

# United States Senate

WASHINGTON, DC 20510

March 11, 2011

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

Dear Mr. Chairman:

We write to urge you to delay implementation of the recently published final Truth-in-Lending (TILA) regulation governing Loan Originator Compensation (75 FR 58509, September 24, 2010). We are concerned that this rule, which becomes effective on April 1, 2011, may have the unintended effect of further increasing concentration in home mortgage market. The proposed rule will have the unintended consequence of creating more uncertainty for small lenders and further impede home loan originations.

Even before the beginning of the housing crisis in 2007, the home mortgage market has been dominated by three of the largest U.S. banks, which account for more than 51% of residential mortgage originations, with the top two alone accounting for a stunning 43% of the market. Yet, to date, the Federal Reserve has declined to provide any written guidance to small mortgage lenders and brokers which would provide clarity and assist them with compliance. As a result, community-based local lenders and mortgage brokers essentially have been left in limbo, unable to effectively design compliant compensation systems for the future.

In addition, we remain concerned the Federal Reserve has not fully evaluated the impact of this rule on the housing market once the "defense to foreclosure" provisions contained in Section 1413 of the Dodd-Frank Act come into effect on July 21, 2011. Under this section, a violation of rules related to loan originator compensation will allow a borrower to assert that violation as a defense to foreclosure for the life of the loan. If a borrower prevails in such an action, the borrower is awarded "enhanced penalties" under TILA and every loan originated under that compensation plan would become a liability. The interaction of the Fed's compensation rule with the provisions of the Dodd-Frank Act could have a devastating impact on the mortgage market as large lenders may be unwilling to take the risk of acquiring loans from community banks, mortgage bankers and brokers. Until this uncertainty is resolved it will severely impair the ability of community-based lenders and small mortgage brokers to compete in the market.

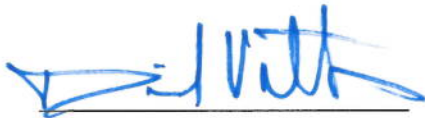
Furthermore, earlier this month the Federal Reserve Board of Governors announced that it does not expect to finalize three pending rulemakings under Regulations Z prior to the transfer of authority for such rulemakings to the Consumer Financial Protection Bureau. The Board determined that it "would not be in the public

interest” because “adopting those portions of the Board’s proposals in a piecemeal fashion would be of limited benefit, and the issuance of multiple rules with different implementation periods would create compliance difficulties.” It would make sense to apply the same standard to this case to ensure new rules on one segment of the mortgage finance industry do not create perverse unintended incentives. The focus should be on getting these rules right, not getting these rules done right now particularly since we know that they will be rewritten in a few months.

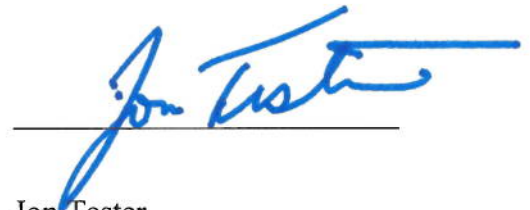
In recent years, the mortgage market has been held hostage by severe regulatory uncertainty. One of the sad facts of the financial crisis is that the big institutions got bigger and the smaller institutions failed. We must ensure that Congressional and regulatory action does not lead us towards further consolidation of the mortgage market which will lead to higher consumer costs and fewer choices. More broadly, ongoing TILA reform like the Federal Reserve’s compensation rule must be done in a manner that ensures consistency with other forthcoming rules required by the Dodd-Frank Act. Conflicting rules and regulations between two agencies unnecessarily disrupt the market and create uncertainty.

For these reasons, we urge you to delay implementation of the loan originator compensation rule so that these provisions can be better coordinated with forthcoming TILA regulations and the impacts of loan concentration can be more thoroughly studied.

Sincerely,



David Vitter  
United States Senator



Jon Tester  
United States Senator