

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

March 24, 2011

The Honorable Ben S. Bernanke
Chairman
Federal Reserve Board
20th & Constitution Ave. NW
Washington, DC 20551

Federal Reserve Final Rule on Loan Originator Compensation
Regulation Z: Docket No. R-1366, Truth in Lending

Dear Chairman Bernanke:

I am writing to urge that the Federal Reserve take immediate action to make two changes to the rule cited above, which is scheduled to take effect on April 1st.

It is important at this point that the rule take effect, and that the Federal Reserve immediately thereafter amend the rule to make these two changes. I urge these changes both for substantive reasons and to dispel the misperception that all the elements in the rule were called for under the "Wall Street Reform and Consumer Protection Act" (P.L. 110-203) (or as it is sometimes referred to, as the Financial Reform Act).

As the Federal Reserve noted in its September 24th rule publication, much of the rule is consistent with the Financial Reform Act. However, I believe it was a mistake for this rule to go beyond what was required in the Financial Reform Act. The two problems I am citing unnecessarily interfere with borrowers' ability to obtain loans from mortgage brokers and their resolution would not damage the core underlying consumer protections. Therefore, I believe it is important that the rule take effect as scheduled, and that the Federal Reserve take immediate action to correct the two problems created by the rule.

First, the rule appears to prohibit a mortgage brokerage firm that is receiving compensation for a loan from the consumer from paying any compensation related to that loan to an employee of that firm. This is because the rule appears to include language that states that when a loan originator receives compensation from the consumer on a loan, no loan originator at all can receive compensation related to that loan from any source.

This differs from Section 1403 of the Financial Reform Act, which merely states that if a loan originator receives compensation from the consumer, that originator cannot receive compensation from another source. This statutory provision prevents double dipping, while the more restrictive Fed rule prevents the sharing of the consumer-paid compensation by the firm with an employee for that employee's work on the loan. I would note that such sharing of compensation would not involve an increase, directly or indirectly, in the level of fees paid by the consumer. I believe this language should be revised to allow employee compensation in this circumstance. Of course, any such compensation should be subject to

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the same rule as laid out in the Rule of Construction (A) in Section 1403 of the Financial Reform Act – that such compensation cannot vary based on terms of the loan, other than the amount of principal.

The second issue relates to a common occurrence in which mortgage brokers offer to make small fee reductions at loan closing, to cover shortfalls which sometimes result because of last minute third party fee changes, or to cover the cost of a short extension of a loan lock when the loan failed to close within the window of the original loan lock. I believe this practice should be allowed if the fee reduction is at the request of the borrower and is made within a short period (eg., 24 hours) of the loan closing. I believe that permitting such a practice does not undermine the rule's essential consumer protections. However, I am cognizant of the potential for a loan originator to systematically make use of such a practice with the intent of circumventing the rule's consumer protections. Therefore, it would be appropriate to limit the frequency of such use and to limit either the dollar or percentage amount of the reduction, and to monitor a loan originators' use of this flexibility to ensure that such flexibility is not abused.

I believe that both of these provisions should be revised expeditiously by the Federal Reserve through an appropriate action or proceeding at the earliest possible time.

Thank you for your consideration of these requests.



BARNEY FRANK
Ranking Member