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Capitol Federal Savings

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Capitol Federal's 116th Year
of True Blue Service
June 29, 2009

JOHN C. DICUS, CHAIRMAN
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Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

RE: "Registration of Mortgage Loan Originators"
OTS-2009-0004

Dear Sirs:

Thank you for providing the opportunity to comment on the proposed Secure and Fair Enforcement of Mortgage Licensing Act of 2008 (SAFE Act). Capitol Federal Savings Bank ("CFSB") is the leading mortgage provider in the State of Kansas with assets of eight billion dollars. CFSB's primary business is the origination of one-to-four family residential mortgage loans. CFSB supports state and federal efforts to strengthen applicable laws and regulations to better protect consumers against unfair and deceptive business practices. CFSB believes there are many unscrupulous and/or uneducated lenders and brokers that have taken advantage of prospective borrowers, however, we have concerns with certain portions of the proposed SAFE Act. In general, the intent of the act should be to target brokers and other lending institutions that have not been required to comply with Fair Lending, RESPA, Truth-in-Lending, and other similar regulatory requirements, or have not had annual examinations to ensure they are complying. Instead, the act seems to burden the staff of experienced community banks and lenders that have adhered to all applicable laws and regulations and are regularly examined to ensure this. In more detail, we will address different aspects of the proposed act:

1) **Definition of "mortgage loan originator".** CFSB believes the words "terms" and "compensation" are too broad. We employ a staff of Mortgage Loan Originators that are paid hourly or have fixed salaried positions. The Mortgage Loan Originator may be a full-time loan originator, or in some instances may be a Retail Branch or Assistant Branch Manager assisting the loan department in taking loan applications due to high volumes or to provide local branch service to our customers. We also have salaried consumer lending staff that take loan applications for home equity and closed end second mortgages. And, finally, we employ Senior Mortgage Consultants whose pay is commissioned based. CFSB management sets a standard rate and origination fee tier that

is quoted by all who originate mortgage loans. None of the loan staff, including the Senior Mortgage Consultants, have the ability to offer or negotiate interest rates or points for personal gain. Therefore, we think the definition of "mortgage loan originator" should be more specific and state that **"an individual who takes a residential mortgage loan application and offers or negotiates *interest rates or fees* for *commissioned based* compensation or gain"**. Mortgage loan originators, including retail and consumer lending staff assisting with mortgage loan originations that have a basic hourly or salaried position, and do not have the ability to negotiate interest rates or fees, are simply providing administrative functionality and earning a standard wage and should be excluded from the definition. Individuals that earn a commission solely based on volume, and can't manipulate the interest rate or fees for personal gain, should also be exempt. CFSB also believes that individuals who modify existing residential mortgage loans should be exempt provided the individual is not able to offer or negotiate an interest rate or fee for personal gain. At CFSB, modifications include the request for a lower rate, a reduced term, elimination of an impending adjustment to the rate, or the opportunity to convert from an adjustable rate loan to a fixed rate loan for a flat fee. The modification requests are taken by loan servicing staff as well as origination staff since the customer often calls the person that helped them the first time.

2) **Deminimis exception definition.** CFSB believes the number of transactions of 5 or fewer per individual or an aggregate of 25 for the institution in a 12 month period to be very difficult to monitor and maintain in general. While the allowance for an exception is a good thought, if the intent of the act is to monitor unscrupulous originators, protect consumers and prevent fraud, the number of transactions a bank or an individual mortgage loan originator performs is not the real factor. CFSB would propose that all regulated and examined banks with good performance histories from previous exams be granted an exception regardless of number of transactions performed. All members of our loan staff have received extensive formal training on how to utilize our loan origination system, understand how each of our loan products are structured, what type of documentation is required from the customer, and how to properly disclose all regulatory documents. Our internal Quality Control procedures, combined with our internal compliance audits, are sufficient tools to ensure all borrowers are treated with respect and not taken advantage of. If these tools have satisfied internal auditors and examiners, then the bank should be exempt from compliance of the SAFE Act. If the bank cannot be exempt, then at least the mortgage loan originator should be automatically exempt, provided they are not earning commissioned based salaries with the ability to negotiate interest rates and/or fees for personal gain, and the bank has policy and procedures that include a formal training program and documented on-going staff meetings to review the ever changing programs and underwriting standards.

3) **Renewal Period.** If the proposed act is approved, having to renew registration annually for each originator is too often and will put an undue burden on the Agency-regulated institution, the Registry, and the regulators to track this. Perhaps a compromise would allow for longer periods of renewals based on experience of the originator, provided their salary structure does not allow them to negotiate interest rates and fees for personal gain. At the very least, proceed with an alternate period of time for the Agency-regulated

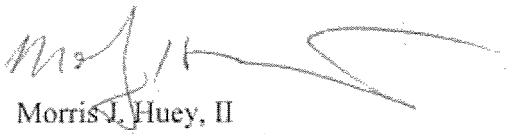
institutions so the Registry isn't overwhelmed with volume during a very short 60 days. Extend an additional 60 days, preferably in January and February which are still slower volume months.

4) **Registry**. The act allows for consumers to have access to "certain information" from the Registry in order for them to obtain information on the mortgage loan originators. To protect the privacy of the mortgage loan originator, the consumer's should not have access to information other than business addresses, phone numbers, and perhaps level of experience and/or training information. Additionally, the act states that the Registry will not screen or approve registrations, but will only be a repository for information. Will the Registry then be responsible for updating the information based on the FBI and other background checks? Will the mortgage loan originator and the lending institution be given preliminary reports before the Registry is updated? Is the background check completed annually by the Registry or does the mortgage loan originator have to supply fingerprints and a new authorization each year?

In conclusion, CFSB is supportive of the efforts to better inform the consumer of whom they will be doing business with and to ensure the mortgage loan originator is accountable. We maintain that the effort would be better placed and enforced with the broker companies who are largely responsible for the unscrupulous lending behavior, and not the Agency Regulated Community Banks. At the very least, the definition of the mortgage loan originator needs to be changed to be more specific. Mortgage loan originators who are not commissioned based are simply administrative employees of the bank and should be exempt from the requirement to register. We ask that the regulators be judicious in any implementation of this proposal as it will have a large and costly effect on the banks in terms of hours spent to implement the necessary policies, procedures, tracking, reporting, filing and compliance.

Again, thank you for providing the opportunity to comment on this proposal and we welcome the opportunity to discuss this with you further. Please do not hesitate to contact us at 785-235-1341 if you have questions.

Sincerely,



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