

July 9, 2009

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

RE: Registration of Mortgage Loan Originators

Dear Mr. Van Meter:

The Farm Credit Council (Council), on behalf of its membership, appreciates the opportunity to comment on the Farm Credit Administration's (FCA) proposed rule regarding a registration system for residential mortgage loan originators. These proposed rules are issued in conjunction with other Agency-regulated institutions in response to the S.A.F.E. Act provisions for a Nationwide Mortgage Licensing System and Registry (Registry) that was published in the June 9, 2009 *Federal Register*.

The comments that follow were developed after soliciting input from all System institutions. Subsequently, a teleconference was held with both bank and association management and counsel participating. Further input was submitted and a draft comment letter reflecting the consensus of that group was developed and distributed to all participants for further review and concurrence. Due to the significance of this proposed rulemaking to many System institutions, we anticipate that several of them will submit their own comments on various aspects of the proposed rule.

General Comments

As FCA is aware, the System's total loan volume of residential mortgage loans is a small percentage of the total loan volume. However, it is an important segment as it provides portfolio diversification and serves as an alternative, competitive source of credit to rural residents.

The System is well aware of the circumstances, and the abuses by many mortgage originators, leading to Congresses' adoption of the S.A.F.E. Act ("Act"). At the same time, we take pride in the fact that System lenders did not engage in the practices that legislation now addresses. We recognize the need for additional safeguards, but encourage the Federal banking agencies to adopt regulations for all aspects of the Act that target the abusive practices that have occurred, and not unreasonably burden lenders who only offer more standardized, traditional mortgage products. In a similar vein, we encourage the banking agencies to distinguish between loan originators who keep their loans "in-house" and those who sell their loans (or merely originate loans) to secondary purchasers.

In general, System institutions support the outline for the registration process in the proposed rule. As noted below, there are specific areas where we believe additional guidance or clarification is appropriate.

Specific Comments

“De minimis” exception needs revision

Sec. 601.101(c)(2) – the “de minimis” exception is too low. We believe a more appropriate threshold would be at least one loan a month for an individual (12 per year), and at least 60 loans per year for each institution. Also, the exception should include employees of institutions which are exempt from reporting for purposes of Reg C HMDA compliance.

Clarify definition of mortgage loan originator

Sec. 601.102(b) – the definition of “mortgage loan originator” should be clarified. The current definition is “(i) an individual who takes a residential mortgage loan application, and (ii) offers or negotiates terms of a residential mortgage loan for compensation or gain.” We think the first prong of the definition of mortgage loan originator, regarding an individual who “*takes a residential mortgage loan application*” creates significant confusion. The Appendix to Part 610(a)(1) states that taking a loan 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.*” This definition could arguably include all individuals who have any contact with the mortgage loan application. The potential registration of these individuals would not further the goals of the Act. In order to reduce confusion and unnecessary registration of non loan officer staff, we request clarification of the meaning of the words “takes” and “application”.

If the definition of mortgage loan originator were clarified to focus on just those individuals who are directly negotiating the loan terms and making loan offers to consumers, it would simultaneously reduce confusion and accomplish the goals of the Act. The offer/negotiation of loan terms is the point in time at which a consumer is most at risk of fraud or abuse. The registration of the individuals who have those discussions with consumers is consistent with the objectives of the Act to allow consumers access to information about the personnel having the most consequence in the loan process to and create accountability of those mortgage loan originators.

We would also recommend adding to Appendix A to Part 610 an additional example as (2)(vi) that offering or negotiating terms of a loan does not include “a non-sales employee who solely performs credit analysis, processing or underwriting of a residential mortgage loan.”

Exception for acquired property

We request clarification that the definition of “residential mortgage loan” at 610.101(e) DOES NOT include seller-sponsored financing of an acquired property (where the lender is the owner of the property).

These proposed changes would also reduce confusion that could exist through the use of automated scoring systems to approve loans. In some cases, electronic systems are used by institutions to receive applications, and the customer information is received prior to any “actual” contact with System personnel. Even at that point, the contact might be with someone functioning solely in a support capacity. As a possible alternative, in the event the institution receives an application through an electronic or other automated system, the institution should be able to designate an employee as the “originator”, and communicate that to the customer in writing or an electronic response.

Modifications

We do not agree that actions taken by loan servicing personnel after loan closing, such as loan modifications, extensions, workouts, restructurings or assumptions should be counted as loans originated unless a new mortgage loan is executed or additional “new money” is loaned. What purpose is served for the consumer to have registration information to shop for a particular special asset officer? In many locations, delinquent loans are serviced by different personnel than those originating home loans. Farm Credit collections staff will not have risky, creative or other nontraditional loan products to offer to consumers who request loan modifications. In these economic times, we cannot afford delays in order to shift workloads because a certain risk asset loan officer is not registered.

Security of personal data

Registration of mortgage loan originations – 610.103. The proposed rule contemplates that a great deal of personal information will be collected on originators. We encourage the banking agencies to describe the safeguards that will be used to prevent the disclosure of non-public information. We also urge that careful consideration be given to the breadth of the information collected. Access to employment information, work contact information, criminal, civil, and regulatory actions may be appropriate. However, we question the relevance of birth date, place of birth, home address, gender, etc. We also request clarification of how a registrant should treat sealed records, records of deferred prosecution, etc.

Extend implementation date to one year from availability of Registry

We do not support the 180 day implementation process for institutions and employees, even assuming there are no unusual delays in accessing the Registry system and inputting the data. Given the long tenure of the average Farm Credit employee, and significant volume of mergers over the last 20 years, it may be time consuming to gather employment information from various locations, especially if records are stored in paper format, in order to compare it to registration information. We expect to encounter significant challenges and questions regarding identification of personnel as mortgage loan originators, training of those people regarding their registration and fingerprinting obligations, drafting of association policies and procedures, and making significant technology systems changes or developing or locating compatible software to track information. We also expect questions from human resource personnel encountered in the process of hiring, responding to requests for job changes and reorganizations,

conducting quarterly reviews, and termination of staff. Coordination with legal counsel will be required to balance rights between employers and existing employees.

Numbering system

We are unclear as to how the RSSD numbering system would be used for System institutions. Consideration should be given to using FCA's existing numbering system as an alternative.

Model guidelines for policies and procedures

Finally, we would encourage all the banking agencies to develop model guidelines for policies and procedures. By providing illustrative models, the costs of both implementation and on-going compliance would be reduced. In addition, the burden on examiners in monitoring compliance would be reduced as well.

As always, we appreciate this opportunity to provide input on the proposed rule. If you have any questions, please do not hesitate to contact me.

Sincerely,

Charles Dana
General Counsel