BBVA Compass

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Via electronic delivery

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Email: regs.comments@federalreserve.gov

Docket No. R-1366

Re: Comments on the Proposed Amendments to Regulation Z - Loan Originator Compensation

Dear Sirs and Madams:

This letter is submitted to the Board of Governors of the Federal Reserve System (the "Board") on behalf of Compass Bank ("Compass"), in response to the Board's request for comment on the Proposed Amendments to Regulation Z (implementing the Truth in Lending Act's rules for closed-end credit), issued August 26, 2009 (the "Proposed Rules"). In particular, Compass is submitting this letter to comment on the alternative loan originator compensation provisions set forth in the Proposed Rules.

Compass conducts a regional general commercial banking and trust business at over 700 bank offices located in Alabama, Arizona, California, Colorado, Florida, Georgia, New Mexico and Texas. As of this writing, Compass has assets of $68 billion and total deposits of $54 billion. Compass is an active participant in the mortgage industry, originating and servicing mortgage loan products on a coast-to-coast basis through its network of branches and its Mortgage Financial Services Division.

Compass appreciates the Board's time and effort in preparing the Proposed Rules. We hope that the following comments are helpful to the Board in crafting a loan originator compensation structure that protects consumer interests and permits flexibility in compensating loan originators.

From the Proposed Rules, we understand that the Board is proposing to use its authority under the Home Owners Equity Protection Act ("HOEPA") to prohibit unfair or deceptive acts or practices in mortgage lending to restrict certain practices related to the payment of loan originators. The term "loan originators," for this purpose, includes both mortgage brokers and employees of banks and other creditors who perform loan origination functions, such as Compass' mortgage lending officers.

To address the potential unfairness that can arise with certain loan originator compensation practices, the Proposed Rule sets forth two alternative compensation structures, one of which (presumably) will be adopted in the final rule issued by the Board. The first alternative, "Alternative 1," generally prohibits a creditor or other party from paying compensation to a loan originator based on a credit transaction's terms or conditions, including a loan's principal amount. The second alternative, "Alternative 2," is largely similar to Alternative 1 with the important exception that a loan's principal amount is excluded from a credit transaction's terms. In other words, under Alternative 2, loan originators would be allowed to receive compensation based on a loan's principal amount.

As set forth below, Compass believes the Board's adoption of Alternative 1 would result in severe consequences for the mortgage lending industry. Consequently, its adoption is not supported by Compass Bank. Alternative 2, on the other hand, appears to offer a more flexible approach while still accomplishing the Board's intended goals. As such, Compass supports the Board's adoption of Alternative 2.

Because Alternative 1 prohibits compensation based on any loan term, the payment structure for loan originators under Alternative 1 would likely take the form of a flat fee commission schedule (i.e., originators will be paid a flat fee per loan closed). Compass believes imposing flat fee commission structures on banks and other creditors will result in several disincentives for mortgage lending personnel that should be avoided. For example, because originators' income will be directly related to the number of loans pushed through the system, it is foreseeable that loan quality will be de-emphasized.

Not only is it foreseeable that loan quality will suffer under a flat fee commission structure, the resulting quantity-over-quality incentive may also lead to a decrease in borrower satisfaction. Consider those applications that demand more up-front originator time. If an originator's income is based on the number of loans closed, it may intentionally encourage originators to focus their attention on simple, moderate balance loan applications as opposed to either those that are higher value and often more complicated or those that are lower value and that may require more assistance at the application stage. A focus on the simplest loans could ultimately lead to lower average loan balances for mortgage lending institutions.

Considering a lending institution's fixed costs with respect to back office functions, if flat fee commission structures lead to lower average loan balances as discussed above, the result will be higher origination costs per loan and therefore higher costs to borrowers.

Loan originator migration from larger to smaller lenders also could result from flat fee commission schedules under Alternative 1. This is because smaller, isolated lenders located in affluent areas will likely pay higher flat fee commissions due to the higher average loan balances present in their lending portfolios. In this sense, Alternative 1 places larger banks and other lenders at a disadvantage in recruiting and retaining top loan originator talent. Compounding this disadvantage is the fact that Alternative 1's prohibitions do not apply if the borrower compensates the loan originator directly. While this exception avoids flat fee commission issues, the exception nevertheless is problematic because it encourages top loan originators to disassociate themselves from lending institutions and become mortgage brokers themselves.

The majority of Alternative 1's ills stem from its general prohibition against using the principal amount of loans in compensating originators. Alternative 2 under the Proposed Rules does not contain such a prohibition. As such, we think it is a more flexible approach than Alternative 1 and the better alternative of the two proposed. We further believe that Alternative 2 will allow the Board to reign in unfair or deceptive acts or practices, such as overages, yield spread premiums or compensation differentials, in mortgage lending to the same degree as Alternative 1. Accordingly, Compass proposes that the Board adopt Alternative 2 in the final rules to be issued.

We appreciate the Board's consideration of our comments.

Respectfully,

M. Brandon Meadows,
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