July 21, 2011

Via Mail and Email to [*regs.comments@federalreserve.gov*](mailto:regs.comments@federalreserve.gov)

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: Truth In Lending Act - Regulation Z - Proposed Rule for Ability to Repay Requirements
Docket No. R- 1417
RIN No. AD 7100 AD 75

Board of Governors Representatives:

Please accept this letter as a comment to the proposed "ability to repay" rule published by the Federal Reserve Board ("Board"). We appreciate the opportunity to provide comments and welcome continued dialog in this regard. Vanderbilt Mortgage and Finance, Inc. ("Vanderbilt") is a lender that specializes in the financing of factory-built housing, primarily manufactured housing. Vanderbilt is part of a group of companies that make up Clayton Homes that is in turn part of the Berkshire Hathaway family of companies. Clayton is proud to be one of the nation's largest home builders, producing more than 79,000 single family houses over the past 3 years. For 2010, Clayton produced 25,781 homes; substantially higher than the top three site-built home builders for the same year – D.R. Horton (18,983 closings), Pulte Group (17,095 closings), and Lennar Corp (10,955 closings)(as reported in "2010 Builder 100;" http://www.builderonline.com/builder100/2010.aspx).

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "Act"), as well as the rules that will implement the Act, will have a serious impact on the affordable housing market, including manufactured housing. There is a significant risk of a disproportionate impact on low and middle income borrowers who select new or existing manufactured homes as their housing option. This challenge extends not only to consumers, but to the many manufactured home retailers (currently estimated at approximately 4,000 locations), manufacturing facilities (approximately 124 locations), lenders, manufactured housing community operators and related component and supply providers who support the industry with jobs, tax revenue, and local economic stimulus.

Manufactured housing is a vital component of our nation's affordable housing needs (especially in rural areas where housing alternatives are limited). According to the Manufactured Housing Institute, 72% of all new homes sold under $125,000 were manufactured housing, with

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manufactured housing also making up 47% of all new homes sold under $150,000 and 27% of all new homes sold under $200,000. As the economy continues to struggle, these numbers may increase as more consumers see manufactured housing as an affordable and reliable housing alternative.

Comments of Proposed Regulation

The following provides Vanderbilt's comments concerning the proposed regulation.

Definition of "Points and Fees"

Section 1412 of the Dodd-Frank Act amends section 129C of the Truth In Lending Act (which was added by section 1411 of the Act) to provide that the term "points and fees" shall have the same meaning for purposes of defining a "Qualified Mortgage" as section 103(aa)(4) of the Truth In Lending Act (which provides the statutory support for the definition of the term for purposes of the Home Ownership Equity Protection Act - 12 CFR § 226.32). In turn, section 1431 of the Dodd-Frank Act amends the definition of "points and fees" in section 103(aa)(4) of the Truth In Lending Act. The proposed rule seeks to change the definition of "points and fees" by amending the applicable provisions (and related official staff commentary) of 12 CFR § 226.32 that currently define the term and provide related guidance.

The primary concern with the definition of "points and fees" is the clear potential for difficulty in complying with the amended provisions. The definition of "points and fees" is a critical component of all lenders' loan compliance systems – whether developed internally or provided by third-party vendors – at both the federal level and state level (many states have adopted the federal definition of the term). This fact, coupled with the significant, if not extreme, penalties for the failure to comply with various obligations in the event that a threshold for which the term was intended to define is inadvertently exceeded, makes the issues raised here of paramount importance in our opinion.

Replacement of Compensation Paid to a "Mortgage Broker" with Compensation Paid to a "Loan Originator" – 12 CFR 226.32(b)(1)(ii)

There are two primary concerns with the Act's and proposed regulations replacement of compensation paid to a "mortgage broker" with compensation paid to a "loan originator" in the definition of points and fees:

- How will a lender be able to identify all of the potential parties involved in a transaction who qualify as "loan originators?"
- How will a lender identify all of the types of compensation that may be paid in a transaction to any loan originators?

If a lender cannot identify these two items *with certainty*, then they have little hope of complying with the laws that incorporate the "points and fees" definition, some of which subject the lender to significant liability.

(a) Identifying the Loan Originators

This element of "points and fees" went from being a *well-defined* category of fees paid to a *known* set of parties – i.e., mortgage brokers – to being replaced with a much broader array of potential individuals and companies over which lenders have *no* ability to control and of which few, if any, lender's or vendor's compliance systems will be able to determine with sufficient certainty.

By way of example, under the current rule, if a loan is originated through a mortgage broker who charges a $700 broker's fee, then that fee is disclosed on the HUD-1 or itemization of amount financed and is paid by the consumer at closing (either in cash at closing or as proceeds of the loan). The $700 is easily identified as being paid to the broker, and therefore rolls into the points and fees calculation in the lender's compliance controls system.

In contrast, the Act and proposed rule amends this provision to apply to all compensation paid to a "loan originator" as defined in 12 CFR § 226.36(a)(1). Loan originator is defined as, "with respect to a particular transaction, 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 also includes "an employee of the creditor if the employee meets this definition." Additionally, the term 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." Lastly, the staff commentary to this section provides that a loan originator could be an individual (including potentially *managerial or administrative staff* depending on their function and compensation) or corporation, and any loan originator who is not an employee of a creditor is deemed to be a mortgage broker.

Again, by way of example, in a typical manufactured housing sale and financing, a lender would normally interact with a manufactured housing retailer (and its employees). Some retail companies may be licensed as mortgage brokers, but most are not. Likewise, retail employees perform various activities in connection with a home sale. Since the definition of "loan originator" as defined in Regulation Z is not definitive, but based on the particular individual's or company's *activities*, any individual involved in the sale could be performing "loan originator" activities, intentionally or inadvertently. The lender has no way of knowing (or controlling) whether the retailer or its employees are acting as loan originators for any particular transaction.

While a lender may be able to identify its *own* loan originators or other *clearly identified* loan originators, like mortgage brokers, the proposed rule and draft commentary do not provide sufficient guidance to identify with certainty other potential parties who may be acting as loan originators for a particular transaction.

(b) Identifying the Types and Amounts of Compensation Paid to Loan Originators

The draft comment 2 to this section defines loan originator compensation to include an expansive laundry list of potential types of compensation, including bonuses, commissions, yield spread premiums, awards of merchandise, services, trips, or similar prizes, gifts or hourly pay for the actual number of hours worked, whenever paid, whether before, at, or after closing. While an expansive view of compensation may make sense in requiring a lender/creditor to comply with the loan originator compensation rules as provided in 226.36 where it primarily regulates the activities of its *own* employees, it does not make sense to require a lender (or its 3rd party compliance system) to perform a compliance calculation that requires knowledge of the specific amounts and types of compensation that may have been paid (or could be paid later) to such individuals.

To continue with the example of the typical manufactured housing sale and financing, as the lender is not apprised of all the activities of the retailer or its employees in a particular transaction, the lender is likewise unaware of the different compensation and incentive programs that may be available for home sales personnel. More specifically, the lender is not aware of whether a particular type of compensation is tied to activities that could make the sales personnel a "loan originator" or for activities that would not trigger loan originator coverage (e.g., selling the home). The lender has no way of knowing (or controlling) the amounts and types of compensation that could be paid in any particular transaction.

In effect, an *objective* control like the points and fees calculation that is performed by a computer system employed by each lender becomes a very *subjective* analysis of the conduct of a variety of individuals working on multiple potential transactions and the nature and amount of compensation or incentives that may be available to the individuals involved.

<u>(c) Recommended Actions</u>

While the definition of loan originator and the rule's draft commentary attempt to limit the application of this provision to "particular transactions" and compensation amounts that "can be determined at the time of closing," it seems that these qualifiers are not sufficient to assist lenders in applying these controls or defending litigation claims that will no-doubt arise as plaintiff attorneys learn how to "second-guess" the lender's evaluation of the amounts and types of compensation to include in the calculation of points and fees. To assist in this matter, the rule and/or the draft commentary should:

- Provide more details to assist lenders/creditors in identifying potential loan originators and in determining the specific types and amounts of compensation that are to be included. Additionally, defining the scope and providing examples of the types of compensation within the list of potential items that could *reasonably* be determined by a lender at the time of closing (as opposed to those that could be present, but of which a lender may never be aware of). For example, how would a lender (or its 3rd party compliance software) every *know* that a broker was offering a periodic contest or prize to its loan originators that will be paid after the loan in question closes? It would seem unreasonable that the lender would have to perform due diligence for every loan with respect to the parties, their activities or compensation policies.

- Making it clear that a lender *is not required* to investigate the activities of every individual involved in a transaction or the compensation or incentive practices of all companies involved for each transaction (understanding that such personnel activities and compensation policies can and do change) to determine the nature and amounts of compensation that may be known at the time of closing.

- Provide examples that deal with situations where a lender/creditor is dealing with multiple parties who *could be* acting as loan originators or being compensated based on particular loans (Note - all of the proposed examples are provided from the perspective of the *creditor* dealing only with its *own* employee loan originators, which are much for straightforward, but fail to touch on the issues raised here).

- Provide specific guidance that, a lender can rely upon or assume that a fee charged in a transaction, like a broker's fee, includes any compensation or incentives that the party pays to its individual employees who may be loan originators, under the assumption that such compensation is included in the fee paid to the company. For example, if a mortgage broker company earns a 1% broker fee totaling $1500 for a particular transaction, then the lender should have no responsibility to *separately* account for the $200/loan incentive paid by the broker to its employees.

- Likewise, for its own employee loan originators, provide guidance that a lender/creditor who charges an origination fee can assume that any compensation or incentives paid to its loan originators are included in that figure without the need to *separately* account for the individual incentives to the loan originators.

- Provide more examples of compensation that "cannot be attributed to a particular transaction" from 32(b)(1)(ii) – Comment 2(ii). Specifically, item (C) that excludes the "base salary of a loan originator *who is the employee of the creditor*" (emphasis added) should be expanded to cover any base salary of any loan originator regardless of their employer under the assumption that salary is not tied to a particular transaction.

- Specifically with respect to compensation paid to an employee of a retailer of manufactured homes – 226.32(b)(2)(i) – clear guidance should be provided that compensation paid in connection with the *selling* of the home is *not* to be included in "points and fees" <u>under any circumstances</u>. The proposed rule again ties an objective calculation of points and fees to the conduct of parties who are *wholly outside the control* of the lenders charged with compliance. This matter is further complicated by the varying state and federal guidance as to what constitutes "taking an application" and "offering or negotiating." This position is supported by the final SAFE Act rule issued by HUD that requires compensation to be paid "in connection" with the activities of offering and negotiating (not selling homes).

- One apparent typographical error in the draft staff commentary - 32(b)(1)(i)-Comment 1 states that "[i]tems excluded from the finance charge under other provisions of § 226.4 are not ***<u>excluded</u>*** in the total "points and fees" under § 226.32(b)(1)(i), but may be included in "points and fees" under § 226.32(b)(1)(ii) . . ." (emphasis added). This particular sentence does not appear to note a change in the commentary by virtue of the lack of the "revision arrows." The current version of this sentence in the commentary states that "[i]tems excluded from the finance charge under other provisions of § 226.4 are not ***<u>included</u>*** in the total "points and fees" under § 226.32(b)(1)(i), but may be included in "points and fees" under § 226.32(b)(1)(ii) . . ." (emphasis added). As drafted in the proposed rule/commentary, the sentence does not make sense – fees *excluded* from the finance charge are *not excluded* from points and fees, but may be *include* under other sections (why would they be included under other sections if not excluded to begin with). The proposed commentary should be edited to match the current language for this sentence to avoid confusion.

Minimum Standards for Transactions Secured by a Dwelling – 226.43

Monthly Debt-to-Income Ratio

The proposed rule requires the creditor's consideration of the consumer's monthly debt-to-income ratio as part of the repayment ability analysis. 226.43(c)(7)(ii). The draft staff commentary provides that the creditor may look to "widely accepted governmental and non-governmental underwriting standards" to determine the "appropriate threshold" for the monthly DTI ratio. 226.43(c)(7) – Comment 1. Additionally, the draft commentary states that "compensating factors" may be considered to mitigate higher DTI ratios or lower residual income. 43(c)(7) – Comment 3.

Because of their relatively low incomes, we have concerns that the "widely accepted" DTI ratios of other programs will adversely impact the typical manufactured housing buyer. As such, and in light of the clear intent in the proposed commentary to permit higher DTI ratios, we recommend that the third comment – 43(c)(7) – Comment 3 – be amended to provide more details on the types of compensating factors, beyond the consumer's assets, that could be used in higher DTI transactions.

Qualified Mortgages

(a) Loss Mitigation Exclusion

We feel strongly that the term "qualified mortgage" should provide specific regulatory relief for loss mitigation transactions such as loan modifications, extensions, and loan assumptions so that these transactions can satisfy the conditions of qualified mortgages. Specifically, loss mitigation transactions are entered into for the very purpose of working through payment default situations. As such, evaluation of a customer's ability to repay is inherent to the process, and structuring such transactions in unique ways is essential in many cases in order to save a consumer's home.

Specifically, certain provisions of the definition of qualified mortgage should exempt loss mitigation transactions, for example:

- (e)(2)(i) – Periodic payments that do not increase the principal balance, allow deferred repayment, or permit balloon payments – While negative amortization is not common in most loan modification programs they can be used at times to help borrowers work through default situations. Likewise, deferral of payments (potentially construed as extensions), including principal, are commonly used to relieve payment default burdens. Additionally, balloon payment structures are also useful in helping customers with default issues.

- (e)(2)(ii) – Loan terms that do not exceed 30 years – Extending the term of a loan beyond 30 years is a possibility for reducing a customer's payment to help them save their home.

- (e)(2)(v) – Requirements for specific debt-to-income ratio limitations based on the alternative selected for this provision

These sections could be amended to specifically exclude loan modifications, extensions and loan assumptions, or the staff commentary could make it clear that the term is not intended to cover these types of transactions. Allowing loss mitigation transactions to qualify as qualified mortgages further incentivizes lenders to pursue these options for consumers.

<u>(b) Safe Harbor vs. Rebuttable Presumption</u>

The proposed rule requests comments regarding §226.43(e)(1) and the dual alternatives for implementing §1412 of the Dodd-Frank Act. This section, entitled the "SAFE HARBOR AND REBUTTABLE PRESUMPTION," creates new TILA §129C(b) in which Congress established the "Qualified Mortgage" as a new type of residential mortgage loan. Congress' use of the words "safe harbor" and "presume" in the legislation has led the Board to propose two alternatives for implementing the Qualified Mortgage exception: Alternative 1 - a "safe harbor" for creditors who make a qualified mortgage and Alternative 2 - a "presumption of compliance" with the ability-to-repay provisions. We believe that it was Congress' intent to encourage creditors to gravitate towards qualified mortgages, making them more readily available to consumers. As a result, we urge the Board to adopt Alternative 1 which creates a safe harbor and true incentive for creditors who follow the requirements of §129C(b).

With a safe harbor, the qualified mortgage creates certainty and more clarity than the presumption of compliance alternative. Creditors can follow the guidelines set out in proposed regulation originating a qualified mortgage, establish polices and procedures to ensure that they follow these guidelines, and can thereby be assured they have made a loan that they may collect or assign without concern that their underwriting can be challenged years later by a consumer or their legal counsel. Further, the safe harbor alternative makes qualified mortgages much more marketable on the secondary market and thus attractive to investors.

Additionally, the safe harbor alternative provides creditors a true incentive to conform to the qualified mortgages requirements, and therefore make these loan types more readily available to consumers. Consumers therefore stand to benefit from adoption of the safe harbor alternative because they will have increased access to a loan type that is inherently less risky for consumers.

In summary, the safe harbor alternative fulfills the intent of Congress in creating a residential mortgage loan product that is attractive to creditors and contains features that are beneficial for consumers.

<u>(c) Limits on Points and Fees for Qualified Mortgages</u>

The proposed rule sets forth alternative provisions for calculating the points and fees cap for determining whether a loan satisfies the conditions of a qualified mortgage – 226.43(e)(3)(i).

Of the alternatives presented, Alternative 1 is preferred as it provides a more clear and straightforward set of rules for implementing the requirement in a lender's and vendor's compliance system. One note of an apparent typographical error – The sample transaction in the draft commentary for Alternative 1 misstates the applicable points and fees cap in that it refers to a loan with a total loan amount of $48,000 that falls into the *third* points and fees tier. The third tier provides for a 4% cap on points and fees, but the example refers to a <u>3.5%</u> cap (which applies to the second tier).

Despite the clarity provided in Alternative 1, we submit that *neither* alternative provides an adequate opportunity for smaller balance loans – more common in manufactured housing finance – to qualify as qualified mortgages. We suggest a new alternative where the range of points and fees caps in Alternative 1 is replaced with a single cap of "the greater of 3% or $3,500."

Using the example in the draft commentary, the analysis would be as follows:

Alternative 1	
Loan Amount	$50,000
"Total Loan Amount"	$48,000
Points and Fees Threshold	4.00%
Allowable Points and Fees	$1,920.00

New Alternative	
Loan Amount	$50,000
"Total Loan Amount"	$48,000
Points and Fees Threshold	Greater of 3% or $3,500
Allowable Points and Fees	$3,500.00

The higher cap is more appropriate for smaller balance loans, many of which are made to rural customers and affordable housing buyers. The real need for more flexibility in the points and fees cap stems from the simple fact that the fixed costs associated with originating a smaller balance mortgage loan are nearly the same as higher balance loans, making it a significant challenge to earn a sufficient profit in this lending space. For example (based on our reasonable estimates),

Traditional Mortgage Loan Under Alternative 1	
Loan Amount	$200,000.00
"Total Loan Amount"	$182,000.00
Points and Fees Threshold	3%
Allowable Points and Fees	$5,400.00
Lender's Average Internal Origination Costs	$1,900.00
Other Closing Costs in Points and Fees (Closing fees, inspection fees, etc.)	$750.00
Available for Profit and Rate Buydown	$2,750.00

Smaller Balance Loan Under Alternative 1	
Loan Amount	$50,000.00
"Total Loan Amount"	$48,000.00
Points and Fees Threshold	4%
Allowable Points and Fees	$1,920.00
Lender's Average Internal Origination Costs	$1,900.00
Other Closing Costs in Points and Fees (Closing fees, inspection fees, etc.)	$750.00
Available for Profit and Rate Buydown	($730.00)

We contend that the $2,750 available to traditional mortgage lenders is a reasonable amount to cover profit and potential rate buydowns for customers *above* the lender's origination costs. Obviously, the smaller balance loan is *unprofitable* under the proposed Alternative 1. This would effectively stop lenders from making smaller balance loans – many of which include manufactured housing. This is a distinct disadvantage, and limits the availability of credit for these home buyers and home sellers.

Our new alternative provides a better approach while adhering to the intent of the Act. For example,

Smaller Balance Loan Under New Alternative	
Loan Amount	$50,000.00
"Total Loan Amount"	$48,000.00
Points and Fees Threshold	Greater of 3% or $3,500
Allowable Points and Fees	$3,500.00
Lender's Average Internal Origination Costs	$1,900.00
Other Closing Costs in Points and Fees (Closing fees, inspection fees, etc.)	$750.00
Available for Profit and Rate Buydowns	$850.00

We believe that this example clearly shows that even under our proposed alternative, the profitability of the smaller balance loan for the lender and the opportunity to help make a home purchase more affordable for the customer through rate buydowns is questionable. Our alternative does, however, provide a better opportunity for credit availability for borrowers in the small balance loan market.

<u>(d) Fees Excluded from Points and Fees</u>

Section 226.43(e)(3)(ii) provides for the exclusion of certain fees from the points and fees calculation of qualified mortgages. Specifically, it provides exclusions for (in summary):

- Third Party Charges - 226.43(e)(3)(ii)(A) - Any bona fide third party charge not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to be included in "points and fees" under § 226.32(b)(1)(i)(B)

- Bona Fide Discount Points - 226.43(e)(3)(ii)(B) and (C) - Up to one or two bona fide discount points paid by the consumer in connection with the transaction, provided that certain conditions are met.

Third Party Charges - Subsection A, as noted above, excludes "[a]ny bona fide third party charge **<u>not retained</u>** by the creditor, loan originator, or an affiliate of either, **<u>unless</u>** the charge is required to be **<u>included</u>** in "points and fees" under § 226.32(b)(1)(i)(B)" (emphasis added). According to the draft language, it appears that a bona fide third party fee is excluded from points and fees for qualified mortgage purposes if two conditions are met:

(1) It is *not* retained by the creditor, loan originator or affiliate; **<u>and</u>**

(2) It would be included in points and fees as a premium/charge for any guaranty or insurance protecting the creditor against default under 32(b)(1)(i)(B).

There appears to be some confusion in that the draft staff commentary provides an example of an *appraisal fee* that may be included in points and fees under certain circumstances. 226.43(e)(3)(ii) – comment 1. The confusion stems from the fact that the appraisal fee in the example is paid, in part, to the creditor, but is *not* included in points and fees under (b)(1)(i)(B). The substance of the example is correct in that an appraisal fee paid to the creditor or an affiliate *would* be included in points and fees (by way of 226.32(b)(1)(iii)), but *not* by virtue of the language in 43(e)(3)(ii).

In effect, the language in the exclusion could be read to *expand* the list of fees that are included in points and fees by excluding only third party fees that are NOT retained by the creditor/loan originator/or affiliate – the inference being that a fee paid to the creditor, loan originator or affiliate is *always* included in points and fees. This is in fact *not* the case under the definition of points and fees in the current or proposed regulation. Section 226.32(b)(1)(iii) is the only part of the definition of points and fees that conditions inclusion of a set of fees on payment or compensation to a creditor or affiliate (i.e., 226.4(c)(7) charges – appraisals, title related charges, inspections, etc.).

By way of example, property or hazard insurance (i.e., homeowner's insurance) is not included in the finance charge even if it is paid in whole or part to a creditor or an affiliate. 12 CFR 226.4(d)(2). Nothing in the proposed or current regulation would include homeowner's insurance in the definition of points and fees – it is not a 226.4(c)(7) charge and not otherwise included. As such, one could read the third party exclusion language in 226.43(e)(3)(ii)(A) to potentially *include* homeowner's insurance in the definition of points and fees simply because it is paid to the creditor/affiliate.

In order for the exclusion of third party fees to be of benefit under the points and fees cap for determining a qualified mortgage, it needs to exclude fees that would otherwise be *included* (like the discount point exclusion discussed below). As such, it seems more appropriate to amend the proposed regulation along the lines as follows:

> "Any bona fide third party charge that would otherwise ~~not retained by the creditor, loan originator, or an affiliate of either, unless the charge is required to~~ be included in "points and fees" under § 226.32(b)~~(1)(i)(B)~~."

Additionally, the staff commentary should change the example for this section to provide a more applicable scenario of a fee that would be included in points and fees, but excluded for qualified mortgage purposes pursuant to this section. Additionally the commentary should be clear that the exclusion is not intended to pull fees into the points and fees calculation that would not qualify as points and fees under the applicable definition, regardless of the party to whom the fee is paid.

Bona Fide Discount Points – Subsection B excludes:

- Up to two bona fide discount point paid by the consumer in connection with the transaction, provided that the interest rate before the discount does not exceed the average prime offer rate by more than one percent

- Up to one bona fide discount point paid by the consumer in connection with the transaction, provided that the interest rate before the discount does not exceed the average prime offer rate by more than two percent (and the two bona fide discount points have not been excluded under paragraph (e)(3)(ii)(B)

We strongly urge the Board to remove from the exclusion the condition related to the pre-discounted rate in order to provide the potential for exclusion of bona fide discount points for more transactions while still permitting the loan to be a qualified mortgage. The pre-discounted interest rate condition is so low (i.e., APOR + 1% or APOR + 2%) that lenders in the affordable housing market cannot qualify due to the higher rates that are needed on smaller balance loans.

Borrowers who qualify for interest rates that are below the pre-discounted rate cap do not need the benefit that bona fide discounts offer because their rates are already so low – based on the current APOR for a 30 year mortgage of 4.57% (as of July 18, 2011), the current caps would be 5.57% or 6.57%. In contrast, affordable housing buyers with comparably higher interest rates can benefit from bona fide discount points both in terms of lower monthly payments and interest savings over time (note – manufacture housing buyers tend to stay in their homes longer than traditional site built buyers, thus taking advantage of more savings over time).

The recommendation is that the exclusion in 226.43(e)(3)(ii)(B) and (C) be amended to remove the condition of the pre-discounted interest rate, thus permitting any bona fide discount points that are reasonable and that actually result in an appropriate interest rate reduction to be excluded. Additionally, the proposed definition of "bona fide discount point" in 226.43(e)(3)(iv) should be amended to something along the following lines (Note – we feel that the secondary market condition should be removed because many lenders are not currently using the secondary market, and as a result would have no point of reference for the compensation they could obtain in return of the loan):

> (iv) The term bona fide discount point means any percent of the loan amount of a covered transaction paid by the consumer that reduces the interest rate or time-price differential applicable to the covered transaction based on a calculation that ~~—~~
>
> ~~(A) I~~ is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer~~; and~~
>
> ~~(B) Accounts for the amount of compensation that the creditor can reasonably expect to receive from secondary market investors in return for the mortgage loan~~.

Thank you in advance for your commitment to considering our comments and those of many others in the mortgage industry. We appreciate the Board's and CFPB's efforts to produce regulations that provide clear guidance that protects the businesses that support our consumers and the economy.

If you have any questions about any of our contacts, please do not hesitate to contact us at your convenience at (865) 380-3000.

With highest regards,

Paul Nichols
President