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distribution, or analysis of information common for the processing or underwriting of a residential mortgage loan, nor is in communication with the consumer to obtain such information.

(c) In order to conclude that an individual who performs clerical or support duties is doing so at the direction of and subject to the supervision and instruction of a loan originator who is licensed or registered in accordance with §1008.103 (or, as applicable, an individual who is excluded from the licensing and registration requirements under §1008.103(e)(2), (e)(6), or (e)(7)), there must be an actual nexus between the licensed or registered loan originator’s (or excluded individual’s) direction, supervision, and instruction and the loan processor or underwriter’s activities. This actual nexus must be more than a nominal relationship on an organizational chart. For example, there is an actual nexus when:

(1) The supervisory licensed or registered loan originator assigns, authorizes, and monitors the loan processor or underwriter employee’s performance of clerical and support duties.

(2) The supervisory licensed or registered loan originator exercises traditional supervisory responsibilities, including, but not limited to, the training, mentoring, and evaluation of the loan processor or underwriter employee.

APPENDIX D TO PART 1008—ATTORNEYS: CIRCUMSTANCES THAT REQUIRE A STATE MORTGAGE LOAN ORIGINATOR LICENSE

This appendix D clarifies the circumstances in which the S.A.F.E. Act requires a licensed attorney who engages in loan origination activities to obtain a state loan originator license and registration. This special category recognizes limited, heavily regulated activities that meet strict criteria that are different from the criteria for specific exemptions from the S.A.F.E. Act requirements and the exclusions set forth in the regulations and illustrated in other appendices of part 1008.

(a) S.A.F.E. Act-compliant licensing required. An individual who is a licensed attorney is required to be licensed if the individual is engaged in the business of a loan originator as defined in §1008.103 and such loan origination activities are not all of the following:

(1) Considered by the state’s court of last resort (or other state governing body responsible for regulating the practice of law) to be part of the authorized practice of law within the state;

(2) Carried out within an attorney-client relationship; and

(3) Accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards.

(b) S.A.F.E. Act-compliant licensing not required. A licensed attorney performing activities that come within the definition of a loan originator is not required to be licensed, provided that such activities are:

(1) Considered by the state’s court of last resort (or other state governing body responsible for regulating the practice of law) to be part of the authorized practice of law within the state;

(2) Carried out within an attorney-client relationship; and

(3) Accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards.

PART 1009—DISCLOSURE REQUIREMENTS FOR DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE (REGULATION I)

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AUTHORITY: 12 U.S.C. 1831t, 5512, 5581.

SOURCE: 76 FR 78129, Dec. 16, 2011, unless otherwise noted.

§ 1009.1 Scope.

This part, known as Regulation I, is issued by the Bureau of Consumer Financial Protection. This part applies to all depository institutions lacking Federal deposit insurance. It requires the disclosure of certain insurance-related information in periodic statements, account records, locations where deposits are normally received, and advertising. This part also requires such depository institutions to obtain a written acknowledgment from depositors regarding the institution’s lack of Federal deposit insurance.

§ 1009.2 Definitions.

For purposes of this part:

Depository institution means any bank or savings association as defined under 12 U.S.C. 1813, or any credit union organized and operated according to the
laws of any state, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to Federal credit unions.

Lacking Federal deposit insurance means the depository institution is neither an insured depository institution as defined in 12 U.S.C. 1813(c)(2), nor an insured credit union as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752.

Standard maximum deposit insurance amount means the maximum amount of deposit insurance as determined under section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)).

§ 1009.3 Disclosures in periodic statements and account records.

Depository institutions lacking Federal deposit insurance must include a notice disclosing clearly and conspicuously that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money, in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate. For example, a notice would comply with the requirement if it conspicuously stated: "[Institution's name] is not federally insured. If it fails, the Federal Government does not guarantee that you will get your money back." The disclosures required by this section must be clear and conspicuous and presented in a simple and easy to understand format, type size, and manner.

§ 1009.4 Disclosures in advertising and on the premises.

(a) Required disclosures. Each depository institution lacking Federal deposit insurance must include a clear and conspicuous notice disclosing that the institution is not federally insured:

(1) At each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main internet page; and

(2) In all advertisements except as provided in paragraph (c) of this section.

(b) Format and type size. The disclosures required by this section must be clear and conspicuous and presented in a simple and easy to understand format, type size, and manner.

(c) Exceptions. The following need not include a notice that the institution is not federally insured:

(1) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution; and

(2) Small utilitarian items that do not mention deposit products or insurance, if inclusion of the notice would be impractical.

§ 1009.5 Disclosure acknowledgment.

(a) New depositors obtained other than through a conversion or merger. With respect to any depositor who was not a depositor at the depository institution on or before October 13, 2006, and who is not a depositor as described in paragraph (b) of this section, a depository institution lacking Federal deposit insurance may receive a deposit for the account of such depositor only if the institution has obtained the depositor’s signed written acknowledgement that:

(1) The institution is not federally insured; and

(2) If the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor’s money.

(b) New depositors obtained through a conversion or merger. With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking Federal deposit insurance after October 13, 2006, a depository institution lacking Federal deposit insurance may receive a deposit for the account of such depositor only if:

(1) The institution has obtained the depositor’s signed written acknowledgement described in paragraph (a) of this section; or
§ 1009.6 Exception for certain depository institutions.

The requirements of this part do not apply to any depository institution lacking Federal deposit insurance and located within the United States that does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

§ 1009.7 Enforcement.