July 21, 2011

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
Via email to regs.comments@federalreserve.gov

Re: 12 CFR Part 226 Real Estate-Related Fees; Proposed Rule

Dear Ms. Johnson:

I write on behalf of the Virginia Bankers Association, whose membership includes nearly all of the banks in Virginia. This letter is in response to the Board of Governors of the Federal Reserve System's request for comment on the proposal not to exclude from the points and fees calculation for "qualified mortgages" fees paid to lender-affiliated settlement service providers, and to explain why excluding these fees from the points and fees calculation would be consistent with the purposes of the Dodd-Frank Wall Street Reform and Consumer Protection Act's amendments to the Truth in Lending Act.

The stated purpose of the Dodd-Frank amendments to TILA is to protect borrowers by prohibiting lenders from making mortgage loans without regard to the borrower's repayment ability. A bank's affiliation with a settlement service provider, such as a title insurance agency, does not have any impact on the borrower's ability to repay a loan. Focusing a bank's attention on fees paid to affiliated title agencies will not in any way improve the bank's evaluation of the borrower's ability to repay.

Rather than protecting borrowers, the proposed rule will actually harm borrowers. Including fees paid to affiliates in the "qualified mortgage" criteria will cause many loans that otherwise would be qualified mortgages not to be qualified mortgages. To make loans that are not qualified mortgages, banks will be required to expend more administrative effort and expense and will be exposed to greater liability. Banks will naturally charge more for non-qualified mortgages and some banks will choose not to make them at all. Ultimately, borrowers who would otherwise receive a lower cost qualified mortgage, will be forced into a higher cost loan or may not receive a loan at all.

The proposed rule will further harm consumers by reducing competition among settlement service providers. The Real Estate Settlement Procedures Act requires banks to disclose their relationships with affiliated settlement service providers and encourages borrowers to shop around for other providers to obtain the best prices available. Since its adoption, RESPA has dramatically increased competition among settlement service providers (affiliated and non-affiliated alike), and substantially reduced the fees charged by those providers. By making loans involving bank-affiliated settlement service providers less available and more costly, the proposed rule will reduce competition among settlement service providers, which in turn will lead to

higher fees being charged by all settlement service providers, affiliated and non-affiliated alike.

The proposed rule will not enhance banks' consideration of borrowers' ability to repay loans as required by the Dodd-Frank amendments to TILA. It will actually harm borrowers by reducing the availability of loans, making loans more expensive and reducing competition among settlement service providers. For these reasons, we respectfully request that the Board exempt the fees of bank-affiliated settlement service providers from the points and fees calculations for qualified mortgages.

Thank you for considering our views and please contact me with any questions.

Best regards,

Bruce T. Whitehurst
President and CEO