



## American Association of Residential Mortgage Regulators

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July 13, 2005

Richard M. Riccobono, Acting Director  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552

Dear Director Riccobono:

The Board of Directors of the American Association of Residential Mortgage Regulators (AARMR), a non-profit association of state regulators of mortgage lenders, mortgage brokers, and mortgage servicers would like to offer comments and perspective from state regulators on the October 25, 2004 opinion letter ("Opinion Letter") from the Office of Thrift Supervision ("OTS") in connection with so-called "exclusive agents" on behalf of State Farm, FSB. I respectfully submit these views on behalf of the AARMR Board.

AARMR is comprised of 42 member states, the District of Columbia and Puerto Rico that pool their resources and talents through AARMR to train regulatory staff, coordinate regulatory efforts, conduct joint/concurrent examinations and investigations, share information, coordinate with federal regulatory agencies, and discuss policy issues with industry representatives. AARMR member states are represented by the regulatory agencies with primary supervisory and enforcement authority over much of the industry affected by the Opinion Letter.

The Opinion Letter gives rise to a number of questions that must be answered in order to fully evaluate the impact of the OTS' position in this matter. For example:

1. How much oversight has actually been given to "exclusive agents," as that term is used by the OTS in the Opinion Letter?
2. What policies or guidelines for examination are currently in place for "exclusive agents"?
3. What is the OTS policy on frequency of examinations of these "exclusive agents"?
4. How many examinations of "exclusive agents" have there been to date, and in what states have they been conducted?
5. If there are no current examination plans, are there any plans to actually perform onsite examinations? If so, when and with what frequency?
6. What are OTS' staffing and resources for sufficient oversight of "exclusive agents"?

This is an immediate but not an exhaustive list of questions. We may have additional questions of the OTS in relation to the Opinion Letter and allied concerns. Dependent upon your response to this letter, the AARMR Board may make a separate request of the OTS under the Freedom of Information Act for information specifically related to the Opinion Letter and its potential impacts on consumer protection.

## Preliminary Substantive Concerns

AARMR has grave concerns related to the future of mortgage lending if the Opinion Letter is not withdrawn and becomes policy. Our concerns include but are not necessarily limited to the following:

1. “Exclusive Agent” Ill-Defined. First, AARMR is concerned with the concept of “exclusive agency” as presented in the Opinion Letter. What does the OTS mean by “exclusive agent”? Does the OTS intend that State Farm agents be “exclusive” to State Farm, FSB? We have been advised by counsel that there have been decades of precedent in law and custom as to what “agent” means and what an agent’s relationship is to his or her “principal.” If the OTS intends this common understanding of “agent” to apply, then we see a conflict arising between well established agency law and the treatment of these “exclusive agents” as operating subsidiaries. In particular the issue of agency liability appears to be turned on its head. The OTS needs to more clearly define what it means by “agent” in the context of the letter. Otherwise the OTS may be setting aside well-settled precedent of the meaning of “agent” and the liability of a “principal” for the acts of his or her “agent.”

2. Unanticipated Implications of Non-Depository, Non-Subsidiary Affiliates. Pursuant to the Opinion Letter, a thrift holding company with an FSB operating subsidiary could operate a sub-prime lending affiliate under the holding company and “broker” all of its loans to the FSB under an “exclusive agency” agreement and, if the Opinion Letter became the prevailing rule of law, these “exclusive agents” could be totally exempt from state licensing requirements and, arguably, state consumer protection laws. Again we question whether the OTS has sufficient resources to regulate these affinity relationships operating under “exclusive agency agreements.”

3. Transformation of Mortgage Lenders. Mortgage lenders, which are presently regulated by the states, including members of AARMR, could be induced to form OTS supervised charters simply to evade state licensing and consumer protection laws. While this could be a big benefit for the OTS, we do not believe Congress intended the OTS to have such a mandate, nor do we believe that the public will be adequately protected by this structure.

4. Unanticipated “Marketing Synergies” for OTS Supervised Wholesale Lenders. If the Opinion Letter is generally applied, OTS charters could re-orient their wholesale marketing to brokers, on the strength of the Opinion Letter, and induce mortgage brokers to enter into tighter relationships with them so that they would fall within the ambit of the relationship that State Farm agents have with State Farm Bank, FSB. As a result, the magnitude of exclusive agents may far exceed the OTS’ ability to adequately regulate and supervise these agents.

5. Decreased Consumer Protection. Perhaps the most important concern lies with consumer protection. The responsibility for thousands of consumer complaints alone, which are currently handled by AARMR state regulators, would be a crippling proposal for any agency. Our record demonstrates that the states are equipped to handle the volume of consumer protection issues inherent in this segment of the mortgage industry.

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We believe that, when Congress enacted the Home Owners Loan Act (“HOLA”) and subsequently enacted various amendments to HOLA, it did not intend the dismantling of the state regulatory system and the subsequent weakening of consumer protection. This is made entirely possible because the “exclusive agency” relationships advanced by the Opinion Letter allow companies to exploit their existing holding company-affiliate structures, affinity relationships and marketing budgets to vertically integrate their markets (i.e., control the retail, wholesale and secondary markets at the same time) thereby creating a federally sanctioned evasion of state licensing and consumer protection laws.

AARMR envisions the distinct possibility of *irreversible, systemic* change in the banking and mortgage lending industry if this Opinion Letter is permitted to have the force of law. We question whether Congress has been adequately apprised of the consequences of the Opinion Letter. Therefore, it is incumbent on the OTS to take a more reasoned and inclusive approach by consulting with Congress and state regulatory associations, such as AARMR.

We invite the OTS to meet with representatives of AARMR to discuss our concerns about this Opinion Letter.

Please contact us at your earliest convenience.

Respectfully,



Chuck Cross  
President

cc: Members of the United States Senate Banking, Housing, and Urban Affairs  
Committee

Members of the United States House of Representatives Financial Services  
Committee