From: Dennis J. Papiernik

Subject: Reg Z - Truth in Lending

Comments:

Dennis Papiernik

December 21, 2009

Federal Reserve

Dear Federal Reserve:

To: Federal Reserve
Re: Comments on Compensation Issue for Loan Originators
Docket No. R-1366

I. The Proposed Rule fails to articulate an adequate rationale and supporting basis for key provisions.

The APA requires agencies to "incorporate in the rules adopted a concise general statement of their basis and purpose."56 As the U.S. Supreme Court has stated: The agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made. . . . In reviewing that explanation, the Court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.

The Proposed Rule exhibits shortcomings. Most obvious, perhaps, is the Proposed Rule's reliance on a 2003 AARP Survey to justify imposing new requirements on loan originator compensation when that Survey refuted the very point it was presented as supporting. More generally, the Proposed Rule fails to cite any bases for some of its key provisions, and did not address relevant information that was readily available.

2. The Proposed Rule failed to consider less restrictive, reasonable alternatives for its chosen policies and offer a reasoned explanation for rejecting them.

The APA requires an agency engaged in a rulemaking proceeding to consider less restrictive, reasonable alternatives for its chosen policies and offer a reasoned explanation for rejecting them. In City of Brookings Municipal Telephone Company v. FCC, the D.C. Circuit Court stated:

It is well settled that an agency has a duty to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives.' Of course... this duty extends only to 'significant and viable' alternatives, not to 'every alternative device and thought conceivable by the mind of man.' . . . But with that sensible caveat, the fact remains that '[t]he failure of an agency to consider obvious alternatives has led uniformly to reversal.

3. The Proposed Rule solicits significant new data or other information

relevant to its provisions, impermissibly denying the public the opportunity to comment.

On numerous points, the Proposed Rule solicits significant new data or other information relevant to its provisions. Although the Board should seek that information, that is only the first step in the rulemaking process. In addition, commenters on the Proposed Rule must also have the opportunity to review and comment on any studies or data upon which the Board relies in developing any proposed regulations.

4. The Board must re-propose its revisions to Regulation Z to permit public comment on rationales and supporting data not presented not in the Proposed Rule.

Given the extent and materiality of the Proposed Rule's (i) failure to articulate an adequate rationale and supporting basis for key provisions; (ii) failure to consider less restrictive, reasonable alternatives for its chosen policies; and (iii) solicitation of significant new data or other information relevant to its provisions, those shortcoming can only be remedied by presenting another proposed regulation which includes all material information which the Board may regard as a basis for a final rule.

5. The Board must address key questions before moving forward in the rulemaking process.

In re-proposing the Proposed Rule, the Board must not simply present its updated research or discuss alternatives, it must also address the policy concerns raised by the proposed Rule's provisions. Particular attention must be given to those legitimate objections which have been raised by commenters.

Prior to finalizing any regulation, the Board must respond to those questions and many others raised in this comment letter. NAMB looks forward to that response, and is committed to continuing to work with the Board to develop policies that best serve the public interest.

VIII. Conclusion
IAMP applauds the Board's forceful response to problems in mortgage markets, and shares the Board's resolute commitment to consumer protection. In addition, NAMB supports those aspects of the Proposed Rule.

Sincerely,

Dennis J. Papiernik