



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 11, 2002

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2002-11

Jan Witold Baran  
Carol A. Laham  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Dear Mr. Baran:

This responds to your letters dated May 9, June 5, June 28, and August 19, 2002, on behalf of the Mortgage Bankers Association of America ("MBAA") and the Mortgage Bankers Association of America Political Action Committee ("MBAA PAC"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the relationship of MBAA PAC to the Texas Mortgage Bankers Association PAC ("TMBA PAC").

***Question Presented***

Specifically, you ask whether MBAA PAC is affiliated with TMBA PAC. The question implicates the Commission's rules on trade associations, federations of trade associations, and affiliation. In order to answer the question, it is necessary to analyze the relationship of MBAA and TMBA. This entails a discussion of the nature and structure of the two associations, and structural or other connections between the associations. An analysis of MBAA's relationship with TMBA for purposes of affiliation within a federation must also address MBAA's relationship with the State associations in general. TMBA will be used as the representative example of the State associations where information is not provided for the State associations in general.

### ***Applicable Law***

Commission regulations define a trade association as:

[G]enerally a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of which inures to the benefit of any member.

11 CFR 114.8(a).

Commission regulations define a federation of trade associations as "an organization representing trade associations involved in the same or allied line of commerce." 11 CFR 114.8(g)(1). Commission regulations explain the federation's role for purposes of the Act as follows:

(1) ... Such a federation may, subject to the following limitations, solicit the members of the federation's regional, State or local affiliates or members, provided that all of the political committees established, financed, maintained or controlled by the federation and its regional, State, or local affiliates or members are considered one political committee for the purposes of the [contribution] limitations in §§110.1 and 110.2. The factors set forth at §100.5(g)(4) shall be used to determine whether an entity is a regional, State or local affiliate of a federation of trade associations.

(i) The federation and its member associations may engage in a joint solicitation; or

(ii) The member association may delegate its solicitation rights to the federation.

(2) A federation is subject to the provisions of this section when soliciting the stockholders and executive or administrative personnel of the corporate members of its member associations.<sup>1</sup>

11 CFR 114.8(g)(1) and (2).

The factors set forth at 11 CFR 100.5(g)(4) (and repeated at 11 CFR 110.3(a)(3)) are used to determine whether political committees and/or sponsoring entities are affiliated under the Act. If political committees are affiliated, a single limit will apply to the aggregate of contributions made by them and to the aggregate of contributions

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<sup>1</sup> Generally, these provisions provide that the restricted class personnel of a member corporation of a trade association may be solicited for contributions to a trade association's SSF only if the member corporation separately and specifically approves the receipt of such solicitations for the calendar year and does not grant such approval to any other trade association for the same calendar year. 11 CFR 114.8(c) and (d). An approval granted to a State trade association that is an affiliate of a federation will constitute an approval for solicitation by the federation for its SSF. See 11 CFR 114.8(g)(2); see also Advisory Opinions 1995-17 and 1995-12.

received by them. 2 U.S.C. 441a(a)(5); 11 CFR 110.3(a)(1); *see also* 2 U.S.C. 441a(a)(1)-(2). Moreover, as indicated in section 114.8(g), a federation's ability to solicit the restricted class of the corporate members of a State trade association is dependent upon whether the federation's PAC and the PAC of the State association are considered to be one political committee under the Act. Where entities are not *per se* affiliated, under 11 CFR 100.5(g)(3) and 110.3(a)(2),<sup>2</sup> Commission regulations provide for an examination of various factors in the context of an overall relationship to determine whether one organization is an affiliate of another and, hence, whether their respective SSFs are affiliated with each other. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J).

The factors relevant to this inquiry are whether a sponsoring organization or committee: (B) has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, by-laws, contracts or other rules, or through formal or informal practices or procedures; (C) has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee; (D) has a common or overlapping membership with another organization or committee which indicates a formal or ongoing relationship between the organizations or committees; (E) has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the organizations or committees; (G) provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee; (H) causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee; (I) had an active or significant role in the formation of another sponsoring organization or committee; and (J) has a pattern of contributions or contributors similar to that of another sponsoring organization or committee which indicates a formal or ongoing relationship. 11 CFR 100.5(g)(4)(ii) and 11 CFR 110.3(a)(3)(ii)(B), (C), (D), (E), (G), (H), (I), and (J). The list of ten circumstantial factors set out at 11 CFR 110.3(a)(3)(ii) is not an exclusive list, and other factors may be considered. *See* Advisory Opinions 2001-18, 2000-28, and 1995-36.

### ***Factual Background***

#### ***MBAA***

MBAA is an incorporated not-for-profit trade association representing the real estate finance industry. MBAAPAC is MBAA's separate segregated fund ("SSF") and has been registered with the Commission since 1975. MBAA is recognized as an organization exempt from Federal income tax under 26 U.S.C. 501(c)(6). It is composed primarily of its 1431 "Regular Members" which are "[b]usiness organizations and financial institutions that are regularly in the business of originating, servicing, or

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<sup>2</sup> According to Commission regulations, committees established by a membership organization including trade or professional associations and/or related State and local entities of the organization are *per se* affiliated. As indicated below, MBAA does not appear to have a typical multi-tier federated structure or have sufficient structural aspects of the type that would fall within 11 CFR 110.3(a)(2)(iv). *Cf.* 11 CFR 100.8(b)(4)(iv)(E) and 114.1(e)(5).

investing in mortgage loans or other types of real estate finance.” MBAA Bylaws, Article III, §3.12. MBAA also has 743 “Associate Members.” They are defined as “[b]usiness organizations, financial institutions and individuals that regularly provide service or products for business organizations or financial institutions eligible to be regular members.” *Id.* at 3.13. State mortgage bankers associations do not qualify as regular or associate members, but may participate in a “membership” role in MBAA pursuant to Article X of the Bylaws, as “Adjunct Organizations.” Adjunct Organizations include State Associations, International Organizations, and “Other Organizations.” Until recently, this category was named “Affiliated Organizations.” A State association is defined as “[a] not for profit association, which has interests similar in nature to those of [MBAA] and which represents firms or individuals engaged in real estate finance and serves an exclusively statewide or regional membership base.” MBAA Bylaws, 10.10(a). There are 46 State association members. Local associations are not eligible for membership in MBAA.<sup>3</sup> Currently, there are also 274 members in other categories such as honorary, special, or small mortgage broker membership.

MBAA’s web site indicates that, other than honorary members, the members in each of these categories pay annual dues to MBAA in specific amounts pre-determined by the organization. According to the MBAA bylaws, only the regular members have voting power; this power includes the right to elect the chairman, vice chairman, and chairman-elect of the MBAA. MBAA Bylaws, §2.10 and Article V.

The MBAA bylaws provide for a Board of Directors, which manages the affairs of the association. MBAA Charter, §10.01. The Board consists of 20 voting members, broken down as follows: One director must be the immediate former Chairperson of MBAA; six directors must be officers of regular members engaged in the residential single family finance business; three directors must be officers of regular members engaged in the commercial real estate or multifamily finance business; one director must be an employee of an associate member; one director must be a current or former elected or staff officer of a State or local mortgage bankers association; five directors must be officers of regular members serving at-large; and three directors must be the elected officers of the MBAA. MBAA Bylaws, §4.13. The Board members are selected by the Nominating Committee, or by either the Residential Board of Governors or the Commercial Real Estate/Multifamily Finance Board of Governors, depending on the board slot. (See below for a discussion of the Boards of Governors.) You state that, currently, only one individual on the Board of Directors has a direct relationship to a State or local mortgage bankers association.<sup>4</sup>

The Chairperson of MBAA may also designate standing committees of MBAA on an annual basis. Members of the standing committees must come only from the membership of MBAA or the Board of Directors. MBAA Bylaws, §8.10. MBAA also has two Boards of Governors: a Commercial Real Estate/Multifamily Finance Board and

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<sup>3</sup> You state that MBAA believes that there are approximately 200 local mortgage bankers associations in the U.S. but that it is aware of only 70. In addition, MBAA is not aware of whether members in the local associations automatically have membership in State Associations because it has no control over this.

<sup>4</sup> This individual is the Executive Director of the Mortgage Bankers Association of New Jersey.

a Residential Board. MBAA Bylaws, §6.10. These boards have the duties and authority that the Board of Directors delegates to them. MBAA Bylaws, §6.13. The MBAA bylaws do not identify any relationship between the State associations and these two Boards of Governors. The bylaws of the Residential Board of Governors do not refer at all to the State associations and limit its membership to specific numbers of regular members. The bylaws of the Commercial Real Estate/Multifamily Finance Board provide for five supporting members out of 30 total members, and these five members include associate vendor members and “affiliate” members, which is the former name for the category that includes the State associations. However, you indicate that representatives of the State associations are not eligible to sit on either Board of Governors.

Finally, in its discussion of MBAA committees, the MBAA bylaws (at §8.50) refer to a State and Local MBA Advisory Council (“Advisory Council” or “Council”), which is an organization under the authority of MBAA and is not separately incorporated. See Advisory Council Bylaws, §1.10. According to the Advisory Council bylaws, its mission is:

- (a) To facilitate and promote grass roots participation in the relationship between federal, state and local governments and the real estate finance industry;
- (b) To facilitate the delivery by MBAA of member services to state and local mortgage bankers associations and mortgage lenders associations;
- (c) To make policy recommendations to the Board of Directors of MBAA affecting association-related state and local issues.

Advisory Council Bylaws, §2.10. The Council consists of nine members, including two representatives from each of the four operating Regions identified by the U.S. Department of Housing and Urban Development. Of these two representatives from each region, one is a volunteer member of a State or local association within the region, and one is a paid executive of a State or local association within the region. The ninth member and chairman is the State or local association member that is a member of the MBAA Board of Directors. Advisory Council Bylaws, §§3.10 and 5.20.<sup>5</sup> Each State and local association within the region is entitled to nominate a candidate for the two positions from its region, and each State association is entitled to one vote for each of the two positions. Advisory Council Bylaws, §3.40(c) and (d). “Voting is by state for practical reasons, and it is anticipated that state associations will consult with and respect the preferences of the local associations in the state when the state association votes.” Advisory Council Bylaws, §3.40(d). Elections are conducted by MBAA under the direction of the State/Local Representative on the Board of Directors. Advisory Council Bylaws, §3.40(b). The Council is to meet four times per year, at least twice in person,

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<sup>5</sup> The State and Local Council shall recommend a list of nominees to the MBAA nominating committee for the State and Local Representative position on the MBAA Board of Directors. Advisory Council Bylaws, §5.30. The MBAA nominating committee makes the selection.

and two meetings may be conducted by electronic means. Advisory Council Bylaws, §4.10. The MBAA bylaws state that “[i]n addition to individuals from the membership, executive officers of state and local mortgage bankers associations shall be eligible to serve as members of the State and Local MBA Advisory Council.” MBAA Bylaws, §8.50.

### *TMBA*

TMBA’s purpose is “to promote the proper professional, educational, political, and ethical conduct of persons engaged in the mortgage banking and real estate finance business in the State of Texas” through meetings, discussion, and the circulation of literature. TMBA Bylaws, Article II. The TMBA bylaws make no mention of MBAA.<sup>6</sup> TMBA PAC registered with the Commission on August 17, 2001, and is the only Federal PAC sponsored by an adjunct organization member of MBAA.

TMBA has a total of 92 Regular Members and 67 Associate Members. Regular members encompass residential or commercial bankers and are comprised of financial institutions that originate or service loans, that have been in continuing business for the previous two years, and that meet other specified disjunctive criteria pertaining to their services. TMBA Bylaws, Article IV, §1(a). Associate members are comprised of all mortgage banking service providers, including mortgage brokers, title companies, mortgage and other insurance companies, law firms, or any other provider servicing the mortgage industry. There are two other membership categories; they are Affiliate Members, which are out-of-state companies with limited operations in Texas that do not want to become regular or associate members, and Honorary Life Members selected by the TMBA Board of Directors. *Id.*, at §1(b)-(d). The first three membership categories pay annual dues to TMBA. Each representative of a regular member and each representative of an associate member who is also a TMBA director have voting rights at the TMBA business meetings. TMBA’s affairs are controlled and managed by its Board of Directors which consists of 30 members who are either regular (at least 21 directors) or associate members, the three elected officers, and past TMBA presidents.

### *Relationship Between MBAA and TMBA*

You assert that MBAA is not a federation of trade associations. You state that it does not represent any other trade association and does not recognize the State associations as “components” of MBAA. Any State association wishing to become attached to MBAA must apply in order to become an adjunct organization. Regular and associate members of MBAA are not members of State (or local) associations simply by virtue of their membership in MBAA, and members of State (or local) associations are not automatically members of MBAA. See MBAA Bylaws, §10.60. There are no consolidated dues statements between MBAA and any State association, nor can a member join both MBAA and a State association in the same application. MBAA has no control or input into State association dues statements or receipts. You state that, instead,

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<sup>6</sup> You have contacted the TMBA as to any official TMBA documents referring to MBAA and you are not aware of any.

membership in MBAA is independent of membership in State or local associations, and that State associations are “freestanding associations that are eligible for membership in the MBAA based on the fact that they are already in existence as state associations.” The State associations are under no obligation to adopt the MBAA Bylaws, nor has MBAA provided prototype bylaws to any State association. The MBAA does not provide instructions to the State associations as to their organization, policies, or operations.

The State/Local MBA Advisory Council may be the most prominent feature of the relationship between MBAA and the State associations. Moreover, as indicated above, Council by-laws allow for an executive of a non-member organization to sit on the Council. However, you state that the MBAA does not represent or coordinate with State and local associations in lobbying efforts. Although section 2.10(a) of the Advisory Council bylaws states that part of the Council’s mission is to facilitate and promote grass roots participation in the relationship between Federal, State, and local governments in the real estate finance industry, you state that MBAA does not represent the State associations with respect to the State associations’ Federal or non-Federal lobbying nor do they coordinate with the State associations’ own lobbying to the extent they engage in such lobbying. You state that MBAA reaches out to all types of its members, whether they are in the residential finance business, the commercial real estate/multifamily finance business, or are a State Association, to assist MBAA in its Federal lobbying as to issues concerning MBAA, not the State associations. It does this by requesting that the members call or write to Members of Congress. The State Associations are not bound to assist MBAA in those efforts and often do not because of disagreements with MBAA’s positions.

The Advisory Council Bylaws, at section 2.10(b) and (c), also refer to the facilitation of member services to the State and local associations and to the making of policy recommendations affecting MBAA-related State and local issues. You emphasize that “member services” means services to the State associations as members of MBAA and not to the members of State or local associations, that the recommendations are with respect to issues pertaining to MBAA and not to the State associations, and that the focus is for MBAA to service all of its members effectively. The Advisory Council and MBAA staff also conduct periodic regional meetings with State associations to discuss MBAA issues and programs affecting them as MBAA members. You emphasize that these meetings are similar to MBAA quarterly meetings with its residential finance members and its commercial/multifamily finance members.

You discuss the lack of governance relationships and overlaps between MBAA and TMBA, which the Commission assumes is typical with respect to the remainder of the member State associations. Specifically, you state that MBAA has no authority or ability to hire, appoint, demote or otherwise control the officers or other decisionmaking employees of TMBA or vice versa. You also state that the directors, governors, officers, or employees of MBAA do not overlap with the directors, officers, or employees of TMBA. As indicated above, only one out of the twenty members of the MBAA Board of Directors is a representative of State associations, i.e., the representative of the Council (who is not from Texas). There does not appear to be a significant degree of membership

overlap between MBAA and TMBA. Of TMBA's 92 regular members and 67 associate members, 33 (22 regular and 11 associate) are members of MBAA, constituting a 21 percent overlap. Moreover, there are 197 MBAA regular members with Texas addresses. The 33 TMBA members constitute only 17 percent of MBAA's regular membership in Texas.<sup>7</sup> The MBAA believes that these numbers typically reflect the level of overlapping membership between each State association and MBAA.

You state that there is no "provision of goods or services from the MBAA to the TMBA or vice versa." There are some arrangements, however, whereby MBAA arranges for the use of funds in connection with the State associations. The only contractual arrangement is an education program known as the Campus MBA Affiliate program whereby 16 of the 46 State associations (including TMBA) promote Campus MBA in exchange for a percentage of the profits generated from Campus MBA sales in the State (regardless of whether the purchaser is a member of either MBAA or the State association). You indicate that the expenses associated with these arrangements constitute only an insignificant part of the revenues or budget of MBAA and the State associations. The program constitutes approximately 2.5% to 3% of TMBA's income, and, in view of the fact that this is supposed to be a profit-making opportunity, the MBAA assumes that TMBA spends less than that percentage of its annual expenses on the program. MBAA anticipates that these percentages are similar to those for other State associations. As for MBAA, only three percent of its budget relates to the Campus MBA program with the State associations and only one-tenth of that amount is distributed to the State associations.<sup>8</sup>

You also note that MBAA endorsed funding of Habitat for Humanity ("Habitat") grants benefiting nine State Associations and exceeding a total of \$100,000 in the year 2000. This figure was reduced to \$50,000 for each of 2001 and 2002. You explain that MBAA encourages any member, including a State association, that wishes to aid Habitat in building a home to apply for a grant from MBAA, which will be donated by MBAA to Habitat. You state that this is not a means by which MBAA enhances the State associations' budgets but a means for getting MBAA members involved in an MBAA-supported program and to enhance MBAA's reputation and the reputation of its members in their communities. You explained by phone that the figures described above do not comprise a significant portion of MBAA's budget and would not constitute a significant portion of the State Associations' budgets if the funds went to those associations.

You state that, to the knowledge of MBAA's current staff, neither MBAA nor any person acting on behalf of MBAA participated in the establishment or formation of any State (or local) mortgage bankers association. You also state that neither MBAA nor MBAA PAC played a role in the formation of TMBA Federal PAC, that there are no

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<sup>7</sup> You state that, if the MBAA associate members with Texas addresses are included, the 33 TMBA members would constitute less than a ten percent overlap.

<sup>8</sup> You also note that Campus MBA entails dozens of agreements with various member and non-member companies and real estate publishers, and MBAA views the agreements with the State associations as relatively insignificant in the overall program.

overlapping personnel between the PACs, that the PACs have not had a past relationship, and that “there will be no coordination, direction or control between the PACs with respect to the raising or spending of funds.”<sup>9</sup> You also state that MBAA is aware that some of the State associations (including TMBA) have non-Federal PACs but you state that MBAA and its PAC did not have a role in the formation of these PACs, do not operate or control those PACs, and have no overlapping personnel with them. You state that MBAA PAC and the non-Federal PACs do not discuss their respective activities (including the receipt and disbursements of contributions or donations). Consistent with your general representations as to the lack of discussion between MBAA PAC and the State association PACs, the Commission assumes that MBAA PAC does not consult with the State Association executives as to its activities.

### *Legal Analysis*

#### *Organizations as Trade Associations*

Both MBAA and TMBA appear to qualify as trade associations under Commission regulations. 11 CFR 114.8(a). They are both not-for-profit corporations composed of entities engaged in the business of mortgage banking and real estate finance, and the purpose of each organization is to promote and improve business conditions in that line of commerce. Both organizations appear to satisfy the criteria for membership organizations under the Act. *See* 11 CFR 100.8(b)(4)(iv)(A) and 114.1(e)(1).<sup>10</sup>

#### *MBAA as a Federation of Trade Associations*

In a number of advisory opinions, the Commission has addressed issues pertaining to federations of trade associations. Typically, such federations are national associations with component State organizations that are officially recognized as such through the interconnectedness of the national association with each of the State associations. This has entailed such features as a significant portion of the national association’s board of directors consisting of representatives of the State associations (*see*

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<sup>9</sup> The Federal PAC of TMBA is newly formed. Its reports as of the 2002 July quarterly disclose the receipt of only four itemized (and no unitemized) contributions and the disbursement of only one contribution. The FEC website discloses no overlapping contributors or recipients between TMBA’s Federal PAC and MBAA PAC for the 2001-2002 election cycle; one of the 2001 contributors to TMBA’s Federal PAC is disclosed as a contributor to MBAA PAC in 2000.

<sup>10</sup> Both organizations are composed of entities that are “members” under the Act and regulations, due to the fact that the entities satisfy the organization’s membership requirements, affirmatively accept the organization’s invitation to become a member, and pay annual membership dues of a specific pre-determined amount. 11 CFR 100.8(b)(4)(iv)(B)(2) and 114.1(e)(2)(ii). With respect to the definition of “membership organization,” some of those entities have the power or authority to operate the organization pursuant to the bylaws. 11 CFR 100.8(b)(4)(iv)(A)(1) and 114.1(e)(1)(i). Moreover, both organizations’ governing documents state the membership requirements in their bylaws and (as evidenced by their web sites) expressly solicit persons to be come members. 11 CFR 100.8(b)(4)(iv)(A)(2) and (4), 114.1(e)(1)(ii) and (iv). The Commission assumes that each organization makes its formal organizational documents available to its members upon request and expressly acknowledges the acceptance of membership. 11 CFR 100.8(b)(4)(iv)(A)(3) and (5), 114.1(e)(1)(iii) and (v). Finally, neither is organized primarily for the purpose of influencing an election of any individual to Federal office. 11 CFR 100.8(b)(4)(iv)(A)(6) and (5), 114.1(e)(1)(vi).

Advisory Opinions 1998-19, 1995-17, 1991-24, and 1977-44); membership in the local or State entity as a necessity for membership in the national association, or where such State or local membership automatically provides membership in the national association (*see* Advisory Opinions 1998-19, 1995-17, 1994-19); dues for the higher level of the organization that are collected by the lower level (*see* Advisory Opinions 1998-19 and 1995-17); or prescription by the national organization of major portions of a State association's by-laws (*see* Advisory Opinions 1995-17 and 1994-19). When national trade associations have such features, the Commission has used these facts in its analysis of both the federation status of the national association and the question of affiliation of that association with State or local organizations. The factors used in concluding that there is a federation in such situations will very likely lead to a conclusion of affiliation under the Commission regulations.

The Commission has also concluded that a national trade association was a federation of trade associations and affiliated with its State association members where the features described above were not present. The Commission, in Advisory Opinion 1995-12, concluded that the Independent Bankers Association of America ("IBAA") was a federation of State associations and affiliated with those associations based on various connections. The situation presented in that opinion was similar in certain respects to the situation presented by you and may serve as a basis for comparison.

IBAA had a relationship with an organization known as the State Independent Bankers Council ("SIBA Council") that bore a similarity to MBAA's State/Local MBA Advisory Council and that served as one of the vehicles for State association input to IBAA with respect to various policies.<sup>11</sup> Just as the State/Local Advisory Council has one representative on a twenty-person MBAA Board of Directors, the SIBA Council had two representatives on a large board. Despite this similarity, there were other connections between the State associations and IBAA, which are absent herein, that led to a conclusion that IBAA was a federation. Although representatives of each State, and not each State association, sat on IBAA's board, IBAA's governance structure (unlike MBAA's) was based on State divisions. The IBAA bylaws provided for State association input as to the IBAA district lines within a State, the IBAA board member from each State acted as a liaison to the State association and negotiated any differences between IBAA and the State association as to issue concerns, and IBAA bylaws required that at least one State association officer sitting on the SIBA Council (each State association had a seat on the SIBA Council) serve as an ex-officio member on most of IBAA's standing committees. Moreover, the role of the State associations in IBAA appeared to differ significantly from the role of the State mortgage bankers associations in that there was greater lobbying coordination between the State and national associations, and State association executives consulted regularly with the national association's SSF with respect to contributions in their States. It was also significant that the State's representative(s) on the IBAA board also served on the State association's board,

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<sup>11</sup> Although IBAA asserted that there were "no formal policy channels" between IBAA and the SIBA Council and that the Council did not represent individual State associations on policy matters, the Council acted as an informal advisory committee to IBAA.

pursuant to State association bylaws, and that the State associations' bylaws singled out IBAA as an organization to which they would extend assistance and cooperation.<sup>12</sup>

By contrast, MBAA does not appear to have the same relationship with the State associations. The TMBA bylaws make no reference to the MBAA. MBAA's Board is not organized on the basis of any State division, and the individual State associations do not have the same kind of liaison relationship with the MBAA Board that was present in IBAA. In addition, MBAA does not have the features of a more traditional federated structure discussed above with respect to multi-tiered membership, dues collection, board representation, or prescription of major portions of the bylaws. MBAA may be considered as representing the State Associations to a certain extent with respect to the policy interests of those associations before governmental entities, although you assert that this really amounts to just voluntary cooperation between the associations and MBAA to enhance MBAA's efforts on behalf of itself. MBAA has a number of other contacts with its State association members, although you minimize the significance of these contacts by noting that groups of other MBAA members have similar types of contacts and interactions. In the sense that MBAA is a representative of these State trade associations and has a relationship with these organizations, it may be construed as a federation of trade associations. Nevertheless, a Commission conclusion that MBAA is a loose federation would not dispose of the issue presented if the State associations are not construed as affiliates of the federation under 11 CFR 100.5(g).

#### *State Associations as Affiliates of MBAA*

Although there are relationships between MBAA and the State associations, facts and descriptions presented by you provide support for a conclusion that TMBA is not affiliated with MBAA under Commission regulations. Although the State associations as a group have a seat on the MBAA Board of Directors, this constitutes only one of 20 directors, and, unlike IBAA's situation, there do not seem to be other official links between the national board and the State association boards, such as seats held by national board members on the State board, pursuant to State association bylaws. MBAA's Boards of Governors, which are the subordinate governing bodies, do not include official representation of the State associations. Moreover, you note a lack of overlap of directors, governors, officers and employees between MBAA and TMBA (as the representative State association). In addition, it is significant that there is only a small overlap between the memberships of MBAA and the State associations, using Texas as the example. The overlap percentages differed markedly from the overlap percentages in Advisory Opinion 1995-12, where membership overlap was a significant factor in determining that IBAA was not just a federation but was also affiliated with the State associations.<sup>13</sup> See 11 CFR 11 CFR 100.5(g)(4)(ii) and 11 CFR 110.3(a)(3)(ii)(B), (C), (D), and (E). The lack of a more traditional federated structure, *e.g.*, as to membership

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<sup>12</sup> One State association was used as the example for all of the State associations in IBAA.

<sup>13</sup> In the State association example used for Advisory Opinion 1995-12, 57 percent of the member banks in the State were members of both associations, 83 percent of IBAA members in the State were members of the State association, and 65 percent of the State association members were members of IBAA. Compare the membership overlap data in Advisory Opinion 2000-28, n.4, and 1996-38.

structure, board overlap, and prescription of by-laws, also is relevant to the application of factors (B), (C), (D), and (E) and provides further support for a conclusion of non-affiliation. The Commission also takes into account your description of the nature of the contact and consultation between MBAA and the State associations. Although the consultation with the State associations as to MBAA's public policy concerns and as to issues affecting the State associations as MBAA members is important and reflects a degree of influence between the national and State associations, you emphasize the loose nature of this interaction.

With respect to the provision, or the arrangement for the provision of funds or goods between MBAA and the State associations, the Commission notes the lack of dues consolidation. The Campus MBA program involves some arrangement for State associations to receive revenues resulting from disbursements by MBAA but these funds constitute a very small part of the operations of the associations. The endowment of grants by MBAA for Habitat also amounts to an insignificant portion of the budgets of the associations involved. The Commission assumes that there are no other programs or arrangements that would cumulatively entail a significant part of the funding for the operations of either MBAA or the State associations. *See* 11 CFR 100.5(g)(4)(ii) and 11 CFR 110.3(a)(3)(ii)(G) and (H).

You assert the lack of involvement by MBAA or MBAA PAC in the formation of any of the State associations or any of the PACs of the State associations. You also assert the lack of personnel overlap or control between the MBAA and the State associations' PACs and the lack of discussion between the PACs as to their activities on both a Federal and non-Federal level. *See* 11 CFR 100.5(g)(4)(ii) and 11 CFR 110.3(a)(3)(ii)(I) and (J).

Based on the foregoing consideration of the affiliation factors in the context of the overall relationship between MBAA and TMBA and other State associations (as well as the relationships among the PACs), the Commission concludes that TMBA is not an affiliate of MBAA under the Commission regulations, and that MBAA PAC and TMBA PAC are not affiliated. Therefore, the two PACs do not have to aggregate the contributions received by them and do not have to aggregate the contributions made by them, for the purposes of the Act's contribution limits at 2 U.S.C. 441a. The Commission's conclusion also means that TMBA's incorporated members may not give prior approval to MBAA for solicitation of their restricted class personnel for contributions to MBAA PAC, and that the restricted class personnel of TMBA's incorporated members may not be solicited for contributions to MBAA PAC, unless those incorporated members are also members of MBAA in their own right. *See* 11 CFR 114.8(c) and (d). Similarly, the restricted class personnel of MBAA's incorporated members may not be solicited for contributions to TMBA PAC, unless those incorporated members are members of TMBA in their own right and have given prior approval to TMBA.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. §437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented in this opinion, then the requester may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

David M. Mason  
Chairman

Enclosures (AOs 2001-18, 2000-28, 1998-19, 1996-38, 1995-36, 1995-17, 1995-12, 1994-19, 1991-24, and 1977-44)