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Jennifer J. Johnson, Secretary
Board of Governors
The Federal Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20511

RE: Proposed changes to Closed-End Mortgage Rules (Docket No. R-1366)

Dear Ms. Johnson:

We respectfully submit our comments.

1. SECTION 226.36(d)(2) – PAYMENTS BY PERSONS OTHER THAN CONSUMER

In light of (1) recent RESPA changes and (2) the Fannie Mae and Freddie Mac limitations on the maximum amount of compensation that mortgage brokers can receive, the proposed prohibition against the use of yield spread premium to pay part of the originator compensation where the consumer is also paying a portion of the compensation should not be implemented as part of a final rule.

Under the new Good Faith Estimate disclosure requirement of RESPA's Regulation X, which becomes effective January 1, 2010, a mortgage broker is required, for the first time, to disclose the total compensation the mortgage broker will receive both from the borrower and from the funding lender in the form of yield spread premium. RESPA does not require that the borrower receive the same disclosure from a funding lender because all post-funding compensation paid, commonly called servicing release premium or gain on sale, is part of a secondary market transaction outside the scope of RESPA. (See, Regulation X, §3500.5(b)(7)). Thus, if this yield spread premium prohibition is implemented, the following will result with no benefit to the consumer:

1. If a lender, without loan broker involvement, makes the same loan, the lender will receive compensation (in the form of secondary market compensation) that equals the compensation the broker would have received as yield spread premium.
2. If a loan broker originates the same loan, the funding lender will receive the compensation (in the form of secondary market compensation) that the broker would have received as yield spread premium



Under both scenarios, the consumer is no better off and lenders will continue to receive compensation that will now be denied to mortgage brokers. This creates a market disparity in compensation that does not benefit the consumer.

In instances where the consumer “floats” the interest rate, the consumer will, on a broker originated loan, receive full credit for any improvement in yield spread premium paid. There is no similar requirement that the funding lender pass on this full market improvement to the consumer. In today’s marketplace we already see an exodus from the mortgage broker industry. The effect of this proposed regulation would be to virtually require mortgage brokers to become “net branches” for client lenders. The cost would be the elimination of the consumer protections that the new RESPA rules provide in the mortgage broker line of business. Accordingly, it would be a great disservice to the consumer, given the new GFE disclosures, to effectively put mortgage brokers out of business by eliminating the ability to use a portion of the yield spread premium to compensate the mortgage broker.

Finally, it is important to note that Fannie Mae and Freddie Mac limit the total compensation that a mortgage broker or lender can earn. Fannie Mae and Freddie Mac guidelines indicate that they will not “purchase or securitize mortgages” if the total points and fees charged to the borrower exceeds the greater of 5% of the mortgage amount or \$1,000. The definition of “points and fees” includes all origination fees, underwriter fees, broker’s fees, finder’s fees and yield spread premiums. The term does not, however, include secondary market compensation to funding lenders. This is a further protection that consumers receive, but only in a brokered transaction.

In short, the elimination of the mortgage broker’s ability to use a portion of the yield spread premium to pay a portion of the origination charge will result in the effective elimination of the mortgage broker industry. There are significant consumer disclosures and protections that will be lost should this proposed regulation be enacted.

2. SECTION 226.36(e)(1) PROHIBITION ON STEERING

This proposed regulation should be eliminated at least as to loans purchased or securitized by Fannie Mae, Freddie Mac or GNMA. As discussed in Section 1 above, Fannie Mae and Freddie Mac have already limited the maximum compensation that any lender may charge to the greater of 5% of the mortgage amount or \$1,000. As to securitized products the prime mortgage lending markets are highly competitive with thin margins, as studies by the Mortgage Banker’s Association of America show. Competition itself prohibits steering. Further, as to the steering safe harbor set forth in Section 226.36(e)(2), the three loans in Section 226.36(e)(3) – (i) the loan with the lowest interest rate; (ii) the loan with the second lowest interest rate; and, (iii) the loan with the lowest total dollar amount for origination and discount points – should be



specifically tied into the trade-off table contained on page 3 of the new Good Faith Estimate.

3. SECTION 226.36(d)(1) PAYMENTS BASED ON TERMS AND CONDITIONS

The prohibition to loan originator compensation based on the terms or conditions of the loan should not apply with respect to securitized products. The prime lending markets are highly competitive markets with thin margins. Any loans eligible for purchase or securitization by Fannie Mae and Freddie Mac should not be subject to the restrictions against term based compensation. Further, as to FHA and VA loans the authority of the Federal Housing Administration and the Veterans Affairs is sufficient to provide oversight with respect to these loans.

4. SECTION 226.4(g) – SPECIAL RULE “ALL IN” FINANCE CHARGE

What Congress has statutorily exempted from the APR calculation, the Federal Reserve Board is powerless to “unexempt”. Absent congressional action, the enactment of the proposed rule will result only in expensive litigation. The “exemption” authority cited at 74 Fed. Reg. 43 ~~at~~ 323 cannot and will not be construed to give the Board the authority to rewrite the statute. This proposed amendment should not be implemented as part of a final rule.

Thank you for the opportunity to comment.

Black, Mann & Graham, L.L.P.

A handwritten signature in black ink, which appears to read 'Thomas E. Black, Jr.', is positioned to the left of the typed name.

Thomas E. Black, Jr.
Managing Partner