new part 761 as follows:

### PART 761—REGISTRATION OF RESIDENTIAL MORTGAGE LOAN ORIGINATORS

Sec.

761.101 Authority, purpose, and scope.

761.102 Definitions.

761.103 Registration of mortgage loan originators.

761.104 Policies and procedures.

761.105 Use of unique identifier.

Appendix A to Part 761—Examples of Mortgage Loan Originator Activities.

**Authority:** 12 U.S.C. 1751 *et seq.* and 5101 *et seq.*

#### § 761.101 Authority, purpose, and scope.

(a) *Authority.* The National Credit Union Administration is issuing part 761 under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act) (Pub. L. 110–289, 122 Stat. 2654, 12 U.S.C. 5101 *et seq.*).

(b) *Purpose.* This part implements the S.A.F.E. Act's federal registration requirement for mortgage loan originators. The S.A.F.E. Act provides that the objectives of this registration include aggregating and improving the flow of information to and between regulators; providing increased accountability and tracking of loan originators; enhancing member protections; reducing fraud in the residential mortgage loan origination process; and providing members with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.

(c) *Scope—(1) In general.* This part applies to federally insured credit unions and their employees who act as mortgage loan originators.

(2) *Exception.* (i) This part and the requirements of section 1504(a)(1)(A) and (2) of the S.A.F.E. Act do not apply

to any employee of a federally insured credit union if during the past 12 months:

(A) The employee acted as a mortgage loan originator for 5 or fewer residential mortgage loans; and

(B) The credit union employs mortgage loan originators who, while excepted from registration under paragraph (c)(2)(i)(A) of this section, in the aggregate, acted as a mortgage loan originator in connection with 25 or fewer residential mortgage loans.

(ii) Prior to engaging in mortgage loan origination activity that exceeds either the individual or the aggregate exception limit, a credit union employee must register with the Registry under this part.

#### § 761.102 Definitions.

For purposes of this part, the following definitions apply:

(a) *Annual renewal period* means November 1 through December 31 of each year.

(b)(1) *Mortgage loan originator*<sup>1</sup> means 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.

(2) The term *mortgage loan originator* does not include:

(i) An individual who performs purely administrative or clerical tasks on behalf of an individual who is described in paragraph (b)(1) of this section;

(ii) An individual who only performs real estate brokerage activities (as defined in section 1503(3)(D) of the S.A.F.E. Act) and is licensed or registered as a real estate broker in accordance with applicable state law, unless the individual is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and meets the definition of mortgage loan originator in paragraph (b)(1) of this section; or

(iii) An individual or entity solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(3) *Administrative or clerical tasks* means the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a member to obtain information necessary for the

processing or underwriting of a residential mortgage loan.

(c) *Nationwide Mortgage Licensing System and Registry or Registry* means the system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the state licensing and registration of state-licensed mortgage loan originators and the registration of mortgage loan originators under section 1507 of the S.A.F.E. Act.

(d) *Registered mortgage loan originator or registrant* means any individual who:

(1) Meets the definition of mortgage loan originator and is a credit union employee; and

(2) Is registered under this part with, and maintains a unique identifier through, the Registry.

(e) *Residential mortgage loan* means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act (15 U.S.C. 1602(v))) or residential real estate upon which is constructed or intended to be constructed a dwelling, and includes refinancings, reverse mortgages, home equity lines of credit and other first and second lien loans that meet the qualifications listed in this definition.

(f) *Unique identifier* means a number or other identifier that:

(1) Permanently identifies a registered mortgage loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry, the Federal banking agencies, and the Farm Credit Administration to facilitate:

(i) Electronic tracking of mortgage loan originators; and

(ii) Uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators; and

(3) Must not be used for purposes other than those under the S.A.F.E. Act.

#### § 761.103 Registration of mortgage loan originators.

(a) *Registration requirement—(1) Employee registration.* Each credit union employee who acts as a mortgage loan originator must register with the Registry, obtain a unique identifier, and maintain this registration in accordance with the requirements of this part. Any such employee who is not in compliance with the registration and unique identifier requirements in this part is in violation of the S.A.F.E. Act and this part.

<sup>1</sup>The Appendix to this part provides examples of activities that would, and would not, cause an employee to fall within this section's definition of mortgage loan originator.

(2) *Credit union requirement*—(i) *In general.* A credit union that employs one or more individuals who act as a residential mortgage loan originator must require each employee who is a mortgage loan originator to register with the Registry, maintain this registration, and obtain a unique identifier in accordance with the requirements of this part.

(ii) *Prohibition.* A credit union must not permit its employee who is subject to this part's registration requirements to act as a mortgage loan originator unless such employee is registered with the Registry under this part.

(3) *Implementation period for initial registration.* A credit union employee who is a mortgage loan originator must complete an initial registration with the Registry under this part within 180 days from the date that the National Credit Union Administration provides public notice that the Registry is accepting registrations.

(4) *Employees previously registered or licensed through the Registry*—(i) *In general.* If a credit union employee was registered or licensed through, and obtained a unique identifier from, the Registry prior to becoming a credit union employee and has maintained this registration or license, the registration requirements of the S.A.F.E. Act and this part are deemed to be met, provided that:

(A) The employment information in paragraphs (d)(1)(i)(C) and (d)(1)(ii) of this section is updated and the requirements of paragraph (d)(2) of this section are met;

(B) New fingerprints of the employee are submitted to the Registry for a background check, as required by paragraph (d)(1)(xii) of this section;

(C) The credit union information required in paragraphs (e)(1)(i) (to the extent the credit union has not previously met these requirements) and (e)(2)(i) of this section is submitted to the Registry; and

(D) The registration is maintained under paragraphs (b) and (e)(1)(ii) of this section, as of the date that the employee is employed by the credit union.

(ii) *Implementation period for certain acquisitions, mergers or reorganizations.* When registered or licensed mortgage loan originators become credit union employees as a result of an acquisition, merger or reorganization transaction, the credit union and employee must comply with the requirements of paragraphs (a)(4)(i)(A), (C), and (D) of this section within 60 days from the effective date of the acquisition, merger, or reorganization.

(b) *Maintaining registration.* (1) A mortgage loan originator who is registered with the Registry under paragraph (a) of this section must:

(i) Renew the registration during the annual renewal period, confirming the responses set forth in paragraphs (d)(1)(i) through (xi) of this section remain accurate and complete, and updating this information, as appropriate; and

(ii) Update the registration within 30 days of any of the following events:

(A) A change in the name of the registrant;

(B) The registrant ceases to be a credit union employee; or

(C) The information required under paragraphs (d)(1)(iii) through (xi) of this section becomes inaccurate, incomplete, or out of date.

(2) A registered mortgage loan originator must maintain his or her registration, notwithstanding the originator's subsequent qualification for the exception in § 761.101(c)(2), unless the individual is no longer engaged in the activity of a mortgage loan originator.

(c) *Effective dates*—(1) *Initial registration.* An initial registration under paragraph (a) of this section is effective on the date the registrant receives notification from the Registry that all information required by paragraphs (d) and (e) of this section has been submitted and the registration is complete.

(2) *Renewals or updates.* A renewal or update under paragraph (b) of this section is effective on the date the registrant receives notification from the Registry that all applicable information required by paragraphs (b) and (e) of this section has been submitted and the renewal or update is complete.

(d) *Required employee information*—

(1) *In general.* For purposes of the registration required by this section, a credit union must require each employee who is a mortgage loan originator to submit to the Registry, or must submit on behalf of the employee, the following categories of information to the extent this information is collected by the Registry:

(i) Identifying information, including the employee's:

(A) Name and any other names used;

(B) Home address;

(C) Address of the employee's principal business location and business contact information;

(D) Social security number;

(E) Gender; and

(F) Date and place of birth;

(ii) Financial services-related employment history for the 10 years prior to the date of registration or

renewal, including the date the employee became a credit union employee;

(iii) Financial information for the 10 years prior to the date of registration or renewal constituting a history of any personal bankruptcy; business bankruptcy based upon events that occurred while the employee exercised control over an organization; denied, paid out, or revoked bonds; or unsatisfied judgments or liens against the employee;

(iv) Felony convictions or other final criminal actions involving a felony against the employee or organizations controlled by the employee; or misdemeanor convictions or other final misdemeanor actions against the employee or organizations controlled by the employee involving financial services, a financial services-related business, dishonesty, or breach of trust;

(v) Civil judicial actions against the employee in connection with financial services-related activities, dismissals with settlements, judicial findings that the employee violated financial services-related statutes or regulations, except for actions dismissed without a settlement agreement;

(vi) Actions or orders by a state or federal regulatory agency or foreign financial regulatory authority that:

(A) Found the employee to have made a false statement or omission or been dishonest, unfair or unethical; to have been involved in a violation of a financial services-related regulation or statute; or to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked or restricted;

(B) Are entered against the employee in connection with a financial services-related activity;

(C) Denied, suspended, or revoked the employee's registration or license to engage in a financial services-related activity; disciplined the employee or otherwise by order prevented the employee from associating with a financial services-related business or restricted the employee's activities; or

(D) Barred the employee from association with an entity regulated by the agency or authority or from engaging in a financial services-related business;

(vii) Final orders issued by a state or federal regulatory agency or foreign financial regulatory authority based on violations of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct;

(viii) Revocation or suspension of the employee's authorization to act as an attorney, accountant, or state or federal contractor;

(ix) Customer-initiated financial services-related arbitration or civil action against the employee that required action, including settlements;

(x) Disclosure of any voluntary or involuntary employment terminations resulting from allegations accusing the employee of violating a statute, regulation, or industry standard of conduct; fraud; dishonesty; theft; or the wrongful taking of property;

(xi) Any pending actions against the employee that could result in an action listed in paragraphs (d)(1)(iii) through (ix) of this section; and

(xii) Fingerprints of the employee, in digital form if practicable, collected by the employing credit union less than three years prior to registration and any appropriate identifying information for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information in connection with a state and national criminal history background check;

(2) *Employee authorization and attestation.* An employee registering as a mortgage loan originator or renewing his or her registration under this part must:

(i) Authorize the Registry and the employing credit union to obtain information related to any administrative, civil or criminal findings, to which the employee is a party, made by any governmental jurisdiction;

(ii) Attest to the correctness of all information required by paragraph (d) of this section, whether submitted by the employee or on behalf of the employee by the employing credit union; and

(iii) Authorize the Registry to make available to the public information required by paragraphs (d)(1)(i)(A) and (C), (d)(1)(ii), (iv)–(ix) and (xi) of this section.

(e) *Required credit union information.* A credit union must submit the following information to the Registry:

(1) *Credit union record.* (i) In connection with the initial registration of one or more mortgage loan originators:

(A) Name and main office address;

(B) Internal Revenue Service Employer Tax Identification Number (EIN);

(C) Research Statistics Supervision and Discount (RSSD) number, as issued by the Board of Governors of the Federal Reserve System;

(D) Identification of the National Credit Union Administration as its primary Federal regulator;

(E) Name(s) and contact information of the individual(s) with authority to act

as the credit union's primary point of contact for the Registry;

(F) Name(s) and contact information of the individual(s) with authority to enter data required in paragraph (e) of this section on the Registry and who may delegate this authority to other credit union employees, provided this individual and any delegated employee does not act as a mortgage loan originator.

(ii) A credit union must update the information required by this paragraph (e) within 30 days of the date that this information becomes inaccurate.

(2) *Employee information.* In connection with the registration of each employee who acts as a mortgage loan originator:

(i) After the information required by paragraph (d) of this section has been submitted to the Registry, confirmation that it employs the registrant; and

(ii) Within 30 days of the date the registrant ceases to be a credit union employee, notification that it no longer employs the registrant and the date the registrant ceased being an employee.

#### **§ 761.104 Policies and procedures.**

A credit union that employs mortgage loan originators must adopt and follow written policies and procedures designed to assure compliance with this part. These policies and procedures must be appropriate to the nature, size, complexity and scope of the mortgage lending activities of the credit union. At a minimum, these policies and procedures must:

(a) Establish a process for identifying which credit union employees are required to be registered mortgage loan originators;

(b) Require that all credit union employees who are mortgage loan originators be informed of the registration requirements of the S.A.F.E. Act and this part and be instructed on how to comply with such requirements and procedures;

(c) Establish procedures to comply with the unique identifier requirements in § 761.105;

(d) Establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparisons with its own records;

(e) Establish reasonable procedures and tracking systems for monitoring compliance with registration and renewal requirements and procedures;

(f) Provide for independent testing for compliance with this part to be conducted by credit union personnel or by an outside party;

(g) Provide for appropriate action in the case of any employee who fails to

comply with the registration requirements of the S.A.F.E. Act, this part, or the credit union's related policies and procedures, including prohibiting such employees from acting as mortgage loan originators or other appropriate disciplinary actions; and

(h) Establish a process for reviewing employee criminal history background reports received from the Registry in connection with § 761.103(d)(1)(xii), taking appropriate action consistent with applicable law and rules with respect to these reports, and for maintaining records of these reports and actions taken with respect to applicable employees.

#### **§ 761.105 Use of unique identifier.**

(a) The credit union shall make the unique identifier(s) of its registered mortgage loan originator(s) available to members in a manner and method practicable to the credit union.

(b) A registered mortgage loan originator shall provide his or her unique identifier to a member:

(1) Upon request;

(2) Before acting as a mortgage loan originator; and

(3) Through the originator's initial written communication with a member, if any.

#### **Appendix A to Part 761—Examples of Mortgage Loan Originator Activities**

This Appendix provides examples to aid in the understanding of activities that would cause a credit union employee to fall within or outside the definition of mortgage loan originator. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this part. For the purposes of the examples below, the term "loan" refers to a residential mortgage loan.

(a) *Taking a loan application:* The following examples illustrate when an employee takes or does not take, a loan application.

(1) Taking an application includes: receiving information that is sufficient to determine whether the member qualifies for a loan, even if the employee has had no contact with the member and is not responsible for further verification of information.

(2) Taking an application does not include any of the following activities performed solely or in combination:

(i) Contacting a member to verify the information in the loan application by obtaining documentation, such as tax returns or payroll receipts;

(ii) Receiving a loan application through the mail and forwarding it, without review, to loan approval personnel; or

(iii) Assisting a member who is filling out an application by clarifying what type of information is necessary for the application or otherwise explaining the loan application process in response to member inquiries.

(b) *Offering or negotiating terms of a loan:* The following examples are designed to illustrate when an employee offers or negotiates terms of a loan, and conversely, what does not constitute offering or negotiating terms of a loan.

(1) Offering or negotiating the terms of a loan includes:

(i) Presenting a loan offer to a member for acceptance, either verbally or in writing, even if further verification of information is necessary and the offer is conditional; or

(ii) Responding to a member's request for a lower rate or lower points on a pending loan application by presenting to the member a revised loan offer, either verbally or in writing, that includes a lower interest rate or lower points than the original offer.

(2) Offering or negotiating terms of a loan does not include solely or in combination:

(i) Providing general explanations in response to member queries regarding qualification for a specific loan product, such as explaining loan terminology (*i.e.*, debt-to-income ratio) or lending policies (*i.e.*, the loan-to-value ratio policy of the credit union);

(ii) In response to a member's request, informing a member of the loan rates that are publicly available such as on the credit union's Web site for specific types of loan products without communicating to the member whether qualifications are met for that loan product;

(iii) Collecting information about a member in order to provide the member with information on loan products for which the member generally may qualify, without presenting a specific loan offer to the member for acceptance, either verbally or in writing;

(iv) Arranging the loan closing or other aspects of the loan process, including communicating with a member about those arrangements, provided that communication with the member only verifies loan terms already offered or negotiated; or

(v) Providing a member with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the credit union.

(c) The following examples illustrate when an employee does or does not offer or negotiate terms of a loan "for compensation or gain":

(1) Offering or negotiating terms of a loan for compensation or gain includes engaging in any of the activities in paragraph (b)(1) of this Appendix in the course of carrying out employment duties, even if the employee does not receive a referral fee or commission or other special compensation for the loan.

(2) Offering or negotiating terms of a loan for compensation or gain does not include engaging in a seller-financed transaction for the employee's personal property that does not involve the credit union.

Dated: May 27, 2009.

**John C. Dugan,**

*Comptroller of the Currency.*

By the order of the Board of Governors of the Federal Reserve System, May 28, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

By order of the Board of Directors.

Dated at Washington, DC, the 29th day of May 2009.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Dated: May 28, 2009.

By the Office of Thrift Supervision,

**John E. Bowman,**

*Acting Director.*

Dated: May 28, 2009.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

By the National Credit Union Administration Board on May 26, 2009.

**Mary Rupp,**

*Secretary of the Board.*

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