



National Association of Independent Housing Professionals

601 Pennsylvania Ave. NW • South Building, Suite 900 • Washington, DC 20004

July 22, 2011

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave, NW
Washington, DC 20551

Re: NAIHP comment to Proposed Rule "Ability to Repay"
76 FR 27390-27506

Dear Secretary Johnson:

Thank you for the opportunity to comment on the above noted proposed rule.

NAIHP represents thousands of small business housing professionals in all 50 states and the District of Columbia. Our members include, mortgage brokers, loan originators, real estate appraisers, settlement agents, real estate agents and more.

One of the most basic fundamentals of loan underwriting is a borrower's ability to repay their loan. During the last decade, this was apparently lost in the guidelines of big banks and the GSE's, who developed these loan programs. Clearly, stated and no income loans were made available to far too many borrowers who never qualified.

Regardless of the fact false information was used to qualify borrowers, bank underwriters could have easily prevented these fraudulent acts, which lead to the mortgage crisis. Underwriters and their regulations required loan originators to obtain a signed IRS 4506 or 4506T from every loan applicant. These forms, if submitted to the Internal Revenue Service, provide underwriters with copies of a borrower's tax returns, showing their true income. If this simple quality control procedure had been deployed on every stated or no income loan, tens of thousands of home owners would have never faced foreclosure.

Although, mortgage brokers and originators have been painted as the "bad actors" in this crisis, they had no control over wholesale lender or bank guidelines. Furthermore, they provided the wholesalers with the necessary tools to expose fraud (4506-4506T). Unfortunately, it's the brokers and originators who now shoulder the brunt of new regulations. These regulations are crippling small business and allowing the developers of these now eliminated loan programs to operate with little control and less competition.

Although, we have no argument with "ability to repay," we do object to its tying with loan originator compensation, as included in the Dodd-Frank Act. Loan originator compensation was in no way a contributory factor in the mortgage crisis. Credible studies have shown just the opposite.

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As you are aware, this proposed rule is similar to the Board's loan originator compensation rule, which was finalized in August of 2010. Designed to protect the consumer, the Board's rule has proven to be ineffective and actually harm consumers. Consumer costs have risen sharply, while small business mortgage professionals have been forced out of business.

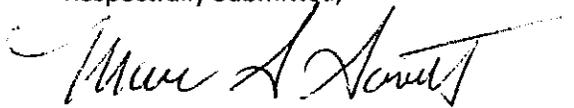
Both the Board's rule and this current proposal prohibit a loan originator from being compensated by both a borrower and lender. Understanding the intense and fraudulent campaign against broker compensation for the last 20 years, this makes perfect sense. However, prohibiting this practice eliminates consumer choice and excludes thousands of qualified borrowers from obtaining mortgage financing. For example, many borrowers choose to split their origination costs between the rate and out of pocket costs. Some wouldn't qualify if they included the entire amount in the rate. Moreover, most don't have the upfront fees to complete the transaction. Brokers have been disclosing all their fees, including yield spread premiums since 1992. Consumers are advised on day one exactly what compensation a broker receives. On the other hand banks, lenders and creditors have no such requirement and are free to receive both forms of compensation on each transaction.

In March of 2011, NAIHP filed suit against the Board over the loan originator compensation rule. The Board's answer to that suit filed on March 18, 2011, clearly stated the Board's position on yield spread premiums (YSP). The Board believes broker YSP and bank SRP to be exactly the same. Therefore, any rule finalized by the CFPB or the Board, should regulate the practice, not the license. The same standards would also provide necessary competition.

Due to the flawed, if almost non-existent testing conducted by the Board with respect to the August 2010 finalized rule on originator compensation and the substantial unintended consequences already created by this rule, NAIHP requests a GAO study be conducted, prior to finalization of this proposal. Furthermore, the two studies noted above, Georgetown University's "The Pricing of Subprime Mortgages by Mortgage Brokers and Lenders," and Harvard's "Understanding the Boom and the Bust in Nonprime Mortgage Lending," should be reviewed and considered in any decision.

Again, we appreciate the opportunity to comment on this important rule.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marc S. Savitt". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Marc S. Savitt, President
NAIHP