



June 20, 2009 via email

National Credit Union Administration – boardmail@ncua.gov; regcomments@ncua.gov
Attn.: Mary F. Rupp, Secretary of the Board
1775 Duke Street, Alexandria, Virginia 22314-3428

In Re: Registration of Mortgage Loan Originators

The American Credit Union Mortgage Association (ACUMA) would like to thank the NCUA and staff for the opportunity to provide comment on the Proposed Interagency Registration of Mortgage Loan Originators Guidelines to be issued by the Federal Agencies that oversee depository institutions.

ACUMA is the sole trade association for the Credit Union industry focusing solely on the function of Mortgage Lending by Credit Unions and has been in existence since 1998. For further information about ACUMA, please go to our website at www.acuma.org. These comments have been prepared by the Chair of the ACUMA Legislative & Regulatory Compliance Committee with input by the ACUMA Board of Directors.

ACUMA's specific comments with regard to the proposed guidelines follow:

- 1) 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.

The American Credit Union Mortgage Association believes the de minimis exceptions are appropriate as proposed. Many Agency-regulated institutions are not truly engaged in mortgage lending as a core competency and would fall into this exemption category.

- 2) 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 consumer protection and fraud prevention purposes of the S.A.F.E.

The American Credit Union Mortgage Association believes that aggregation is not appropriate for Credit Unions that originate through a Credit Union Service Organization as mortgage loan

originators for these entities are required to be licensed under the provisions of the S.A.F.E. Act because the NCUA does not provide regulatory oversight for Credit Union Service Organizations.

- 3) 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)?

The American Credit Union Mortgage Association does not believe that, *only or in conjunction with any other de minimis exemption*, an asset based exception to the proposed rules is appropriate in light of the number of Agency-regulated institutions that are not truly engaged in mortgage lending as a core competency regardless of their asset size.

- 4) 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.

The American Credit Union Mortgage Association believes an event specific de minimis exception as outlined similar to the guidelines for the normal de minimis exception would be appropriate should the normal de minimis not be included in the final rule. If the normal de minimis exception is included in the final rule, then such an event specific de minimis exception should not exceed the guidelines as outlined for the normal de minimis exception to the proposed rule.

- 5) 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 an alternate annual renewal period during an alternate 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.

The American Credit Union Mortgage Association believes the Agencies should have the power to allow a temporary waiver or extension due to any event which is beyond the control of the registry, an Agency-regulated institution or a mortgage loan originator. However a regulatory burden could exist in determining if such an event was truly a factor with a sixty (60) day window for renewal proposed, where an Agency-regulated institution and/or mortgage loan originator waited until the end of a renewal period and then such an event occurred. Who would serve as the determiner of

fact in this instance or any instance of determining if any such event met a subjective level of being beyond the control are a regulated institution or mortgage loan originator?

Furthermore, The American Credit Union Mortgage Association believes that if the renewal period is annual, that the only renewal period should be within sixty (60) days of the end of such period.

- 6) 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.

The American Credit Union Mortgage Association believes that the definition of “mortgage loan originator” does not include individuals that modify existing mortgage loans that do not constitute a refinancing. As such they do not “originate” and their exclusion from licensing or registration does not violate the spirit or intent of the S.A.F.E. Act.

- 7) 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.

The American Credit Union Mortgage Association believes that the definition of “mortgage loan originator” does not include individuals that modify existing mortgage loans that do not constitute a refinancing. As such they do not “originate” and their exclusion from licensing or registration does not violate the spirit or intent of the S.A.F.E. Act.

- 8) 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.

The American Credit Union Mortgage Association believes that the definition of “mortgage loan originator” does not include individuals that modify existing mortgage loans that do not constitute a refinancing. As such they do not “originate” and their exclusion from licensing or registration does not violate the spirit or intent of the S.A.F.E. Act.

- 9) 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.

The American Credit Union Mortgage Association believes that loan modifications are typically handled by an Agency-regulated institution's collection or workout department and that an "assumption" would if available typically be handled by a lending department. Unfortunately, assumptions are very much a thing of the past and it would be a rare circumstance to find an assumable loan on the secondary mortgage market. As most Agency-regulated institutions utilize, at least for 1st mortgage transactions, secondary market documents that do not allow for a mortgage loan to be assumed and finding an assumable junior lien or home-equity loan that is assumable would be difficult to find, that such loans are not new originations and should be excluded the same as a modification as previously outlined.

An exception does exist for FHA and VA loans, which do not have the "due on sale" clauses that are found in secondary market 1st mortgages. But even so a consumer that is approved for an assumption inherits the prior loan's existing rate, term and conditions typically with reduced closing costs. Because a "new loan" is not being created in the case of an assumption, the American Credit Union Mortgage Association believes that these transactions should be excluded.

- 10) 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.

The American Credit Union Mortgage Association believes that the definition of "mortgage loan originator" does not include individuals that modify existing mortgage loans that do not constitute a refinancing and that an assumption is not a new loan. As such neither a modification nor an assumption is not an "origination" and their exclusion from licensing or registration does not violate the spirit or intent of the S.A.F.E. Act.

- 11) 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?

The American Credit Union Mortgage Association believes a significant regulatory burden would be created to distinguish whether a loan met a particular (there are numerous) definition of "cash-out" refinance. For instance is this a transaction where a borrower receives cash or proceeds are allocated to pay-off non-mortgage debt; what dollar amount would qualify? As the standard residential loan application would be used, at least on a 1st mortgage transaction, would such an excluded loan leave blank the field for the mortgage loan originator's unique identification number?

The American Credit Union Mortgage Association does not believe an exception for any type of refinancing is in keeping with the spirit and intent of the S.A.F.E. Act and therefore should not be allowed.

- 12) 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.

The American Credit Union Mortgage Association believes that there is little difference, other than a purchase contract, between a purchase transaction and a refinance transaction in the origination or fulfillment of that loan including the underwriting of the loan application. In any case these would be considered a "new" loan and any exclusion would not be in keeping with the spirit or intent of the S.A.F.E. Act.

- 13) 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.

The American Credit Union Mortgage Association believes that all loan modifications should be excluded regardless of any additional criteria, unless such criteria results in a new loan being created; and that all refinances, which result in a new loan being created, are subject to the provisions of the S.A.F.E Act.

- 14) 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 American Credit Union Mortgage Association believes a 180-day implementation period is adequate for regulated institutions to complete the initial registration process.

- 15) 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.

The American Credit Union Mortgage Association believes that mortgage loan originators *with a current unique registry identification number* should be allowed to use that number during a 60-day grace period, whether a new employee or acquired through an acquisition, merger, or reorganization, during which time the originator's required information is updated as a normal part of the hiring process.

- 16) 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.

The American Credit Union Mortgage Association believes the 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.

- 17) 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.

The American Credit Union Mortgage Association believes the three-year age limit for existing fingerprints is appropriate.

- 18) 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.

The American Credit Union Mortgage Association believes that the employee data that is proposed to be collected and to be made public is adequate for meeting the goals of the S.A.F.E. Act and that no additional information is warranted.

- 19) The Agencies seek comment on batch processing and welcome suggestions for workable alternative approaches that could mitigate the initial registration burden on Agency-regulated

The American Credit Union Mortgage Association believes it is appropriate for an Agency-regulated institution system administrator to be allowed to update both the institutional and mortgage loan originator information. Such updated mortgage loan originator information should be archived by such a system administrator to ensure that it was gathered from and attested to by the employee. Because credit unions that do 1st mortgages, as a core competency, typically have the consumer loan department handle junior real estate lien transaction and because some operational front line staff could be categorized a mortgage loan originators, it would be prudent to have the function of entering or updating information centralized rather for an Agency-regulated institution have multiple departments handling this function.

- 20) 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.

The American Credit Union Mortgage Association believes that Agency-regulated institutions should be able to meet the requirement to have written policies and procedures as outlined in place prior to the registration of employees deemed to meet the definition of a mortgage loan originator under the S.A.F.E. Act.

- 21) 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 American Credit Union Mortgage Association believes that a mortgage loan originator's unique registration number will be required on a particular borrower's residential loan application where the identity of the loan officer is required. In addition to this, mortgage loan originator specific marketing materials or an aggregation of registered employee unique identification numbers on an Agency-regulated website should become a standard practice going forward to accomplish the goals of the S.A.F.E. Act. An issue does exist for junior liens or home-equity loans where a standard residential loan application is not typically used and may not display the mortgage loan originator unique identification number however. In any event, mortgage loan originators should be able to supply their unique identification number if requested by a consumer.

- 22) 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.

The American Credit Union Mortgage Association believes it is inherent on the Federal Government, the Agencies and the Registry to make consumers aware of the ability for them to find the information required from mortgage loan originators and that such a Registry exists.

- 23) 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.

The American Credit Union Mortgage Association believes the standard residential loan application is being re-designed to include the mortgage loan originator unique identification number, which will remove the chance that a mortgage loan originator would not be identifiable to a consumer. An issue does exist for junior liens or home-equity loans where a standard residential loan application is not typically used and may not display the mortgage loan originator unique identification number however. In any event, mortgage loan originators should be able to supply their unique identification number if requested by a consumer.

- 24) 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 American Credit Union Mortgage Association believes more examples are needed to satisfy the true definition of a mortgage loan originator. Under the current standard more than one person from an Agency-regulated institution, who responds to an inquiry from a prospective borrower, will be considered to have discussed qualification standards, rates, prices, or loan programs; yet only one employee will actually be listed on the standard residential loan application or other application and be identified as the loan officer. Many credit unions have front line staff, either in branch or a phone/call center, *that are not assigned* to a credit union's mortgage loan or home equity department, that handle multiple functions, and may respond to a potential borrower such that they may fit within the definition of a mortgage loan originator, but will not be listed on the standard residential loan application.

- 25) 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.

The American Credit Union Mortgage Association knows in many Agency-regulated institutions that there are online mortgage or home equity loan platforms that allow a prospective borrower to complete a loan application, select a program and rate, and to receive not only required disclosures, but also an automated loan decision with supporting documentation requirements. In these Agency-regulated institutions, the loan fulfillment staff typically has contact with a borrower to acquire the supporting documentation, exchange information with regard to vendor supplied information such as credit, potential flood insurance requirements, title insurance requirements, coordinate subject property access for valuation purposes, inform the borrower(s) of any additional underwriting requirements, and to arrange for a closing date and time. However, also in a number of these online applications, consumer supplied information is found to be lacking to make or receive an appropriate underwriting response and it does involve an employee completing the

application with the borrower. Only in the last instance may an employee in this online environment be considered to meet the definition of a mortgage loan originator. The potential exists for some Agency-regulated institutions to complete mortgage transactions without an employee ever having met the requirements to be considered a mortgage loan originator.

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

The American Credit Union Mortgage Association does not believe there is sufficient education of Agency-regulated mortgage loan originators, on an annual basis, to stay abreast of mortgage regulations/compliance.

The American Credit Union Mortgage Association does advocate for the Agencies to mandate some level of enhanced annual educational component, beyond the presently required annual fair-lending required training, for Agency-regulated institutional employees considered to fit within the confines of the definition of a mortgage loan originator is necessary for said employees to stay current and on par with the knowledge of licensed originators.

Additionally, as previously mentioned in this response, employees of many departments within Agency-regulated institutions may fit within the *present* definition of a mortgage loan originator and could result in a significant regulatory burden to monitor the activities of multiple departments. The NCUA's legal counsel commented on and determined that the definition of a mortgage loan originator would fit many credit union staffers who interface and interact with members, in response to a letter from the American Credit Union Mortgage Association, on October 3, 2008. This letter can be found at:

<http://www.ncua.gov/Resources/RegulationsOpinionsLaws/OpinionLetters/2008/08-0843.pdf>

Respectfully submitted,



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