July 9, 2009

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551
Docket No. R-1357

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Docket Number OCC-2009-0005

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
FDIC RIN 3064-AD43

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

Ms. Mary F. Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428
RIN 3133-AD59

Mr. Gary K. Van Meter
Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22102-5090

Re: Comments of Freddie Mac and Fannie Mae on the Registration of Mortgage Loan Originators; Proposed Rule Published on June 9, 2009

Dear Messrs. and Mesdames:

Freddie Mac and Fannie Mae request the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration and the Farm Credit Administration (collectively, the Agencies) exclude from the Agencies' interpretation of the term "loan originator" any loss mitigation specialists who engage in activities such as modifying existing residential mortgage loans and approving mortgage loan assumptions. For the reasons described below, these individuals should not be subject to the registration requirements in the Secure and Fair Enforcement for Mortgage for Mortgage Licensing Act of 2008 (the SAFE Act).

Freddie Mac and Fannie Mae play a key role in sustaining homeownership and supporting the Obama Administration's Making Home Affordable program. We recently announced two new initiatives – Home Affordable Refinance and Home Affordable Modification – available to our servicers and through them to borrowers. These two initiatives are designed to expand significantly the number of borrowers who can refinance or modify their mortgages to a payment that is affordable, thereby allowing

them to keep their homes. During the first quarter of this year, Freddie Mac and Fannie Mae have modified nearly 37,000 loans and expect to increase that pace throughout the year in response to the increase in mortgage delinquencies, thereby preventing foreclosures in most cases. The Making Home Affordable program and our other loss mitigation efforts are important initiatives in restoring stability and affordability to the residential housing market.

The language of the SAFE Act is consistent with the conclusion that it does not apply to servicers or loss mitigation specialists. The Act requires registration of "loan originators", defined as individuals who —

(i) take residential mortgage loan applications; and
(ii) offer or negotiate terms of residential mortgage loans for compensation or gain. 12 U.S.C. 5102(3)(A).

Loss mitigation specialists do not meet the statutory definition because they do not accept residential mortgage loan applications.

The legislative history confirms that the SAFE Act's licensing and registration requirements were designed to apply only to "loan originators." When Senator Feinstein introduced the S.A.F.E. Licensing Act of 2008 (S.2595), which was later incorporated into the Housing and Economic Recovery Act, she stated that the legislation "would create a comprehensive database of all residential mortgage loan originators. This includes mortgage brokers and lenders, as well as loan officers of national banks and their subsidiaries." Congressional Record-Senate, 734 (February 6, 2008). Similarly, in a floor statement in July 2008, Senator Dodd made clear that the provisions of the bill were intended to cover only "loan originators." Congressional Record-Senate, S6520 (July 10, 2008). The legislative history does not support an interpretation that covers loss mitigation specialists.

The substantive requirements in the SAFE Act further evidence that loss mitigation specialists were not intended to be covered. The law requires that qualification tests measure a license applicant's knowledge concerning federal and state law pertaining to mortgage origination, but there is no similar requirement for knowledge of servicing related matters, thus leading to the reasonable conclusion that loss mitigation specialists are not, and should not, be considered the same as loan originators.

The SAFE Act states that the purposes for establishing a mortgage licensing system and registry include reduction of regulatory burden and increasing consumer protection. 12 U.S.C. 5101(5), (6). We believe that subjecting loss mitigation specialists to the SAFE Act will instead make it more difficult for consumers to take advantage of federal initiatives such as the Administration's Making Home Affordable program, without benefit such as increasing their protections.

If loss mitigation specialists who are employees of financial institutions were required to register under the SAFE Act, they must submit information for a personal background investigation, including fingerprints for an FBI check and an authorization for the state registry to make additional inquiries, such as examining their employment history; the time required for inquiries could also prevent prompt action on applications for modification or refinance under federal programs. More importantly, this registration would do nothing to enhance consumer safety, since these modifications and refinances

offer the borrower better terms than the original loan, including reduced interest rates or more favorable payment terms, often enabling borrowers to escape abusive loans originated by those the Act is designed to keep out of the business. In addition, the modification terms are largely determined by the Department of the Treasury, leaving little discretion to loss mitigation specialists.

Lenders and servicers are beginning to implement the Making Home Affordable program now and are working diligently to process borrower applications, but they are experiencing difficulty in meeting borrower demand. Freddie Mac and Fannie Mae are working closely with our Seller/Servicers to help them prepare the systems and processes that they will need to handle the terms of the refinance and modification initiatives. A requirement for individual registration would delay the implementation of these initiatives without increasing safety for consumers.

We have reviewed the enclosed letter from the American Bankers Association, American Financial Services Association, Consumer Bankers Association, Consumer Mortgage Coalition, Housing Policy Council of the Financial Services Roundtable, Independent Community Bankers of America, and the Mortgage Bankers Association sent to the Secretary of HUD on March 5, 2009 and believe the points set forth in that letter support our views.

We appreciate your consideration of this matter.

Sincerely,

Robert E. Bostrom
General Counsel
Freddie Mac

Timothy J. Mayopoulos
General Counsel
Fannie Mae

cc: Federal Housing Finance Agency
Alfred Pollard, General Counsel
Chris Dickerson, Deputy Director for Enterprise Regulation

Enclosure

March 5, 2009

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Dear Secretary Donovan:

The undersigned organizations representing the financial services industry urgently seek your assistance regarding national housing policy and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E.). We are concerned that, absent appropriate guidance from HUD, there is real danger that states will enact a patchwork of new laws requiring mortgage servicers to be licensed and registered under S.A.F.E.

While we support appropriate qualifications for mortgage servicing companies, we do not believe the S.A.F.E. licensing and registry system is the appropriate vehicle to address any servicer-related concerns. S.A.F.E. was never designed to cover servicers. Rather, it was designed to establish a nationwide licensing and registration system for individual loan originators, lenders and mortgage brokers. S.A.F.E.'s substantive requirements are geared to these individuals and not servicers or their personnel. Most importantly, making servicers and their employees subject to these new requirements will only serve to hinder and make much more costly the crucial work of servicers today – reaching and assisting millions of borrowers experiencing payment difficulties. Such a result would undermine the administration's Making Home Affordable Plan.

By way of background, Congress enacted S.A.F.E.[1] as part of the Housing and Economic Recovery Act (HERA), to establish a nationwide mortgage licensing system for "loan originators."[2] Notably, it was also intended to streamline the licensing process and reduce the regulatory burden.[3] Generally, states are free to regard the requirements of S.A.F.E. as a floor, not a ceiling, which they may build on, in enacting their own licensing and registration laws. S.A.F.E. encourages the states to establish a Nationwide Mortgage Licensing System and Registry (NMLSR), to be developed and maintained by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). While the states must meet the requirements of S.A.F.E., overall responsibility for interpretation, implementation and compliance with S.A.F.E. rests with HUD. HUD must implement and administer its own licensing and registration requirements in those states where a state law does not meet the requirements of S.A.F.E. Accordingly, states and state organizations can be expected to defer to HUD's view.

In this connection, we greatly appreciated the recent letter to you of February 5, 2009, from CSBS and AARMR. In their letter, the organizations expressed the concern that "application of S.A.F.E. licensing requirements to servicer loss mitigation specialists assisting homeowners experiencing problems might seriously curtail such activity at a time of unprecedented numbers of mortgage delinquencies and defaults." The organizations, therefore, requested your interpretation of whether S.A.F.E. covered servicers and suggested a delay until July 31, 2011,

[1] Title V of the Housing and Economic Recovery Act of 2008 (HERA), Pub. Law No. 110-289, 122 Stat. 2654, 2810.
[2] S.A.F.E. Section 1502(1)
[3] S.A.F.E. Section 1502 (7)

or later as approved by the Secretary, for loss mitigation specialists employed by servicers to be covered by S.A.F.E.

While we strongly support CSBS's and AARMR's request for an interpretation, we do not agree that resolution of the issue should be deferred. Rather, we believe an examination of the Congressional intent and the law should result in a definitive opinion at this time, to exclude servicers from S.A.F.E. licensing and registration to avoid unwarranted regulation, undue harm and unnecessary costs to industry and consumers alike.

Although Congress did not issue a conference report on the legislation, the floor statement by Senator Christopher Dodd, Chairman of the U.S. Senate Banking, Housing and Urban Affairs Committee, made clear what Congress meant by "loan originators" covered by the bill. Chairman Dodd characterized S.A.F.E. as a "new mortgage broker and lender licensing requirement that was added by Senator Martinez and supported by Senator Feinstein from California. That will begin to address many of the abuses of the mortgage process that have been perpetrated by mortgage brokers."[4] There is no statement in the law or legislative history to indicate that servicers were ever intended to be covered by the legislation.

The Act itself defines a "loan originator" as an individual who "(i) takes a residential mortgage loan application; ***and*** (ii) offers or negotiates terms of a residential mortgage loan for compensation or gain."[5] S.A.F.E. also provides that the term originator "does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law *unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator* (emphasis supplied).[6]

In applying the two-prong test to define an "originator," servicers do not take applications and therefore do not meet the first part of the test. A servicer does and should negotiate the terms of an *existing* loan they service to provide loan workouts and modifications or other solutions such as a loan under the administration's program that is a better option for the borrower. The exception for real estate brokerage activities also makes clear that the bill is directed only to lenders, mortgage brokers or similar mortgage originators. The Act's definitions, therefore, include lenders and mortgage brokers and do not cover servicers.[7]

Beyond statutory interpretation, there are several other reasons why S.A.F.E. should not apply to mortgage servicers. S.A.F.E.'s substantive requirements are geared to mortgage lenders and brokers and not mortgage servicers. For example, the law requires that qualification tests adequately measure a license applicant's knowledge concerning federal law and state law pertaining to mortgage origination, but there is no similar requirement for knowledge of servicing or servicing related matters. The law requires education in federal law and regulations, ethics and fraud, fair lending and lending standards for the subprime mortgage market, but there are

[4] Congressional Record-Senate, S6520, July 10, 2008
[5] S.A.F.E, Section 1503(3) (B).
[6] HERA § 1503(3)(A)(i) (emphasis added).
[7] The issue has been confused by a model law developed by CSBS and AARMR. Unlike the statute, the model law sets forth a disjunctive two-prong test which provides that an originator is covered if it either (A) Takes a residential mortgage loan application; ***or*** (B) Offers or negotiates terms of a residential mortgage loan. Considering the fact that servicers negotiate terms, this formulation has made it more likely that states may adopt laws covering mortgage servicers absent HUD guidance.

no requirements specifically relevant to mortgage servicing (e.g. investor requirements or present value analyses). It is therefore fair to say that requiring servicers to meet S.A.F.E. requirements amounts to "pushing square pegs through round holes."

Licensing requirements applied to mortgage servicers under S.A.F.E. would be more burdensome on servicers than on originators. Servicers customarily operate in numerous, if not all, states and under S.A.F.E. their personnel would need a license in each of them. Lenders, on the other hand, except for the largest, tend to be more geographically concentrated, so their originators ordinarily would require licensure in only one or a few states. Additionally, servicing is a very labor-intensive operation, requiring very large numbers of employees and agents. A requirement for individual licensing would result in significant implementation delay and licensing costs.

Finally, in recent weeks, the administration announced its Making Home Affordable Plan, committing a large amount of government resources to provide loan modifications and refinance opportunities for millions of mortgage borrowers. Servicers and the industry will meet these challenges, but layering on additional licensing requirements that are neither well-founded nor warranted will only frustrate and make more costly this important effort.

For all of these reasons, we strongly urge that HUD publicly take the position that servicers, who work with consumers concerning *existing* loans, are not subject to S.A.F.E. and should not be subject to state licensing requirements under S.A.F.E. This should be so even if the servicer negotiates and amends the terms of a loan or helps the borrower into one of the programs under the Making Home Affordable Plan or other options. For these purposes, we suggest defining a servicer as an individual who services a preexisting mortgage loan, which may include explaining the terms of an existing loan or its escrow account, negotiating, amending or waiving the terms of an existing loan, and taking other actions designed to prevent or avoid default or foreclosure in connection with an existing loan. We also request clarification that servicers are exempt from licensing requirements when servicers arrange or assist with loan assumptions under the FHA program in connection with 12 U.S.C. § 1701j-3(b).

We greatly appreciate your consideration of this exceedingly important matter and we would welcome an opportunity to meet with you concerning it at your earliest convenience.

Sincerely,

American Bankers Association
American Financial Services Association
Consumer Bankers Association
Consumer Mortgage Coalition
Housing Policy Council of the Financial Services Roundtable
Independent Community Bankers of America
Mortgage Bankers Association

CC: The Honorable Timothy Geithner, Secretary
U. S. Department of the Treasury