AUGUSTA MORTGAGE COMPANY

Making the *Dream* of home ownership a *Reality*...

December 11, 2009

Via E-Mail

regs.comments@federalreserve.gov

Re: Docket Number R-1367

Ladies and Gentlemen:

I write this letter to voice concerns about the above pending legislation and support the comments by the Mortgage Bankers Association of Georgia's legal Counsel, Loretta Salzano in her letter dated December 9, 2009.

I applaud the Board's efforts at reforming the mortgage process so as to better protect consumers; however, I believe that the Board has gone too far. Many of the Board's concerns have already been addressed through consumer awareness, recently enacted statutes and regulations and changes in the secondary market and available loan products. In some cases consumers have been harmed by the very same statutes and regulations intended to protect them, for instance due to new waiting periods. We have also seen fee increases from Appraisers, Real Estate Attorneys and Mortgage Lenders due to the new laws that are currently in place.

I am personally concerned over the Loan Originator Compensation. Every day I work with low to moderate income families, credit challenged consumers and first-time homebuyers to help educate them on buying a home. I give everyone the same attention whether they are able to buy a house now or 10 years from now. I also give a free training class to new Real Estate Agents in our area. These agents are able to use this knowledge to help further educate consumers about the home buying process. I fear that change in my compensation and other LO's compensation will change the service and education these customers currently receive. Many of my clients have worked with a Loan Originator that is paid a salary and they have not received any education and very poor service. I also talk with many consumers in the evening and on weekends while I am at home my wife and two boys. Many of these borrowers are overseas with the military serving our country or they are in a local service that does not allow them to be contacted during the day. Changing the way a Loan Originator is paid will reduce the education and service provided to consumers.

Benjamin Franklin coined the phrase "A Rotten Apple Spoils the Bunch." By visiting www.MortgageImplode.com, you can see that 374 major mortgage lenders have shut their doors since late 2006. The recently enacted statutes and regulations and changes in the secondary market and available products have removed or will force the removal of many "Rotten Apples." Further changes to the Loan Originator Compensation will remove the "Good Apples."

I make my living through referrals from being the best that I can be in this industry. Many of the measures that the Board is taking will remove the highest quality of Mortgage Lenders and Originators in our industry. Your intentions are good, but please be careful of the future ramifications of your actions.

Sincerely,

Kevin McDougal

243 Davis Road • P.O. Box 211046 • Augusta, Georgia 30917-1046
Telephone (706) 860-4200 • (800) 860-4714 • Fax (706) 860-4205
E-mail: amco1@augustamortgage.com • www.augustamortgage.com

December 9, 2009

Via E-Mail

regs.comments@federalreserve.gov

Re: Docket Number R-1366

Ladies and Gentlemen:

I have the honor of serving as Legal Counsel to the Mortgage Bankers Association of Georgia ("MBAG") and respectfully submit this letter on behalf of the MBAG. This letter highlights the major concerns expressed by MBAG's Executive Committee, its Board and its members.

MBAG applauds the Board's efforts at reforming the mortgage process so as to better protect consumers; however MBAG believes that the Board's revised rules go too far. It is MBAG's position that many of the motivating factors for the Board's proposal have been addressed due to increased consumer awareness, recently enacted statutes and regulations and changes in the secondary market and available loan products. In some cases consumers have been harmed by the very same statutes and regulations intended to protect them, for instance due to new waiting periods.

Imposing new disclosures and a revised annual percentage rate ("APR") calculation will result in substantial implementation costs which would be borne by consumers as well as lenders. At a time when many MBAG members are struggling to stay afloat, MBAG fears that yet another major change in regulatory disclosure and calculation requirements will reduce the pool of professional mortgage lenders. A reduction of lenders is also likely to result in increased costs to consumers. Nevertheless, MBAG understands that the Board is unlikely to respond to requests to withdraw the proposed rules in their entirety, which is the preference of MBAG's members. Therefore, MBAG respectfully requests that the Board consider our concerns regarding specific portions of the proposed revisions. In response to the Board's request for comments concerning an implementation timeline, MBAG strongly suggests that the Board not enact a new regulation before 2011 and that any regulatory changes not be effective until at least 2012.

Disclosures at Application

MBAG does not object to providing the new "Key Questions" disclosure; however, MBAG urges the Board to require such disclosure at the earlier of the time of application or payment of a non-refundable fee (instead of before the consumer applies for a loan). Such an approach provides creditors with a clearly defined time to make the disclosure, is consistent with the Truth in Lending Act ("TILA") and would still afford consumers adequate time to shop for and consider the appropriate loan product.

Revised APR Calculation

While MBAG has not fully considered the issue of the Board's authority to revise the finance charge calculation set forth in TILA, MBAG questions whether the Board has the authority to do so as set forth in the proposed regulation. Assuming that the Board does have the authority to do so, MBAG fears that the harm to consumers will outweigh the benefits. While MBAG favors simplification of the calculation of the APR, MBAG believes that the proposed change must not occur without a corresponding change in the calculation and definition of "Section 32" high-cost mortgage loans.

Including the proposed additional fees in the APR will result in fewer loans to consumers seeking relatively small loan amounts because such loans would constitute high-cost loans not made by MBAG members. While MBAG's members are concerned about the fair lending issues associated with imposing minimum loan amounts, MBAG's members are confident that they will have to increase their minimum loan amounts.

MBAG believes that the Board's proposed analysis estimating a 0.6 percent increase in high-cost loans is conservative. Many MBAG members are confirming the impact that the new APR definition would have on their portfolios. We expect that they will comment on their own with estimates of the fractional increase of loans that will meet the federal and Georgia high-cost loan thresholds under the proposed revised APR definition.

MBAG reminds the Board that many states use the federal definition of finance charge and APR in implementing anti-predatory lending legislation. Georgia is one such state. Georgia's "high-cost" mortgage loan threshold is even lower than that set forth under HOEPA. Therefore, the proposed changes will have an even greater impact on low income consumers in Georgia.

Disclosures Required Within Three Days After Application

MBAG members are frustrated by the duplicative but not identical summary of terms required by the proposed regulation and Regulation X. Members urge the Board and HUD to work together to formulate one set of early disclosures.

MBAG agrees that consumers are confused about the definition of "finance charges" and that the words "interest and settlement charges" will be more meaningful to consumers. Members believe that consumers want and need to know the total amount of their monthly payment, including escrows. It is unclear, however, whether lenders will have the requisite information to provide the information required by the new form within three days of application.

There are other changes required by the new disclosures which will be difficult for members to implement. For instance, many members expressed practical, technical concerns with producing the graph. In fact, at least one lender stated that it is impossible to program a "moving dot on a line." Another lender expressed concern about the absence of a definition for "excellent" relative to credit quality in the comparison graph. While the graph shows a comparison based on credit, it seems that it might be the case that even a consumer with excellent credit will not receive the best available rate due to product choices. Moreover, lenders have stated that it will be difficult to calculate and produce a constantly moving average for each loan type. Furthermore, some lenders have questioned how meaningful the graph will be because price increases might be more pronounced as credit quality declines. Finally as to the graph, at least one member found the graph to be confusing.

The proposed form requires lenders to advise consumers of the amount that the consumer could save as a result of lowering the consumer's APR; however, it is possible that a lower APR might not be available to the consumer. Thus, this section of the disclosure is misleading to consumers.

MBAG appreciates that consumers must understand early in the loan process whether their payments can increase. Nevertheless, the manner in which this question is posed in the model disclosure is also misleading. A payment increase is possible even with a performing fixed-rate, fully amortizing loan, such as due to increased escrow amounts. Therefore, MBAG recommends either removing this sentence or adding clarifying language (such as indicating that it applies only to the portion of the payment constituting principal and interest). MBAG has the same concerns with the "Payment Change Limits."

Lenders have expressed concern about their ability to calculate the prepayment penalty at the time the disclosure is required. Under the proposed rule it would be insufficient to advise the consumer of the manner of calculating the prepayment penalty which is how lenders would prefer the disclosure to read.

Lenders have voiced concern about the manner in which the forms must be populated. That is, instead of a "check the box" method, which is relatively easy to populate from a technological perspective, it seems that the form would have to be populated to reflect only the applicable terms as indicated by, for instance, the "[No.][YES." statements in the payment increase and prepayment penalty sections. Some lenders expressed their doubts as to how they could accomplish this.

<u>Disclosures Required Three Days Before Consummation</u>

MBAG members strongly believe that the recent Regulation Z changes effective July 30, 2009, pursuant to the Mortgage Disclosure Improvement Act ensure that consumers will not arrive at the closing table to discover an impermissible increase in their APR. Moreover, the new RESPA regulatory changes ensure that even non-finance charges will not increase beyond specific tolerances. Therefore, MBAG urges the Board not to require an additional disclosure and waiting period absent an APR change outside of the tolerances. The challenges in the mortgage industry have already increased consumer frustration with the loan process due to the extended time period from application to closing. To impose yet another delay is unwarranted absent a change to the APR outside of the permitted tolerances.

While not set forth in the proposed rules, MBAG encourages the Board to revise Regulation Z to provide that *any* over disclosure of the APR will constitute a permitted tolerance so that creditors need not issue a revised disclosure due to a decrease in the APR. Over disclosure of the APR does not result in consumers being overcharged at the closing table, and in many cases the additional waiting period harms the consumer. For instance, it could impact the consumer's performance under a purchase and sale agreement or result in additional interest and charges for debts to be paid as part of a refinance transaction. The added delay also impacts interest rate locks resulting in a higher interest rate or additional costs to the consumer.

Of the two alternatives the Board proposes relative to redisclosure, MBAG favors the second approach resulting in redisclosure and an additional waiting period only if the APR changes beyond the tolerance. Otherwise, it could be provided at closing.

Loan Originator Compensation

Of most concern to MBAG is the Board's proposed prohibition on payments to loan originators based upon terms and conditions of the loan, including the interest rate. Many MBAG members have expressed concern about whether it is appropriate for the Board to limit compensation as the Board proposes.

MBAG is confident that implementation of the rule in its proposed form would be severely detrimental to consumers. First, it would discourage loan originators from working with those consumers needing the most protection: first time home buyers, credit-challenged consumers and consumers seeking low loan amounts. Because of the time required to assist these consumers with the loan process, many MBAG members fear that these consumers would be underserved.

Another concern expressed by MBAG members is that a change in the loan originator compensation structure would drive away experienced loan originators due to limitations on their income. MBAG members exhibit the highest level of professionalism. While many MBAG-member loan originators are compensated based on loan terms, consumers are educated about their choices relative to interest rate and closing costs in order to decide what best suits them. MBAG members strive to serve consumers of all socioeconomic strata. Limiting compensation based on loan terms would likely provide a disincentive to serve lower income consumers.

Allowing some variance in loan originator compensation would allow consumers to pay more for additional service. It would also help to ensure that loan originators would still serve more challenging consumers. At least one member questioned the impact of the proposed limitation on customer service. More particularly, she believes that loan originators might not provide the same level of service and devote the same number of hours to each loan if their compensation were limited as the Board proposes.

MBAG members believe that the abuses in the market leading the Board to propose the prohibition on loan originator compensation based on loan terms have been corrected by the market, thus rendering the Board's proposal unnecessary. Nevertheless, MBAG understands the Board's desire to protect consumers. Therefore, MBAG proposes the following alternatives to the Board's proposal. MBAG presents the alternatives below in lieu of compensation based on the principal amount of the loan because MBAG's members advise that the principal loan amount generally does not determine loan originator compensation.

One alternative would be to limit the amount of loan originator compensation, such as to 200 basis points. For fair lending reasons among others, many lenders already limit variances in loan originator compensation based on rate in such a manner.

A second alternative would be to limit loan originator compensation based on loan terms only for all "high-cost" or "higher priced" mortgage loans as well as those loans with the following features:

Interest only payments;
Negative amortization;
Prepayment penalty; or
Balloon payment.

A third alternative would be to permit variable loan originator compensation in connection with the following loans: FHA, VA or USDA. The reason for allowing variable loan originator compensation in connection with such products is that agency guidelines already afford special protections to consumers.

A fourth alternative would be to allow loan originator compensation to vary based upon:

Initial principal loan amount;
Loan volume; and
Secondary market compensation.

Of course, the Board may consider each of these alternatives individually or cumulatively.

Steering

MBAG strongly encourages the Board to abandon its proposed rule relative to steering. MBAG finds the proposal inappropriately paternalistic. It is and should be for the consumer, not the loan originator, to shop and determine which loan is in the consumer's interest.

Many of the terms in the proposed Section 226.36(e) are vague or too imprecise to interpret with certainty. While MBAG's members strive to act in the consumer's interest, such a vague standard is difficult to interpret. Even language in the "safe harbor" is vague, such as what is in a "significant" number of the creditors with which the originator "regularly" does business; the consumer's expression of interest and "fees." Finally, the information to be presented to consumers under proposed Section 226.36(e)(3)(i)(C) would require countless options and is not a meaningful comparison.

Conclusion

MBAG appreciates the Boards efforts and the consideration it has expressed as implementation issues raised by the proposed rules. Thank you in advance for your continued consideration of the professionals in the mortgage industry.

Respectfully submitted,

MORTGAGE BANKERS ASSOCIATION OF GEORGIA

Loretta Salzano
Legal Counsel