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Comments:
April 7, 2008 To: The Federal Reserve Board Address: regs.comments@federalreserve.gov Subject line: Docket No. R-1305 RE: Proposed changes to Reg-Z From: Kenneth A. Jones, Esq. President, Blue Oak Mortgage Corporation Government Affairs Chair NB CAMB My name is Ken Jones, a Broker and attorney who has been in the mortgage business for over 20 years. I have been employed as a VP for a major lender, a litigator, and more recently, own an independent mortgage brokerage employing 15 people. I currently serve as the Government Affairs Chair for the North Bay California Association of Mortgage Brokers. I believe the cumulative effect of the proposed changes to Reg-Z and RESPA, coupled with pending anti-broker state and federal legislation could put many independent brokers out of business, eliminating market competition to the disadvantage of consumers. The proposed changes to Reg-Z are generally well researched and thought out. However, I believe they contain disclosure requirements that are unfair to brokers and new higher cost loan restrictions that are over-inclusive to the detriment of consumers. Unfair Compensation Disclosure Requirements One of the main premises for The Federal Reserves (FRB) position that Brokers need more oversight than lenders is that Brokers are more trusted. The only statistical support the FRB offers for this position is a study of 1,008 elder borrowers who took out loans in 1999 and 2000. I

believe you indicate that 70% of those who used Brokers trusted them “a lot” while only 52% of those who used lenders trusted them to the same degree. I would argue the world has substantially changed since 2000, especially in the last year. The barrage of negative press received by Brokers has been relentless. Even Brokers who did not dish up every loan offered by lenders, and who actually counseled people away from high risk products, are being lumped into the new, negative collective Broker image. It seems the “Broker” single handedly wrecked the United States economy; it was the “Broker” who sold NINA products offered by unsuspecting lenders. I would chance to say that Brokers as a group are not as trusted today as your elder borrowers indicated back in 2000. I know there are those who work for Brokers (and those who work for lenders) who have not done well by their borrowers (I have counseled some of their victims.) These opportunists should be dealt with through civil fraud lawsuits. I’m not sure stricter disclosures (which they will manufacture as necessary to get paid) will lead to the results you seek. I applaud your courage in your commentary to utter a truth that many refuse to acknowledge: employees of lenders have just as much incentive to use higher rates or different products to increase their incomes as do employees of Brokers. I am then stunned when you determine on the heels of your own conclusion that only the trusted Brokers need to disclose total compensation. The FRB seems to think it’s too difficult for lenders to figure out how much money they make. Lay that fear to rest. I once worked in the secondary marketing department of a major lender. If anyone really thinks that a lender doesn’t know within a few basis points exactly how much they will earn from premium pricing and service released premiums, then they haven’t seen the semi-foolproof, complex, secondary pricing interfaces and hedging strategies of a major lender. These guys and gals are not dumb. I don’t mind calculating and disclosing the dollar amount of my final compensation. In California, we already disclose origination and YSP early in the application process. I think it is an idea whose time has come. However, I resent that I will have to explain to every borrower who walks through my door why I am so much more expensive than the kid who works down the street at the local mega-bank. I can hear myself now “believe me, they are earning commission too, they just aren’t required to tell you about it. I do because federal law requires it. Lenders don’t have to because their commission comes from SRP--(confused faces) ……..forget it, they just don’t.” I urge you to create a level playing field – extend your disclosures to all originators. Incorrect Disclosure of Duty in California A California DRE Broker has a special problem regarding your new conflict of interest disclosure. In 1979, the California Supreme Court determined in a case known as Wyatt that brokers have a duty of utmost good faith towards their borrower. Your request that we disclose to our clients that we may not act in their best interest is a direct denial of our California duty. I had a chance to chat with the CA Department of Real Estate regarding this issue, and they replied that Brokers were not at liberty to disclaim our common-law duty. I appreciate the thought that went into the exemption clause that allows

Brokers to avoid disclosure when there is a statutory fiduciary duty coupled with a legal requirement to explain the duty to the client in writing. In our present case, we have common-law duty coupled with a DRE mandate that we disclose our agency. Are we excused? Higher Cost Loan Category Over Inclusive I understand that the FRB's somewhat aged data indicates that 3% over comparable Treasury yields for first mortgages will capture the sub-prime folks you seek, while allowing Alt-A and Prime to fall into the more traditional loan category. I would suggest that your assumptions need to be retested using today's market as a gauge. The lack of investor appetite for MBS and PCs in the secondary market has driven a substantial wedge between comparable Treasury yields and mortgage rates. Promise me liquidity and I will support your 3% in any and all future speaking engagements. However, if you cannot, and current trends continue, 3% will capture Agency Jumbo, FHA Jumbo, and all Alt-A (if you are able to find any.) This ill-set trigger will deny credit to otherwise creditworthy borrowers. I urge you to recalculate your data using today's spreads, and set your triggers at levels which will better accomplish your stated goals. Can the Honest Broker Survive? In my opening paragraph, I indicate that the cumulative effect of the proposed changes to Reg-Z and RESPA, coupled with forthcoming anti-broker state and federal legislation could put many independent Brokers out of business. Let me explain. Each day one of my loan officers asks me why the lender's retail rates are so much better than the wholesale rates they offer us. I tell them it is because of liquidity issues, and that the lenders are channeling their available funds to their retail originators until more money comes into the system. We lose loans based on price. The FRB and HUD continue to support disclosures which are confusing to borrowers as they do not treat lenders and Brokers the same. Brokers must report dollar compensation when lenders don't even have a document to fill out. Consumers shy away as the collective Broker's reputation is being pummeled by the Press and leaders of our government. We lose a few more loans. I let go several loan officers. The Dodd Predatory Lending Bill threatens to take YSP away from Brokers because they can't be trusted to refuse shiny objects offered by lenders. California AB 2880 and AB1830 echo the Dodd Bill – plus they propose to extend harsh new underwriting criteria into non-traditional mortgages (interest only.) They require me to purchase a surety bond, and SB 1053 will require me to pay to a have a compliance audit done by some yet to be defined CPA compliance auditor (a new cottage industry?) at costs of 10's of thousands per year. I lose more loans and close one office…….. I had a meeting last week with an EVP from a major lender who told me he believed that in a year after some consolidation, 80% of all mortgage business will be done by 4 major lenders. I find this possibility petrifying. Throughout my career and my time with CAMB I have been fortunate to meet many competent, thoughtful, client oriented Brokers who take their job very seriously. I have also met a small minority of opportunists who should find a different profession. Because of the few, the many are slowly being crushed, one regulation at a time. Reg-Z

by itself will not extinguish competition. But I kid you not, the cumulative weight of all this is taking its toll. Thank you, Kenneth A. Jones, Esq. President, Blue Oak Mortgage Corporation Government Affairs Chair, NB CAMB