



January 18, 2011

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Sandra F. Braunstein
Director, Consumer and Community Affairs Division
Board of Governors of the Federal Reserve System
1709 New York Avenue, NW
Room 8021
Washington, DC 20006

Dear Chairman Bernanke and Director Braunstein:

The National Association of Mortgage Brokers (“NAMB”) is extremely concerned about the potential unintended consequences that are likely to follow the April 1, 2011 compliance deadline for the Board’s final rule on loan originator compensation (“Rule”). Therefore, we write to you today to respectfully request written guidance that will help our members and partners in the mortgage industry implement the changes prescribed in the Rule, and also ask that you delay enforcement of the Rule for at least twelve (12) months while the industry determines the most effective means of implementing these changes.

The Rule, by design, is a game-changer for the mortgage industry. It forces the industry to re-examine well-established and, until recently, legal policies and procedures, and requires significant changes to the way in which loans are priced and the way that loan originators may be compensated for their services. Additionally, because the Rule was made pursuant to the Board’s authority to prohibit unfair or deceptive acts or practices, severe penalties could be in order for any party found to be in violation of the Rule.

While we acknowledge the Board’s efforts in promulgating the Rule and the Board’s intent to change the way business is done in our industry, we are deeply concerned that the Rule is flawed in certain respects and has yielded more questions than answers from both creditors and loan originators seeking to comply with the Rule. We strongly believe that if the rules of the game are going to change, it is critical that: (1) everyone knows exactly what the rules are and how they are going to be interpreted; (2) the rules are applied fairly and equally to every similarly situated party; and (3) the rules will not be continuously changing.

In July 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Act”), which established the Consumer Financial Protection Bureau (“CFPB”). Under the Act, the CFPB is given authority to supervise certain activities of financial institutions and prescribe rules for consumer financial products and services. The Act requires the CFPB to propose its own rules and model disclosure forms that address the very same subject matter as the current

Board Rule. Additionally, because there are a number of differences between the Act and the Board's Rule, the CFPB will need to reconcile these differences in its rulemaking process.

The inevitability and uncertainty of this future rulemaking is very unsettling for our industry as we contemplate significant changes to our business models and practices in order to comply with the Board's Rule. In an already turbulent market, what we really need are clear lines and objective parameters within which to operate our businesses. The potential for cumulative and conflicting rulemaking in the very near future puts our entire industry in an untenable position and makes it extremely difficult for us to move forward. Therefore, we strongly encourage the Board to postpone the April 1, 2011 compliance deadline for the Rule.

We believe postponing mandatory compliance with the Rule until after the CFPB has assumed implementation authority under TILA will allow for greater examination of the implications of such regulatory changes, including their economic impact on consumers and small businesses. Because loan pricing models have still yet to be established, we are concerned that the Board's consumer testing could not have adequately taken into account the Rule's effect on the real world costs of the regulation. Not until pricing models and fee structures are established for both the retail and wholesale channels will it be possible to determine, with any accuracy, the actual effect this regulation will have on consumers and the market.

To this end, NAMB is making a Freedom of Information Act ("FOIA") request that the Board produce all documents and records relative to the consumer testing of the Rule. This includes, but should not be limited to, study design, the name of the company and project manager responsible for conducting the test(s), and any communications concerning the consumer testing that were made by or between the Board and any other federal agencies. NAMB is a non-profit trade association and does not request this information for commercial use. Moreover, NAMB does request a waiver of any fee associated with this request, as production of this information is in the public interest and is likely to contribute significantly to the public's understanding of the Rule.

NAMB is confident that once the true economic impact of the regulatory changes is fully understood, there is a high likelihood that less burdensome alternatives could be implemented, which would lessen the negative impact on the industry, consumer costs and our recovering housing market. However, if the Board remains intent on implementing the Rule by the April 1, 2011, we urge the Board to issue formal written guidance on a number of significant issues that remain undefined or are clouded by conflict or uncertainty.

Currently, many in our industry are very concerned about implementing changes to their policies or procedures without additional written guidance from the Board. In fact, absent formal guidance from the Board, a number of institutions are indicating that they will have to proceed with extreme caution when implementing new fixed loan originator compensation structures, which will likely result in higher loan costs for consumers.

Because our colleagues at the Mortgage Bankers Association have already submitted to the Board a thoughtful and comprehensive set of questions and answers regarding significant aspects of the Rule that must be addressed, it would be redundant for us to do so again here. Nevertheless, NAMB would like to confirm with the Board one aspect of the rule relating to permissible payments in the following situation:

A lender agrees to pay a mortgage broker company 2% of the mortgage amount and an hourly fee that is based upon the complexity of the mortgage loan obtained for the consumer and the hours spent on the loan transaction by the employee working for the mortgage broker company.

After a thorough review of the Rule, and based upon verbal communications with Board staff, we are confident that such a payment model is permissible. However, we request that the Board please confirm that this interpretation of the Rule is accurate.

NAMB is also compelled to raise another specific issue upon which further guidance is requested. The Rule defines the term “loan originator” as:

a person who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. The term “loan originator” includes an employee of the creditor if the employee meets this definition. The term “loan originator” includes the creditor only if the creditor does not provide the funds for the transaction at consummation out of the creditor’s own resources, including drawing on a bona fide warehouse line of credit, or out of deposits held by the creditor.

The Board has indicated that a mortgage brokerage firm falls within this definition of a loan originator, regardless of the fact that the firm is an entity unto itself. We strongly, but respectfully, believe that the Board should re-examine this interpretation.

NAMB is concerned that the Board has no legal basis for treating mortgage broker companies differently than other firms carrying out the same or substantially similar business operations. Under the Rule, certain activities are prohibited as “unfair or deceptive trade practices” for one class of mortgage market participant, while another similarly situated class of participants is permitted to engage in the very same activities.

We respectfully request that the Board provide further clarification as to why the Rule permits one class of mortgage market participants to: (1) receive incentive compensation based upon the type of loan originated; (2) reduce their own compensation or income in order to capture more business; and (3) remain exempt from restrictions and prohibitions set forth in the Rule, while other classes of market participants are held to significantly different standards.

Not unlike creditors, mortgage brokerage firms assume various costs of doing business, including but not limited to building expenses, equipment, employee overhead and benefits, and insurance. Additionally, mortgage brokerage firms employ individual loan originators (in the same way creditors do) who are already clearly and unequivocally covered by the Rule. The Board’s interpretation of mortgage brokerage firms as loan originators, as defined in the Rule, places the mortgage brokerage firm at a real and substantial competitive disadvantage as compared to other loan originating entities. By treating mortgage brokerage firms differently than other similarly situated loan originating entities, the Board is selectively picking winners and losers and harming consumers in the process by reducing competition and increasing loan prices for everyone.


Over the past several years, our industry has been overwhelmed with legislative and regulatory changes at both the state and federal levels. Such changes have been economically burdensome for the industry to plan for and keep up with, and the constant changes are having a profoundly negative impact on the market. We believe postponing implementation of the Rule will provide

an opportunity for the industry to thoughtfully and comprehensively make changes to their policies and procedures, as opposed to merely responding to one change while waiting to see how the regulatory framework will inevitably change again in the very near future.

Thank you for your consideration of this letter, as well as the letter submitted by our colleagues at the Mortgage Bankers Association. We are all committed to strengthening the mortgage industry and serving consumers, and we greatly appreciate the Board's leadership on these important issues.

Please direct all correspondence related to this letter and NAMB's FOIA request to Roy DeLoach at 1425 K Street NW, Suite 350, Washington, D.C. 20005, (202) 549-8655.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. D'Alonzo".

Michael J. D'Alonzo, CMC
President
National Association of Mortgage Brokers