From: Craig Pizer

Subject: Reg Z - Truth in Lending

Comments:

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Proposal: Regulation Z - Truth in Lending - Closed-end Mortgages
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December 21, 2009 Board of Governors of the Federal Reserve System Attn: Jennifer J. Johnson, Secretary 20th Street and Constitution Avenue, NW Washington, DC 20551 Submitted electronically via ww w. federalreserve.gov Re: Regulation Z; Docket No. R-1366 DHI Mortgage Company, Ltd. (DHIM) appreciates the opportunity to comment on the Board's proposal to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the staff commentary to the regulation, as part of a comprehensive review of TILA's rules for closed-end credit. DHIM is a residential mortgage lender that has been offering loans to consumers since 1983. DHIM employs approximately 400 people, and has offices in 20 states. In Fiscal Year 2008 DHIM closed a new home loan an average of 69 times per business day. DHIM's parent, D.R. Horton, Inc., America's Builder, is the largest homebuilder in the United States, delivering more than 26,000 homes in its fiscal year ended September 30, 2008. DHIM supports effective and rational efforts to revise the format and content of disclosures given at application, revising the calculation of the finance charge and annual percentage rate, loan originator compensation and proposed changes to disclosures after consummation. These points are addressed in more detail in the following comments. The following set of comments is focused on originator compensation, steering, and record retention and if home equity lines of credit should be included in the rules. The proposed rules covering these topics are § 226.36(d)(1), § 226.36(e), § 226.25(a), and § 226.36(d) re-designated as § 226.36(f). Proposed § 226.36(d)(1) Compensation: DHIM would oppose treating the loan amount as a term or condition of the loan. It is not necessary to prohibit originator compensation based on the loan amount to achieve the Board's stated goal as long as yield spread premiums and overages are prohibited payments to the originator. This can be accomplished by prohibiting loan originator compensation based on the interest rate. The proposed rule to include the loan amount as a loan term would be unduly restrictive because a creditor's revenue is based on the loan amount. The originator's commission is a material portion of the creditor's cost to originate a loan and managing those costs is best structured as a percentage of the loan amount. Additionally, it would be difficult for the creditor to determine what the flat fee should be to cover

the wide range of loan amounts that are available in the market. By allowing the lender to consider loan amount, the consumer will not be harmed because the percentage amount will be determined prior to the date the transaction rate was set. Thus the originator will not have an incentive to increase the consumer's interest rate in order to increase their compensation. It is important to allow different commission percentages for different loan amounts. If this is not permitted consumers applying for lower loan amounts may be harmed because originators would not be adequately compensated for the services provided, thus lower priced neighborhoods could be underserved. Paying a higher percentage on "low" loan amounts should be permitted in order to adequately compensate the originator and ensure lower priced neighborhoods are adequately served. Optional proposal § 226.36(e) Steering: We support the concept that loan originators should be discouraged from steering consumers to particular loans in order to increase the loan originator's compensation. However, as proposed, the Board's proposal would leave it very difficult to make a precise determination whether an originator or creditor is covered by the safe harbor provisions. Enforcement would be difficult and litigation could easily arise. The most effective way to prevent steering a consumer to a loan type in order to increase compensation is to prohibit differences in the percentage of compensation based on the terms or loan type except for loan amount tranches. Creditors should not be permitted to pay higher commissions based on the loan type (e.g. subprime loan v prime loan), thus an originator would have no incentive to steer a consumer and there would be no need for safe harbor provisions. In our opinion, Loan Officer's compensation based on different loan types should be restricted. However; as previously stated it is important to allow for compensation adjustments based on loan amount. Record Retention §226.25(a): The Board's determination that the creditor's compensation agreement with the originator that was in effect on the date the transaction rate was set, is the appropriate agreement to use for a particular transaction. Records for loan officer compensation compared to a broker are payroll records, commission reports, and a funded loan report. The two-year retention requirement is adequate. We believe it would be cost prohibitive and impractical to require non-creditors to retain documents in order to provide evidence that indirect payments to originators were not made. To have a reasonable chance of enforcing the rule there would have to be a requirement for all businesses and individuals who conduct business with a Creditor to retain all forms of payment records. The Creditor would have to retain records of every payment to every person or company it did business with or an auditor would not know who they should be auditing. A creditor intent on evading the rule would not likely channel payments through an affiliate if only affiliates were required to retain records, thus it would not be very effective if only affiliates were required to retain records. Home Equity Lines of Credit 36(f): We support the concept of having all the protections in § 226.36 apply to HELOCs. While we do not have evidence that shows originators unfairly manipulated HELOC terms and conditions, the potential to do so is there. Yield spread premiums and overages are paid on HELOCs similarly to Closed-End Mortgages. An originator could charge a higher rate to the consumer in order to increase compensation. While many servicers of HELOCs own the loan they service, not all do. We do not know in today's market to what extent HELOCs are owned by their servicers. Prior to the financial crisis of 2008 it was a common practice for mortgage aggregators to securitize HELOCs then and either retain the servicing or sell it. This may become a common practice again. We do not have evidence of appraisals obtained for HELOCs with misstated values and believe they were not disproportionate to Closed-End Mortgages. The requirements of the Home Value

Code of Conduct, while not directly applicable to HELOCs, will be adopted by most creditors for all loans including HELOCs. Thus whatever issues occurred in the past should be mitigated by HVCC. We are not aware of any concerns over abusive servicing practices. Forms of Disclosure §§ 226.17: We believe that there should be one set of disclosures to comply with RESPA and TILA regulations rather than providing a number of forms containing different information. The vast majority of home purchasers are confused by the information provided on so many separate disclosures. For instance the new RESPA Good Faith Estimate form promulgated by HUD reform does not contain the dollar amount of the loan down payment nor does it contain total monies due from the borrower at loan closing. We agree with the proposed changes to the TILA form of adding graphics and easy to understand verbiage for the home purchaser. In addition we agree with the adoption of new disclosure format requirements, including rules regarding; type size and use of boldface for certain terms, placement of information, and highlighting certain information in a tabular format. Although we agree with the above proposed format requirements we do have concerns regarding electronic delivery of disclosures at application due to the fact that the use of a specific font and font size cannot be complied
with when disclosing electronically. We recommend that the Board make exceptions for type size and format requirements for electronic disclosures. Finance Charges § 226.4: We support some changes to the fees to be included in the APR. We believe that the APR calculation should be revised to include fees paid to the lender but that the Board should not add third party fees to the calculation of the APR regardless if seller or borrower is paying as defined in the new RESPA rules and shown on the new Good Faith Estimate. Further, any revision to the APR calculation should be accompanied by a revision to the maximum APR as used in Section 32 loans and loans defined as higher priced loans under the Mortgage Disclosure Improvement Act and Regulation Z, Section 226.35. Failure to change these maximum APR's could result in substantially restricting the availability of credit. In particular, we believe the APR calculation should not include property taxes and hazard insurance since they are
the homeowners continuing responsibility and not truly a part of the financing transaction. Revision to § 226.19 (a) Disclosures Three Days before Consummation: We object to the addition of the three day waiting period provided in proposed Section 226.19(a)(2)(ii). We believe that current Mortgage Disclosure Improvement Act regulations adequately address the issuance of the TILA disclosure. Today, the TILA disclosure is given 7 days before consummation as well as the additional 3 days waiting period if the APR exceeds the set tolerance and a revised disclosure is necessary. In addition, most creditors will give a final TILA disclosure at consummation. With the implementation of RESPA reform, fees which make up the APR have zero to a limited tolerance making it almost impossible to re-issue a Good Faith Estimate unless a "changed circumstance" exists. We believe we will see a significant protest from borrowers when they are required to wait an additional 3 days at the closing table and
in some cases more than 10 business days to fund on their loan. DHIM appreciates the opportunity to provide comments, and submit suggestions related to the proposed amendments. Sincerely, Craig Pizer