

**From:** Thomas Inserra [mailto:TInserra@tcba.com]  
**Sent:** Wednesday, July 08, 2009 12:10 PM  
**To:** Comments  
**Subject:** Proposed Joint Rule - June 9, 2009 - RIN 3064-AD43, Registration of Mortgage Loan Originators

I applaud the federal agencies for the objective of this regulation which is to increase accountability of mortgage originators.

During my career, I have participated in the management of 700 failed financial institutions on behalf of the FDIC, as an employee and contractor. This experience has allowed me and the hundreds of workers reporting to me to review hundreds of thousands of mortgage loan files, and helped me to formulate fact-based opinions regarding the abuses that led to financial institution failures. It is my opinion that the abuses by mortgage loan originators GREATLY contributed to the failure of financial institutions of all sizes, including small institutions in the past, and presently.

My comment relates primarily to the de minimis portion of the regulation, which have the affect of exempting 98.7% of our nation's credit unions, and exempting 74% of our nation's banks. My view is that having any de minimis provision results in a policy loophole that has the unintended consequence of actually encouraging and allowing abuse by encouraging lenders to exploit that loophole, which defeats the whole purpose of having the regulation.

I am currently managing a small failed bank on behalf of the FDIC which would have been exempt under the de minimis section of the regulation. I can confirm that abuses by unlicensed mortgage brokers and loan originators and their disregard for sound lending practices was a major contributing cause and likely the PRIMARY cause of this institution's failure. I conclude that this proposed policy with its de minimis exemption would have had no affect in preventing this institution from failing. However, had the proposed regulation been in affect without a de minimis provision and applied to both large and small institutions, it would have likely reduced abuses and may have effectively prevented this and other small institutions from failing.

My view is that the de minimis provision fails to fully take into account the huge magnitude of lending abuses that are occurring, record number of fraud cases and a lack of appreciation of the lessons that can be learned by more closely evaluating institutions that have failed and by understanding the root cause of those failures. Abuses in mortgage origination are in fact a major contributing factor to the failure of financial institutions of all sizes.

I am aware of the arguments that the cost of compliance might be too burdensome for small financial institutions, or that the losses of small institutions do not pose a safety and soundness risk. However, I don't buy these arguments, and they are inconsistent with the abuses I see in the field. I believe that the overall aggregate losses and risks accruing from a rather large number of small institutions as a result of this loophole would in fact jeopardize the safety and soundness of the entire banking system. I would argue that the

compliance costs to the banking system would be recovered in the form of reduced loan losses, and thus be self-funding, and that the costs of NOT implementing the regulation are greater than the costs of implementing them. The negative consequences of this loophole are so significant from a risk and loss standpoint, that the risk to the entire banking industry is far too great to allow these abuses to continue. Having such an appealing de minimis “loophole” would cause and allow abuses to continue, and thus a de minimis loophole should NOT be permitted.

This proposed regulation is worded in a way that mirrors FIRREA legislation that created appraisal licensing, which also contains similar de minimis language. However, the de minimis provision in the appraisal regs has resulted in policy loophole that is being abused, and has the unintended affect of making enforcement of appraisal regs more difficult, needlessly exposes institutions to increased levels of fraud, risk and abuse, and thus should be repealed. The de minimis provision of the appraisal regs had unintended consequences, history shows us it did not work, and the similarly proposed de minimis provision will not work in this regulation either.

If the objective is to promote safe and sound banking practices and to reduce risks of taxpayer funded banking losses, my recommendation is to entirely eliminate the de minimis portion of the proposed regulation, and to repeal the de minimis portion of the existing appraisal regulation.

If however, the objective is to politically appease the lobby efforts of mortgage brokers, to preserve the ability of lenders to originate mortgages without regard to prudent lending practices, to increase safety and soundness risks of our banking system, and to preserve a boom and bust cycle where we have a major banking crisis every 15 to 20 years, then by all means, please keep the de minimis loophole provision in place.

**Thomas J. Inserra**