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Agencies Announce Start of Mortgage Loan Originator Registrations Under SAFE Act

On January 31, 2011, the Federal Reserve, Farm Credit Administration, FDIC, NCUA, OCC, and OTS jointly announced that the Nationwide Mortgage Licensing System and Registry ("Registry") is now accepting registration of mortgage loan originators employed by institutions regulated by those agencies. Employees of depository institutions that meet the definition of a mortgage loan originator now have 180 days to register with and obtain a unique identifier from the Registry. During that 180 days, employees may continue to originate residential mortgage loans even if they have not completed the registration process. However, after July 29, 2011, depository institutions cannot allow employees who qualify as mortgage loan originators to originate residential mortgage loans until they have completed the registration process and obtained their unique identifier.

On July 28, 2010, the agencies issued a Final Rule implementing the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2009, better known as the SAFE Act. Under that Final Rule, a mortgage loan originator is an individual who both takes mortgage loan applications and offers or negotiates terms for residential mortgage loans. A residential mortgage loan is defined as a consumer purpose loan secured by a lien on a dwelling or by real property upon which a dwelling will be constructed. The term residential mortgage loan is not limited to first lien purchase money loans. It also includes other consumer purpose loans secured by dwellings, including refinancings, home equity lines of credit, and reverse mortgages.

The registration requirements under the Final Rule do not apply to employees who perform "purely administrative or clerical tasks" or to employees who are involved only in loan modifications, assumptions, or loan servicing. There is also a *de minimis* exception for employees who have never been previously registered with the Registry and who have originated 5 or fewer residential mortgage loans in the past 12 months. Depository institutions must be very careful about relying upon these exceptions, however. The examples given in the Final Rule make it clear that whether an employee is or is not required to register will be determined by the duties that employee performs, not their job title. Particularly at some community institutions this may result in some loan support personnel meeting the definition of a mortgage loan originator. More information about the Registry and the registration process is available here.

In addition to ensuring that appropriate employees are registered, depository institutions must also provide certain information to the Registry and adopt appropriate written policies and procedures to ensure compliance with the Final Rule.

If you have any questions about the registration requirements for mortgage loan originators or financial institutions under the SAFE Act, please contact T. Wayne Hood at whood@millermartin.com | 615.744.8421 or any member of Miller & Martin's Financial Services Practice Group.

guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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