

RE: Federal Reserve Board's Proposed Rule amending Regulation Z – Docket No. R-1366 (Fed. Reg. 43232)

To Whom It May Concern:

As an owner/originator of a small mortgage broker company, licensed Illinois attorney and a director of the Illinois Association of Mortgage Professionals I have spent a substantial amount of time reviewing the Federal Reserve Board's Proposed Rule amending Regulation Z - Docket No. R-1366 (F.R. Fed. Reg. 43232) (the "Proposed Rule") and researching and analyzing its potential adverse consequences. While I believe it is necessary to address remaining problems in the mortgage market, the Proposed Rule will ultimately only harm me, the small business mortgage professional, and the consumers I serve. I request that you strongly consider my concerns before issuing a Final Rule that could negatively change the mortgage market landscape, and impede a recovery of the housing industry.

Of particular concern is the Board's proposal to eliminate or curtail loan originators ability to receive compensation in the form of YSP. The Board acknowledges that it is using its authority under HOEPA (TILA Section 129(l)) "to prohibit unfair or deceptive acts or practices in mortgage lending to restrict certain practices related to the payment of loan originators." In considering whether an act is "unfair or deceptive", the Board looks at the standards adopted in Section 5(a) of the FTC Act. The Board points out that the FTC Act finds that "an act of practice is considered unfair when it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." The Board does not provide any supporting evidence indicating that the commonly used method of compensating mortgage brokers or loan originators in the form of YSP is tantamount to an "unfair or deceptive practice" (please see NAMB's analysis of finding an unfair or deceptive practice as stated in their comment letter). Nor does the Board present any supporting proposition or evidence that limiting the method by which mortgage brokers or loan originators are compensated would not be outweighed by countervailing benefits to consumers or to competition. In fact, there is data establishing that mortgage brokers bring greater competition to the market for loan origination services and often provide consumers with a local and often less costly alternative to using large national banks or lenders. Yield Spread Premiums (or service release premiums for that matter) are not simply a means of compensating loan

originators, they also serve consumers best interests by offering greater flexibility and alternatives in structuring loans to best suit a particular consumer's needs. The payment of YSP is a legitimate way for borrowers to avoid paying some or all of the typical closing costs upfront by paying a slightly higher interest rate. From my experience, the higher interest rate that I can offer in exchange for low or no upfront closing costs is usually lower than those rates offered by retail banks. I still need to compete against the retail banks and other mortgage brokers to earn my customer's business. They are free to shop around and hopefully will have better tools to do so if RESPA and TILA disclosures are simplified. If loan originators ability to earn a living without increasing upfront fees to consumers is eliminated or severely restricted, then the mortgage broker industry will likely dissolve and consumers will have no choice but to obtain mortgage loans from retail banks that are left with reduced competition, higher overhead and a window of opportunity to increase profits. The Board's proposal will clearly eliminate the countervailing benefits to consumers and to competition.

The Board, in defending their position on the elimination or curtailment of established methods of compensating loan originators, states that consumers do not understand the methods upon which loan originators are compensated and do not understand current disclosures, yet the Board proposes sweeping changes to current mortgage disclosures that I believe cause fundamental problems of practicality and potential consumer confusion. I request that you consider the following policy recommendations:

- Revise language of the Proposed Rule to permit either the creditor, or a mortgage broker or third-party originator, to provide the required pre-application disclosures.
 - Because the Board has not defined mortgage brokers or other third-party originators as creditors, and these originators are often the ones making first contact with consumers and taking applications, the Proposed Rule poses a compliance problem for creditors, mortgage brokers and other third-party originators.
- Eliminate the disclosure of APR, and instead require disclosure of payment terms, settlement costs and monthly payment.
 - Board testing showed that consumers do not typically understand the APR and do not use the APR effectively as a shopping tool.
- Establish a reasonable tolerance threshold, within which certain terms could change after the final TILA disclosure but prior to closing without requiring re-disclosure and without triggering an additional waiting period.

In the past 24 months market forces and new and amended legislation have already occurred and been adopted. These market forces and legislation have already had the effect and will continue to protect consumers and, hopefully, eliminate the catastrophe caused by an irresponsible Wall Street appetite and lending practices of the past. We have already seen tighter lending guidelines by Fannie Mae and Freddie Mac eliminating stated income and stated asset lending and requiring supporting evidence of a borrower's ability to pay for a mortgage loan and live within their means. Many states and now the

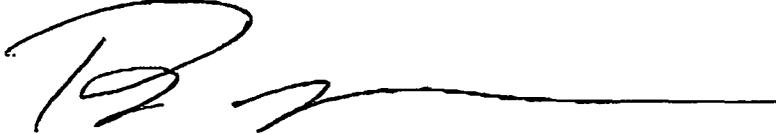
Federal Government have imposed much stricter licensing rules to make sure that we create barriers to entry into the mortgage origination profession. Included in these licensing rules is increased required continuing education and testing. The only lapse in these rules is that the education and testing provisions only apply to mortgage brokers but not to the loan originator employee of a national or local bank for whom the Board seems to be favoring in terms of eliminating or limiting the method upon which mortgage brokers are compensated. So, the future under the Proposed Rule in terms of consumer mortgage product choice is likely to be limited to banking institutions that have less incentive to compete, and employ individuals that are not required to pass licensing tests or complete annual continuing education. I urge the Board to re-think its Proposed Rule.

In closing, I would like to present the following policy recommendations that I believe The Board should strongly consider when developing a Final Rule. Small businesses offering mortgage loan origination services will be negatively and disproportionately impacted by the Proposed Rule. For this reason, I cannot support the Proposed Rule because it will not serve the best interests of the consumer or the market.

1. Withdraw the proposed prohibition on payments to loan originators that are based on the terms or conditions of a loan.
2. Delay implementation of any final rule until Congress has acted on currently proposed legislation that would create a new Consumer Financial Protection Agency
3. Permit either the creditor, or mortgage broker, or other third-party originator to provide the required pre-application disclosures.
4. Eliminate disclosure of the APR and instead require disclosure of payment terms, settlement costs and monthly payment.
5. Establish a reasonable tolerance threshold, within which certain terms could change after the final TILA disclosure but prior closing without requiring re-disclosure and without triggering an additional waiting period.
6. Ensure that loan originators retain their ability to receive compensation as a percentage of the loan amount and not just a flat fee.
7. Adopt an anti-steering rule that does not affect the mechanism for providing direct and/or indirect compensation to a mortgage originator, does not limit or affect the amount of compensation received by a creditor, and does not restrict a consumer's ability to finance the fees and costs associated with a loan transaction into the loan amount or rate.
8. Address all "up selling" in connection with mortgages and other financial transactions, not just YSP.
9. Compliance with the Administrative Procedures Act.
10. Mortgage companies should be treated in the same manner as lender companies. Mortgage broker companies operate on net profits after all income and expenses and treating them differently from lender companies (some of which have fewer loan originators than mortgage brokers) is bad policy.

The Board's goals to simplify and clarify disclosures for consumers and prohibit anti-steering are not successfully accomplished through the proposed changes. In fact, the changes, as planned, fail to achieve those goals and contradict their overall purpose. The offered amendments to Regulation Z make the entire mortgage process more complex for borrowers, exacerbate and compound the already complicated practices that exist, and most importantly, eliminate consumer choice. Therefore, the Board should withdraw the proposed amendments, perform more qualified consumer testing (utilizing the results in an effective manner), and engage and confer with seasoned, knowledgeable industry experts to obtain credible and useful participation to ensure a successful and effective resolve to achieving the Board's objectives.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. J. Martin', with a long horizontal line extending to the right.

Bradley J. Martin