

July 9, 2009

VIA E-MAIL

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G. Street, N.W.  
Washington, D.C. 20552

Re: **OTS-2009-0004: Registration of Mortgage Loan Originators;  
Proposed Rule**

Dear Agency Counsel:

On behalf of our client, State Farm Bank, F.S.B., Bloomington, Illinois, (the "Bank") a federal savings association and a wholly-owned subsidiary of State Farm Mutual Automobile Insurance Company ("State Farm"), we hereby submit comments on the proposed rule jointly issued by the Office of Thrift Supervision ("OTS"), the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Farm Credit Administration ("FCA"), and the National Credit Union Administration (collectively, the "Agencies") on Registration of Mortgage Loan Originators under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act" or "Act").<sup>1</sup> As set forth in sections II through IV below, our comments focus in particular on the need to define the scope of the term "employee" in the Agencies' final rule for purposes of the S.A.F.E. Act's provisions pertaining to "registered mortgage loan originators."

Specifically, we believe it is critical that the final rule define "employee" to include agents of an "Agency-regulated institution" (as that term is used in the Agencies' notice of proposed rulemaking) who, pursuant to a written contract, perform mortgage loan origination activities exclusively for, and subject to the oversight of and training by, a particular Agency-regulated institution ("Exclusive Agents"). Such a definition is essential to ensure that, consistent with established case law and Congress' intent underlying the S.A.F.E. Act, Exclusive Agents who are and will continue to be subject to federal regulation will not improperly be deemed to be "state-licensed loan originators"

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<sup>1</sup> Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654, 2810-1824 (July 30, 2008).

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and therefore subject to unnecessary, dual regulation by application of the mortgage broker licensing requirements of the States. The factual and legal bases for our recommended definition are discussed in detail in Part IV below.

**I. Background: Pertinent Provisions of the S.A.F.E. Act**

As described in the Agencies' notice of proposed rulemaking (the "Notice"),<sup>2</sup> the S.A.F.E. Act mandates a nationwide licensing and/or registration system for mortgage loan originators. The system, the Nationwide Mortgage Licensing System and Registry ("Nationwide Registry"), is designed "to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud."<sup>3</sup> Under the S.A.F.E. Act, all residential mortgage loan originators will be required to register with the Nationwide Registry, which entails, *inter alia*, undergoing fingerprinting and a criminal history background check and submitting certain personal history and experience information.<sup>4</sup> When the Registry is fully operational, it will provide for increased accountability and tracking of mortgage loan originators and thereby help ensure that each such originator is acting in compliance with applicable law.

The system works differently for mortgage loan originators employed by Agency-regulated institutions ("registered loan originators") than for other mortgage loan originators ("state-licensed loan originators"). Specifically, although the Act requires both types of originators to obtain and maintain annually a registration with the Registry and to obtain a unique identifier, "registered loan originators" do not need any additional authorization to engage in mortgage loan origination activities, whereas "state-licensed loan originators" must obtain state authorization(s) to engage in mortgage loan origination.<sup>5</sup>

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<sup>2</sup> *Registration of Mortgage Loan Originators; Proposed Rule*, 74 Fed. Reg. 27,386 (June 9, 2009).

<sup>3</sup> HERA § 1502.

<sup>4</sup> *Id.* § 1507(a)(2).

<sup>5</sup> *See* 79 Fed. Reg. at 27,389 ("[T]he 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

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Thus, mortgage loan originators who are not employees of an Agency-regulated institution (as well as certain "loan processors" and "loan underwriters") will be required to comply with all of the various requirements imposed by the States to obtain and retain a license to originate mortgage loans, including undergoing credit checks; demonstrating financial responsibility, character, and general fitness; meeting net worth or bonding requirements; obtaining pre-licensing education; successfully completing tests; and undertaking continuing education.<sup>6</sup> In contrast, due to the Agencies' primary authority over Agency-regulated institutions, none of these state-imposed requirements are applicable to "registered loan originators" (*i.e.*, Agency-regulated institution employees).

## II. The Agencies' Authority to Define "Employee"

Given the differential treatment of "registered loan originators" and "state-licensed loan originators" under the S.A.F.E. Act, the definition of "employee" (as used in the Act's definition of "registered loan originator"),<sup>7</sup> has great significance. This significance was, in fact, recognized by Congress during consideration of the legislation that became the S.A.F.E. Act. At that time, Congressman Frank, the Chairman of the House Committee on Financial Services and one of the managers of the legislation, responded to a request by Congressman Jim Marshall, also a member of the Committee, for clarification of the OTS and OCC's authority to define the scope and applicability of the terms and requirements of the S.A.F.E. Act. The request and response were as follows:

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*Footnote continued from previous page*

employees, who do not need additional authorization from the appropriate Federal agency to engage in mortgage loan origination activities.").

<sup>6</sup> HERA. §§ 1505-06. In the event the States do not establish a Nationwide Mortgage Licensing System and Registry, or a State does not enact conforming procedures or does not participate in the Registry, the Act authorizes the Secretary of Housing and Urban Development to establish a Registry or a loan originator licensing system for State-licensed loan originators. *Id.* §§ 1508-09.

<sup>7</sup> The S.A.F.E. Act defines a "registered loan originator" as "any individual who: (A) meets the definition of mortgage loan originator and is an employee of a [Agency-regulated institution]; and (B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry." HERA § 1503(7).

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Mr. MARSHALL. Mr. Speaker, I want to seek a point of clarification from the managers of this bill regarding the intent and effect of the requirements in title V [the S.A.F.E. Act] with respect to the licensing of certain loan originators. I want to confirm that these provisions do not interfere with or limit the Office of Thrift Supervision's or the Office of [the] Comptroller of the Currency's authority, including their regulation and oversight of a depository institution's products and services marketing and distribution system, and that, of course, as the principal regulators of federally chartered thrift institutions and national banks, they *have the authority to make an appropriate definition of the term "employee" of a depository institution within the meaning of title V.*

Mr. FRANK of Massachusetts. The gentleman from Georgia has been a diligent advocate for a sensible public policy, and I admire both his diligence and his grasp of the issue. He is correct. Nothing in this title changes existing Federal law with respect to the authority of the Office of Thrift Supervision and the Office of the Comptroller of the Currency's preemptive authority, and their right to regulate and oversee a depository institution's products and services marketing and distribution system, *and they do obviously have definitional authority under this legislation.*<sup>8</sup>

This explicit Congressional confirmation of the authority of the OTS and the OCC to define the term "employee" for purposes of the S.A.F.E. Act – which authority naturally extends to the other Agencies with respect to institutions subject to their regulation<sup>9</sup> – underscores the appropriateness of including in the Agencies' final rule a

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<sup>8</sup> 154 Cong. Rec. H6997 (daily ed. July 23, 2008) (statements of Rep. Marshall and Rep. Frank) (emphases added).

<sup>9</sup> Under established United States Supreme Court precedent, federal agencies have the authority to interpret statutes they are charged to administer. *See, e.g., Smiley v. Citibank*

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definition of "employee." And, as discussed below, such a definition of "employee," to be consistent with existing federal law and Congressional objectives, should include Exclusive Agents of Agency-regulated institutions.

### III. Proposed Definition of Employee

We propose the following definition of "employee," to be added to the definitions set forth in Section \_\_.102 of the proposed rule:

*Employee*, as used in the definition of *registered mortgage loan originator* or *registrant*, shall be deemed to include an exclusive agent of a [insert respective type of Agency-regulated institution] who: (i) has entered into a written agreement with such [Agency-regulated institution] requiring that the agent: (A) perform residential mortgage loan origination activities exclusively for that particular [Agency-regulated institution] and no other residential mortgage lender; and (B) as a condition precedent to, and a continuing requirement of, marketing and/or selling products of [Agency-regulated institution], successfully complete training by the [Agency-regulated institution] that has been reviewed by the [relevant Agency] with respect to the products of [Agency-regulated institution] and all laws and regulations applicable to such products and the marketing of them; and (ii) is subject to direct examination, supervision, regulation and enforcement of law by the [relevant Agency].

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*Footnote continued from previous page*

*(S.D.), N.A., 517 U.S. 735, 739; Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc., 467 U.S. 837, 842-45 (1984).*

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**IV. Justification for the Proposed Definition.**

As noted, the S.A.F.E. Act does not require state licensing for “registered loan originators,” including any loan originator who is an employee of a depository institution or an operating subsidiary thereof. The implicit rationale underlying this regulatory regime is that the performance of loan origination activities by employees of a depository institution or an operating subsidiary thereof effectively constitute activities of the institution itself, and depository institutions are already subject to extensive regulation that would make the state-licensing requirements of the S.A.F.E. Act superfluous as applied to those entities – and, therefore, to their employees.

In an opinion letter from the OTS to counsel for the Bank dated October 25, 2004 (the “2004 OTS Opinion”),<sup>10</sup> the OTS found that the mortgage loan-related activities conducted by the Exclusive Agents of State Farm Bank (the “SFB Agents”) on the Bank’s behalf are subject to the same regulatory, supervisory, examination, and enforcement authority as those activities would be if conducted by the Bank, through its employees, itself. As stated in the 2004 OTS Opinion, and as confirmed last summer by the Court of Appeals for the Sixth Circuit in *State Farm Bank, FSB v. Reardon*, 539 F.3d 336 (6th Cir. 2008), the Bank’s delegation of the performance of its mortgage loan marketing, solicitation, and customer service activities to the Agents does not alter the preemptive force of the OTS’s regulatory authority over those activities. *See* 2004 OTS Op. at 11, 13-15; *Reardon*, 539 F.3d at 349; *see also State Farm Bank, FSB v. Burke*, 445 F. Supp. 2d 207 (D. Conn. 2006).<sup>11</sup> Consistent with those opinions and the legislative history of the S.A.F.E. Act (discussed further below), it is critical that the Agencies’ final rule define “employee” so as to ensure that Exclusive Agents such as the SFB Agents are not subject to state licensing under the S.A.F.E. Act.

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<sup>10</sup> OTS Legal Op. P-2004-7, 2004 WL 3272094 (O.T.S. Oct. 25, 2004).

<sup>11</sup> In *Reardon*, the Sixth Circuit noted the enactment of the S.A.F.E. Act and suggested that it could affect the future viability of the court’s decision. *See State Farm Bank, FSB v. Reardon*, 539 F.3d at 338 n.1. The Sixth Circuit did not, however, discuss the requirements of the S.A.F.E. Act or the role of the Agencies in interpreting the meaning and applicability of those requirements. Nothing in the Sixth Circuit’s opinion suggests that it would be inappropriate for the Agencies to include in the final rule the definition of “employee” we are recommending here.

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**A. State Farm Bank and Its Exclusive Agents.**

Since its establishment in March 1999, the Bank has provided deposit and loan services to its customers as authorized by Section 5(b)(1) and (c) of the Home Owners Loan Act, 12 U.S.C. § 1464(b)(1), (c), and 12 C.F.R. § 560.30. The Bank offers a variety of deposit and loan products and services, including first and second mortgages, on a nationwide basis. The Bank markets these products and services primarily through the SFB Agents, who are independent contractors exclusively of the Bank and State Farm. The Bank does not maintain any branches or offices open to the public and thus relies almost entirely on the SFB Agents for marketing of its products and services.

In their role as agents of the Bank, the SFB Agents provide information to customers regarding the products and services offered by the Bank. They do this by, *inter alia*, displaying in their offices information and brochures relating to the Bank's banking products and services; mailing marketing materials to State Farm customers and potential customers; and apprising customers and potential customers of the availability of the Bank's products and services through telephone, e-mail and in-person contacts.

With respect to mortgage loans in particular, the SFB Agents direct potential borrowers to the Bank and may assist individuals in completing application forms and documentation for Bank mortgage loan products and services. For example, if a customer expresses interest in a residential mortgage loan, the SFB Agent might assist the customer in completing the application form, answer questions and, at the customer's request, transmit to the Bank the completed application and any other required documentation collected from the customer. The SFB Agents do not, however, evaluate or review applications (except for completeness), apply underwriting criteria, make lending decisions, or make any other substantive decisions on behalf of the Bank. Instead, the Bank makes the decisions on all loan applications, prescribes the terms of loans, and approves or denies the loan.

To be authorized to market the Bank's products and services, each SFB Agent must first undergo extensive, in-house training that has been reviewed by the OTS. In order to complete this training successfully, the SFB Agent must become fully familiar with and educated regarding the Bank's products and services and the laws and regulations applicable to all aspects of marketing those products and services and demonstrate such knowledge by passing an examination. With respect to mortgage loans in particular, the SFB Agent must demonstrate his or her familiarity with and understanding of their obligations under, *inter alia*, the Truth in Lending Act, 15

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U.S.C.A. § 1601 *et seq.* (West 1998 & Supp. 2004 ) and Regulation Z, 12 C.F.R. Part 226 (2004); the Equal Credit Opportunity Act, 15 U.S.C.A. § 1691 *et seq.* (West 1998 & Supp. 2004) and Regulation B, 12 C.F.R. Part 202 (2004); OTS Nondiscrimination Requirements, 12 C.F.R. Part 528 (2004); and the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C.A. § 2601 *et seq.* (West 2001 & 2004 Supp.) and Regulation X, 24 C.F.R. Part 3500 (2004).

After they have successfully completed all training and have been certified as Bank Agents, the SFB Agents are subject to regular, periodic review to ensure that their performance and training qualifications are up-to-date. Each SFB Agent is reviewed at least annually. This includes Bank Compliance Reviews completed in the field at the SFB Agents' offices by Field Compliance Coordinators. The Bank has the contractual right to take action against an SFB Agent, up to and including contract suspension and termination, if the SFB Agent fails to comply with any applicable law, refuses to submit to an examination by OTS, or takes any other action inconsistent with OTS or Bank requirements.

Each SFB Agent must enter into a written agency agreement providing that he or she will act exclusively on behalf of the Bank and no other banking institution. Thus, although the SFB Agents are independent contractors, all of the banking-related activities they conduct are subject to OTS regulation, examination, supervisory and enforcement authority -- just as though those activities were being conducted by the Bank (or its employees) itself. Indeed, under the Examination Parity and Year 2000 Readiness for Financial Institutions Act (the "Exam Parity Act"),<sup>12</sup> the OTS has explicit regulatory and examination authority over independent contractors in their performance of services on behalf of a federal savings association "to the same extent as if such services were being performed by [the federal savings association] on its own premises."<sup>13</sup> Moreover, the

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<sup>12</sup> Pub. L. No. 105-164, 112 Stat. 32 (1998) (codified at 12 U.S.C. § 1464(d)(7)).

<sup>13</sup> 12 U.S.C. § 1464(d)(7)(D)(i). As noted by the Sixth Circuit in *Reardon*, "[a]dditionally, 12 U.S.C. § 1464(d)(1)(B)(ii) requires that a federal savings association provide the OTS with 'prompt and complete access' to its agents for regulatory purposes." *Reardon*, 539 F.3d at 537.

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OTS also has direct examination and enforcement authority over the SFB Agents as "institution-affiliated parties."<sup>14</sup>

**B. The 2004 OTS Opinion**

As noted above, in the 2004 OTS Opinion, the OTS found that that state mortgage broker licensing and registration requirements are preempted as applied to the SFB Agents. The OTS reached this conclusion in part by recognizing that, for bank regulatory purposes, there is no substantive distinction between the Bank's Exclusive Agents and an operating subsidiary of the Bank or its employees. That is because:

[T]he Association [State Farm Bank] controls and reviews the activities the Agents perform on behalf of the Association, and no other entity exercises effective operating control over the Agents' activities on behalf of the Association. Where an association exercises sufficient control over an agent's performance of authorized banking activities, the agent, *like an operating subsidiary* of a federal savings association, will be subject to OTS regulation and supervision, and federal preemption of state license and registration requirements applies to the agent, *just as it would apply to an operating subsidiary*. . . . We are satisfied that the Association exerts sufficient supervision [and] control over the Agents to warrant a finding that the state licensing and registration requirements do not apply when the Agents perform marketing, solicitation, and customer assistance activities on behalf of the Association for the Association's banking products and services.<sup>15</sup>

These OTS findings and conclusions clearly support the view that the SFB Agents, like employees of depository institutions and operating subsidiaries who conduct mortgage loan origination activities on behalf of those entities, should be subject to

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<sup>14</sup> See 12 U.S.C. § 1464(d)(1)(A) and 12 U.S.C. § 1818.

<sup>15</sup> 2004 OTS Op. at 13-14 (footnotes and citations omitted) (emphasis added).

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federal registration, but not state licensing, under the S.A.F.E. Act. Like such employees, the SFB Agents are closely monitored and overseen by the Bank, and they are subject to precisely the same federal regulatory and supervisory regime as the Bank in their performance of mortgage loan marketing, solicitation, and customer service activities on behalf of the Bank. It would be incongruous to think that that Congress intended the S.A.F.E. Act to impose an additional, duplicative layer of regulation on such Exclusive Agents as would be entailed in requiring their licensure by the States.<sup>16</sup> For example, imposing on SFB Agents the Act's net worth and bonding requirements, which are applicable to loan originators who must be state-licensed,<sup>17</sup> would be wholly superfluous because the Bank is fully responsible for the SFB Agents' actions that fall within the scope of the agency relationship. Likewise, imposing on the SFB Agents the Act's pre-licensing, testing, and continuing education requirements would simply duplicate the Bank's internally "required education and training program that the SFB Agents must complete pertain[ing] to the [Bank]'s products and services, as well as federal compliance laws."<sup>18</sup> These are just two examples of the reasons why Congress, considering the manner in which it chose to regulate loan originators who are employees of a depository institution or operating subsidiary thereof under the S.A.F.E. Act, cannot have intended to subject the SFB Agents to the state licensing requirements of the Act.

Indeed, this conclusion is fully consistent with well-established federal law. As stated by the Sixth Circuit in its opinion confirming preemption of state mortgage broker licensing requirements as applied to the SFB Agents, "federal law provides State Farm Bank with the authority to delegate the task of soliciting and marketing its mortgage products to exclusive agents," and the Bank's choice of how to structure and conduct its banking-related activities does not alter the preemptive effect of federal law on state law purporting to govern those activities. *Reardon*, 539 F.3d at 346; *see also* 2004 OTS Op. at 8, 10 ("[F]ederal savings associations are free to decide how to structure their operations and conduct their authorized banking-related activities" and, specifically,

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<sup>16</sup> *Cf. Watters v. Wachovia Bank, N.A.*, 127 S. Ct. 1559, 1570 (2007) ("[J]ust as duplicative state examination, supervision, and regulation would significantly burden mortgage lending when engaged in by national banks, so too would those state controls interfere with that same activity when engaged in by an operating subsidiary." (citation omitted)).

<sup>17</sup> HERA § 1505(b)(6).

<sup>18</sup> 2004 OTS Op. at 3 (footnote omitted).

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“how . . . [to] market and solicit their banking products and services.”). Whether State Farm Bank chooses to conduct its mortgage loan marketing, solicitation, and customer services activities itself or to delegate them to an operating subsidiary or the Agents is a “distinction . . . without a difference.” *Reardon*, 539 F.3d at 345. That is because, as the United States Supreme Court observed with respect to its federal banking law jurisprudence: “We have never held that the preemptive reach of [federal banking law] extends only to a [federally chartered] bank itself. Rather, in analyzing whether state law hampers the federally permitted activities of a [federally chartered] bank, we have focused on the exercise of [the] bank’s powers, not on its corporate structure.” *Watters* 127 S. Ct. at 1570.

There is nothing in the S.A.F.E. Act’s legislative history that suggests that Congress sought to limit the flexibility of federally chartered banks to delegate their activities to operating subsidiaries or exclusive agents or otherwise to interfere with the uniform federal scheme of regulation applicable under *Watters*. As the Sixth Circuit held in *Reardon*, *Watters* dictates that the States may not impose their mortgage broker licensing requirements on the Agents because doing so would have the same adverse effect on the Bank as would imposing those requirements on the Bank (or its employees) itself. *Reardon*, 539 F.3d at 347-48. Just as the federally permitted activities of the Bank would be hampered by the imposition of state licensing requirements on the Bank (or its employees) itself (or on any operating subsidiary the Bank might establish), so too would those activities equally be hampered by the application of state licensing requirements to the SFB Agents. *See* 2004 OTS Op. at 11 (“[The Bank] should not be hamstrung in the exercise of its authorized powers merely because it chooses to market its products and services using agents whose activities the association closely monitors and controls.”<sup>19</sup>).

It would, therefore, be error to interpret the S.A.F.E. Act in a manner that would deprive the Bank of the flexibility to use the SFB Agents, rather than Bank employees, to originate residential mortgage loans without triggering the application of state licensing requirements. *See, e.g.*, 12 C.F.R. § 560.2(a) (“OTS intends to give federal savings associations maximum flexibility to exercise their lending powers in accordance with a *uniform federal scheme* of regulation.” (Emphasis added)). This is particularly true because, as specifically noted by the Sixth Circuit in *Reardon*:

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<sup>19</sup> *Id.* at 11.

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In addition to being regulated by the OTS, State Farm Bank's exclusive agents are also subject to continual oversight by State Farm Bank itself. The record indicates that if State Farm Bank's exclusive agents fail to comply with applicable laws and regulations, their agency relationship may be terminated. Thus, we are not confronted today with a situation where a federal savings association has contracted with non-exclusive, untrained, and unsupervised individuals, over whom it has no control, for the purpose of marketing and soliciting mortgage products . . . . Instead, we are confronted with a situation where [a State] is attempting to regulate a federal savings association's exclusive agents who are already subject to regulation by the OTS and State Farm Bank itself. *See generally* 12 C.F.R. § 560.2(a) (stating that the OTS desires its regulation to keep federal savings associations "free from undue regulatory duplication and burden").<sup>20</sup>

In fact, Congress was specifically informed in the context of the S.A.F.E. Act of these very circumstances -- *i.e.*, that the SFB Agents are subject to a degree of regulatory supervision and oversight comparable to employees of a federal savings association or operating subsidiary. While the Act was under consideration, Senator Richard Shelby, the ranking member of the Banking, Housing, and Urban Affairs Committee, requested information from the OTS about how it supervises the Bank's residential mortgage operations, including the Bank's use of the SFB Agents.<sup>21</sup> The OTS responded in letters sent to both Senator Shelby and Senator Mel Martinez, also a member of the Committee (the "OTS Shelby/Martinez Letters"), describing in considerable detail the activities of the SFB Agents in marketing residential mortgage loans for the Bank. As stated in those letters:

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<sup>20</sup> *Reardon*, 539 F.3d at 347 n.6.

<sup>21</sup> Letters from John E. Bowman, Deputy Director and Chief Counsel, OTS, to The Honorable Richard C. Shelby, and The Honorable Mel Martinez, U.S. Senate (June 17, 2008), at 1.

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The OTS examines State Farm Bank on an annual basis. The examination includes a comprehensive compliance review covering all activities of the institution, including a review of the agent activity. The scope of the OTS examination also includes a review of State Farm Bank's internal agent training and monitoring programs. . . .

Bank-certified agent monitoring is performed continuously throughout the year. All internal review findings regarding bank products are reported to the Audit Committee of State Farm Bank on a quarterly basis.

In addition to reviewing the results of the internal State Farm Bank agent reviews, the OTS selects a sample of bank-certified agents to meet and interview as part of its examination of State Farm Bank. A number of bank-certified agents from across the country, with a cross-section of characteristics, are selected for the OTS sample. OTS also selects a few bank-certified agents that had one or more exceptions noted during the State Farm internal review for the sample. An examiner visits the office of each selected bank-certified agent in the sample and completes an examination program. The visit will include an interview of the State Farm agent and a visual review of the office and bank-related materials available to customers.<sup>22</sup>

As the OTS pointed out to Senators Shelby and Martinez, these facts demonstrate that:

State Farm Bank employs a level of supervision and oversight of [the banking-related] activities of its agents *that is comparable to the supervision and oversight of the activities of employees who deal directly with customers*

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<sup>22</sup> OTS Shelby/Martinez Letters at 2-3.

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*such as [a bank]'s tellers in its branch offices. This requires the federal savings association to exert sufficient control over whatever means it uses to market its products, solicit customers for its products, and service its customers to assure OTS that the activities comply with all applicable laws and regulations.*<sup>23</sup>

Thus, as Congress was informed, in light of the "OTS's comprehensive federal regulation of both the [Bank] and those marketing its products," the SFB Agents should be treated in the same manner as employees of a depository institution or operating subsidiary for purposes of the licensing and registration requirements of the S.A.F.E. Act.<sup>24</sup> The OTS's views regarding the proper treatment of the SFB Agents under the S.A.F.E. Act are authoritative, and should be codified in the form of a definition of "employee" such as we propose herein.

#### **V. Batch Processing**

In addition to our recommendation regarding a definition of "employee" in the final rule, we also support the Agencies' suggestion that the Registry be modified to permit a "batch" process for Agency-regulated institutions to submit, in bulk, the required institution and employee information on behalf of their respective mortgage loan originators. In particular, we support the suggestion that the Agencies specify a limited set of standard data elements likely to be maintained by Agency-regulated institutions, such as mortgage loan originator names, which the institutions could submit in a single "batch file." Assuming the treatment of the SFB Agents as "registered loan originators" consistent with our comments above, this would vastly facilitate registration of the more than 17,000 SFB Agents that currently originate residential mortgage loans.

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<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.* at 3.

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**VI. Conclusion**

For the reasons stated above, and based on the foregoing facts and legal analysis, we respectfully urge that the final rule include a definition of "employee" that includes certain Exclusive Agents of an Agency-regulated institution, and we also support the Agencies' suggestion for batch processing of registrations with the National Registry.

Respectfully submitted,

A handwritten signature in black ink that reads "A. Patrick Doyle" followed by a stylized flourish or initials.

A. Patrick Doyle