IMMAAG
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July 22, 2011

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551

Copy also sent electronically to: regs.comments@federalreserve.gov and to
http:// www.regulations.gov.

Subject: Comments regarding Ability to Repay Proposed Rule, 76 FR 27390 - 27506
Docket No. R–1417 and RIN No. 7100–AD75

Dear Ms. Johnson:

IMMAAG appreciates the opportunity to share our thoughts regarding the proposed regulation. On behalf of the several thousand registered users and subscribers we assist in maintaining awareness of and engagement in what has become a relentless series of legislative and regulatory changes in our industry we believe that the proposed regulation needs to be incorporated in a much broader comprehensive review that attempts to integrate rather than increment changes to the TILA.

The proposed rule will be finalized by the Bureau of Consumer Financial Protection (CFPB). The Bureau was created at least in part to bring together two confusing and ineffective bodies of regulation: Regulation X and Regulation Z.

We realize that the NPRM seeks public feedback on the specific proposals in the rule. However, there comes a time when the public feedback has to be "enough is enough". That is what **IMMAAG** offers as a general prelude to feedback on Docket R-1417. RESPA and TILA have received piecemeal attention for 37 and 43 years, respectively. The changes to both in the past several years have been nothing short of an avalanche of paperwork requiring thousands of hours of industry attention during a time when the focus should have been on product improvement and consumer education.

We ask the Bureau to postpone reaction to the cited and other proposed rules that are generated from pre-July 21, 2011 activities. Continuing the fragmented, incremental approach to rule making is already causing operational distress in the market and is only harming consumers with confusion and increased cost while forcing small business professionals out of an industry which has been their career. We suggest that the Bureau expend its effort and resource in an organized review of all of the market and legislative/regulatory activities since 2008 then assess the changes that have already been administered to both RESPA and TILA, and simultaneously conduct the research necessary to make the rules required by Dodd-Frank in January 2013

meaningful. To simply continue the cacophony of disconnected change that has been forced on the mortgage industry for the past three years when July 21, 2011 marks the chance to do something meaningful, integrated and positive would simply further delay recovery and harm consumers and the industry.
IMMAAG stands prepared to work with the Bureau to orchestrate a planned approach to an integrated rule review and offers our resources to Mr. Cordray, Ms. McCoy and the rest of the mortgage area to assist.

We do not have the internal resource necessary to timely address the dozens of specific requests for comment included in the overly prescriptive rule offered by the Board in response to its inferred Dodd-Frank authority and requirement so we have chosen what we believe to be the key items that need to be considered.

Qualified Mortgage Definitions and Safe Harbor versus Rebuttable Presumption

The Act provides that the Board may. . . *"revise, add to, or subtract from the criteria that define a qualified mortgage* ***upon a finding*** *that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section. . . ."*. The Board's proposed rule does not establish a finding supporting the need for alternatives.

The Board offers alternative definitions of a qualified mortgage. It appears, as others of the 320+ commenters have observed that the provisions for a rebuttable presumption are more restrictive but offer less creditor protection than the requirements to achieve safe harbor. This apparent inconsistency should be considered.

The idea of a qualified mortgage offering Safe Harbor is derived form a back drop of what have been referred to as "exotic" mortgages. The market has basically removed those products on its own. The DFA requirement for a qualified mortgage was passed after the problem had largely been solved. Minimally, the Board should not add pages of confusing alternatives to a definitions that is clear in the statute but should defer acting on this single rule and coordinate a comprehensive proposal.

Points and Fees

In August 2009, the Board issued then deferred its NPRM amending TILA. A small portion of the August 2009 NPRM led to the Loan Originator Compensation Rule which was finalized and officially published in September 2010. The remainder of the Board's originally proposed rule was deferred in February 2011. This deferral left a tremendous amount of detail related to points, fees and finance charges unresolved.

IMMAAG suggests that the Bureau coordinate the various RESPA and TILA rules. Instead of only addressing the disclosure forms required by DFA Section 1032(f), take advantage of its charter and engage the industry in a one time focused effort to avoid the issues implied by the points and fee, etc. and create a comprehensive rule that finally has a chance to achieve the statutory objectives.

By taking that approach there may be a realistic opportunity to address unintended consequences driven by the Dodd-Frank Act's section 1403, 1411 and 1412 while creating an outcome that not only minimizes operational redundancy and confusion but results in consumer protection and product preservation.

However, if the Bureau decides that something has to be done to finalize R-1417 without considering other related issues, then we do want to make sure the Bureau realizes that the Points and Fees calculations in the DFA and the rule perpetuate the unlevel playing field between the banking and broker distribution channels. The Bureau has publicly indicated one of its objectives is to create a level playing field. The proposed approach to points and fees does not achieve that goal. **IMMAAG** suggests that to the extent action is taken without the recommended coordination that the Bureau consider excluding indirect compensation from the calculation or increasing the CAP for mortgage brokers to accommodate a level playing field with creditors.

In conclusion, the proposed rule conveys definitions of ability to repay, qualified mortgages and points and fees, that if implemented will reduce consumer choice, limit product availability, increase cost, harm a segment of an industry and will do so without advancing the basic objectives of the statute it is intended to serve. The offending products and practices have largely been removed from the market and the Bureau has now formally begun operations. Now is the time to slow down, step back, create a plan, set measureable, time bound objectives and implement something comprehensive. It is not the time to add yet another several hundreds pages of confusing, overly prescriptive, basically unenforceable and unnecessary changes on an industry.

Thank you for the opportunity to weigh in on this important issue.

William F. Kidwell, Jr.
President