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Comments:

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RE: Proposed Amendments to Reg Z (Sect I. (E) Prohibitions on Payments to Loan Originators and Steering, unintended adverse effects, regulatory implications & appropriate determination of "application" for purchase transactions involving a mortgage) Having read the proposed changes, as difficult as the adjustment will be, they mostly looks necessary and will ultimately help the consumer. I am particularly happy to see refined post consummation disclosure, MDIA and the lending incentive created in the "safe harbors" test for HELOC's. I do have four concerns about the amendments. They concern Prohibitions on Payments to Loan Originators and Steering, unintended adverse effects of the amendment, regulatory implications & appropriate determination of "application" for purchase transactions involving a mortgage. 1.) Prohibitions on Payments to Loan Originators and Steering In Sect I. (E) of the proposal, I am concerned about the inclusion of "creditors' employees" in the definition of "loan originators." While this is meant to include loan officers that aren't mortgage brokers in the name of fairness and other principles, it skips a very large step and jumps to a broad assumption. In the case of brokering a loan, the indirect compensation from the lender or Yield Spread Premium (YSP) is directly tied to the credit transaction''s terms or conditions and therefore, the regulatory intention in this proposal is met in that case. However, for "creditor's employees" be they credit unions, banks or non bank lenders, Service Release Premium (SRP) is assumed to operate in the same fashion which is an erroneous assumption. SRP is not defined in this proposal where YSP is. This is symptomatic of the issue I am raising here. SRP is a separate transaction from the borrower's transaction (between a borrower's creditor and a secondary market investor) that represents the value of delivery of a collateralized asset (or collection of assets) to an investor at certain terms and
within a certain timeframe and documented in a certain way. It is subject to varying value (positive or negative - the entire risk for which is assumed by

the creditor) depending on if the loan is sold individually or in bulk, collective volume of delivery under certain timeframes and a myriad of direct and indirect fees from the perfection of the asset to delivery and therefore, it is impossible to ascertain the net compensation from the secondary market purchaser. Because it is impossible to ascertain the net compensation from the secondary market purchaser, it is impossible to relate any anticipated profitability to the transaction''s terms or conditions at point of origination or at the time a lock in agreement is executed. Because SRP is not related to a transaction''s terms or conditions, it cannot be regulated as if it were. If the Board of Governors of the Federal Reserve wishes to regulate SRP for banks, credit unions and non-bank lenders, it cannot do so in this particular amendment. It must start anew with the matter. Therefore, the language including "creditors' employees" should be stricken from the amendment. 2.) Unintended adverse effects The affect of the language in Sect I. (E), paragraphs 5-8 will likely have the effect of changing the nature of compensation for mortgage loans from their present schematics to a "fixed fee" approach or a "volume-based" approach. By untying compensation from the loan amount, small loans will either become much more expensive or will become underserved. In the "fixed fee" approach, they become very expensive. In the "volume-based" approach, they will either not be offered or, if they are, they will be underserved. I realize that it is impermissible to treat a transaction with a smaller loan amount any different from one with a large loan amount but it is naïve to assume that this won't happen. Even now, it happens but it will only become worse should this amendment become the rule. Under this amendment, guidance for how a low cost or no cost loan might be offered is altogether absent. The benefit of this type of loan is affirmed in the proposal but it goes on to plainly state, "this benefit may be outweighed by costs to consumers" and then makes no further mention. This leaves anyone to assume that low cost and no cost loans will be sacrificed for the opportunity to regulate YSP's. The examples this document gives to justify this trade off include "when consumers pay a higher interest rate or obtain a loan with terms the consumer may not have chosen otherwise, such as prepayment penalty or an adjustable rate." First of all, an adjustable rate doesn't inherently represent a cost to consumers. Second of all, although it may be more difficult, it is a better service to consumers to preserve low cost and no cost loan options and approach these other matters individually (i.e. banning prepayment penalties). Either way, stripping the consumer of choice is no way to protect hem.

Enforcing the matters covered in Sect I. (E) as written, is nearly impossible. If the enforcement only had to do with YSP, that would be manageable and would probably accomplish the objectives of the amendment. If they leave it as is, including "creditors' employees" and thus SRP, then regulators are biting off more than they can chew. This is true because it would be impossible to enforce this amendment without investigating compensation practices and, in the case of "creditors' employees," that would require getting into complex profitability models, endless contracts and sophisticated software which current regulators neither have the time nor resources for. 3.) Appropriate determination of "application" for purchase transactions involving a mortgage The industry needs clarification on the appropriate determination of "application" for purchase transactions involving a mortgage. Most applicants submit an application prior to having a subject property. It is at this time that

they want to see good faith estimates and truth in lending disclosures and other consumer disclosures. It is also appropriate that they see them at this time. Clearly, when they do get the purchase agreement, this would require disclosure as well. The confusion in the industry is not when the good faith estimate and TIL are required but when the rest of the disclosures are required and what date constitutes the application date. Knowing which date is that technical application date is critical for complying with the 3-7-3 rule in MDIA.   Short of confidently knowing this, lenders are requiring full disclosure at multiple points in the transaction. This is creating "disclosure fatigue" where the consumer no longer pays close attention to what could be critical protective documents. Clarification on this matter would eliminate this "disclosure fatigue" and accomplish the intent of the rule changes. Thank you for hearing and considering these suggestions and good luck in producing quality changes that protect the consumer and continue to allow the affected lending institutions to best serve them. Regards, Charles Dailey