



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

June 3, 1993

J. VIRGIL NATTINGLY, JR.
GENERAL COUNSEL

Gary S. Dubrow, Esq.
6904 Strathmore Street
Chevy Chase, Maryland 20815

Dear Mr. Dubrow:

This letter is written in response to your letter dated May 19, 1993, in which you ask whether, consistent with Regulation O, the executive officers and directors of a financial institution may participate in a home mortgage loan program offered by the institution to its employees but not to members of the general public. Under this program, as described in your letter, employees are offered a 1 point discount on the loan origination fee.

Our answer is that the executive officers and directors of the financial institution may not participate in this program unless the institution makes home mortgage loans on substantially the same terms to non-employees. This is the position we have stated in the past, and stated most recently in a letter dated March 22, 1993, a copy of which is attached.

You note in your letter that a 1 point discount on the loan origination fee for a 30-year home mortgage loan would result in a reduction in the annual percentage rate of less than one-eighth of 1 percent.¹¹ On this basis, you contend that loans made under this program are made on substantially the same terms as loans to the general public, and therefore comply with 12 C.F.R. 215.4(a)(1). We do not agree that the determination whether a loan term is substantial with respect to Regulation O is properly made solely with reference to the effect of the term on the loan's annual percentage rate, or by analogizing from the regulatory scheme of the Board's Regulation Z, which addresses a different set of issues. See 12 C.F.R. 226.2(b). Ordinarily, the loan origination fee is a significant element in the total package of terms considered by a prospective home mortgage loan borrower. Absent a showing that a 1 point discount on the loan

¹¹ One-eighth of 1 percent is the amount by which, under the Board's Regulation Z, the disclosed annual percentage rate for a loan may differ from the actual annual percentage rate for the loan without a redisclosure being required or the disclosure being considered inaccurate. See 12 C.F.R. 226.19(a)(2) and 226.22(a)(2).

origination fee would not be a significant factor for members of the general public in the selection of a home mortgage lender. It is our opinion that home mortgage loans made subject to this discount are not made on substantially the same terms as loans to the general public.

If you have any further questions concerning this matter, please do not hesitate to contact Gordon Miller (202/452-2534) of my office.

Sincerely,

(signed)
J Virgil Mattingly, Jr.