VIRGINIA BANKERS ASSOCIATION

July 2, 2009

Office of the Comptroller of the Currency
regs.comments@occ.treas.gov

Federal Reserve System
regs.comments@federalserve.gov

Federal Deposit Insurance Corporation
Comments@fdic.gov

Office of Thrift Supervision
regs.comments@ots.treas.gov

Dear Sir or Madam:

I am writing on behalf of the Virginia Bankers Association (the "VBA") to comment on the federal financial institution regulatory agencies' proposed regulations to implement the registration requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "S.A.F.E. Act"). The VBA represents the interests of all of the commercial banks and savings institutions doing business in the Commonwealth of Virginia. The VBA currently has 141 members.

The VBA has comments concerning three aspects of the proposal. First, we believe the proposed de minimis exception for a bank employee who originates five or less mortgage loans annually and is employed by a bank whose mortgage loan originators make twenty-five or less mortgage loans annually is too narrow. Virtually none of our bank employees would be able to use the de minimis exception as proposed. Therefore, we strongly recommend that the agencies adopt an asset-based threshold, such that employees of a bank with assets below the threshold would not be subject to the registration requirements.

We believe an asset-based approach to the de minimis exception is entirely appropriate and is consistent with the authority granted under S.A.F.E. Act. By establishing an exception for small-asset institutions, the agencies would provide relief to those who need and deserve it most: small banks. Because of their limited resources, small banks are struggling more than others to comply with the many regulatory requirements to which the banking industry is subject. Exempting such institutions from these new requirements would be consistent with exceptions elsewhere in federal law recognizing that small banks deserve relief (e.g., the Community Reinvestment Act regulations, expanded exam cycle regulations). Accordingly, we believe an asset-size threshold should be established at $1 billion, subject to periodic inflation adjustments.

Second, we believe the definition of "mortgage loan originator" should exclude individuals who merely modify, or facilitate the assumption of, existing mortgage loans. The modification or assumption of a mortgage loan does not involve the making of a new mortgage loan. Rather, in the case of a modification, there is simply a change in the terms of the loan agreement, usually in connection with a workout for a borrower who is unable to pay the loan. In the case of an assumption, there is simply a person who agrees to take over the mortgage loan obligations from the original borrower. In both situations, there is not a "sale" of a mortgage loan product, which is where the S.A.F.E. Act requirements are targeted.

Importantly, mortgage loan modification activities are typically handled by an entirely different department (i.e., loss mitigation) within most of our banks than where mortgage loans are originated. None of the purposes of the S.A.F.E. Act are served by requiring employees who modify mortgage loans or handle assumptions to be registered. Accordingly, we urge the agencies to expressly provide for the exclusion of these activities in the final regulations.

Third, we note that the proposed requirement that institutions develop detailed written policies and procedures for S.A.F.E. Act compliance will require significant time and resources of our member banks. While we understand that financial institutions must be in a position to comply with the registration requirements, it seems that requiring them to have detailed written plans for how they will do so is unnecessary. We would simply ask that, to the extent possible, the agencies limit unnecessary burdens with respect to this issue in the final regulations.

Thank you for your consideration of our comments.

Sincerely,

Bruce T. Whitehurst
President and CEO