

Carl Howard
General Counsel
Bank Regulatory

Citigroup Inc.
425 Park Avenue
2nd Floor/Zone 2
New York, NY 10022

Tel 212.559.2938
Fax 212.793.4403
howardc@citigroup.com

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

Dear Sir or Madam:

Citigroup Inc. appreciates the opportunity to provide the following comments on the proposed rule ("Proposed Rule") to implement the Secure and Fair Enforcement for Mortgage Licensing Act (the "SAFE Act" or the "Act").

Under the Proposed Rule, each employee of a thrift who acts as a mortgage loan originator is required to register with the Nationwide Mortgage Licensing System and Registry ("Registry"), obtain a unique identifier, and maintain the registration. The Proposed Rule imposes a parallel obligation on the employer thrift, requiring the thrift to confirm that it employs the individual being registered, and to ensure that the employee complies with the registration and unique identifier requirements. The thrift must also require the employee to submit to the Registry, or must submit on behalf of the employee, identifying information, dates of employment, financial information, disciplinary record, and fingerprints of the employee. The employee, in turn, must attest to the correctness of all information submitted and authorize the Registry to obtain disciplinary or court records and make certain information available to the public. As you know, the SAFE Act does not define the term "employee."

In a recent meeting we discussed with you an example of exclusive representatives of a thrift who, as independent contractors, serve as the only loan channel for the thrift, and whose regulatory activities are under significant supervision and control by the thrift. We also indicated that, as the legislative history makes clear,¹ the Office of Thrift Supervision ("OTS") has the independent discretion under the SAFE Act to define employee to include exclusive agents of a thrift (or its regulated subsidiary, collectively "thrift") that are subject to such thrift supervision and control. Indeed, we believe that

¹ See 154 Cong. Rec. H6997 (daily ed. July 23, 2008)(Floor statements by Congressmen Frank and Marshall that both OTS and the Office of the Comptroller of the Currency "have the authority to make an appropriate definition of the term "employee" of a depository institution within the meaning of title V").

each federal agency has that discretion with respect to the institutions it supervises, although not all may wish to exercise it.

We urge the OTS to exercise this discretion given the importance of preserving an origination channel for federal thrifts. As noted, under the Proposed Rule, it is up to the thrifts to confirm that the individuals they register with the Registry are appropriately categorized. We urge the OTS to allow thrifts to register their exclusive agents for purposes of SAFE Act registration, where the thrift exercises sufficient control over such agents that registration is consistent with the SAFE Act's objectives. We would very much look forward to working with the OTS to identify the aspects of control that should be present to include non W-2 workers as employees for registration under the SAFE Act.

The U.S. Department of Housing and Urban Development ("HUD") recently announced an intent to conduct notice-and-comment rulemaking on SAFE Act issues.² In that announcement, it provided its "present view" on certain issues in advance of its rulemaking, including its view that a state may not exempt from licensing individuals who are agents, but not employees, of a depository institution. In that context, HUD indicated its present view that an individual is generally considered to be an employee only if the manner and means of his or her performance of duties is subject to the control of a federal depository institution, and if his or her income is reported on a W-2 form. Although we agree on the control aspect of HUD's statement, we disagree strongly that whether an individual's compensation is reported to the Internal Revenue Service on a W-2 or 1099 Form should drive how an individual is categorized under the SAFE Act. The clear legislative history of the SAFE Act reflects that OTS has definitional authority on this issue with respect to savings associations, and we urge you to exercise that authority by focusing on the substantive factor of control.

Thank you for the opportunity to provide these comments on the Proposed Rule. Please do not hesitate to call Jeffrey Watiker at (212) 559-1864 or me at (212) 559-2938 with any questions or to discuss these comments.

Sincerely,



Carl V. Howard
General Counsel - Bank Regulatory

cc: Viola Spain

² See HUD announcement at <http://www.hud.gov/offices/hsg/ramh/safe/faq.cfm>.