FINAL REPORT

of the

Small Business Review Panel on
CFPB's Proposals Under Consideration for
Residential Mortgage Loan Origination Standards Rulemaking

July 11, 2012

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1. INTRODUCTION

Under the Regulatory Flexibility Act ("RFA"),[1] unless the Consumer Financial Protection Bureau ("CFPB") certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, the CFPB must convene and chair a Small Business Review Panel ("Panel") to consider that impact and obtain feedback from representatives of the small entities that would be subject to the rule.[2] The Panel consists of representatives from the CFPB, the Chief Counsel for Advocacy of the Small Business Administration ("SBA"), and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget ("OMB").

This Panel Report addresses the CFPB's upcoming proposal to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"),[3] that impose certain requirements concerning the compensation and qualification of mortgage loan originators ("MLOs"), and address or clarify other interpretive issues relating to current rules on MLO compensation.[4] The Dodd-Frank requirements relating to MLO compensation and qualification will automatically take effect on January 21, 2013, unless final rules are issued on or before that date that provide otherwise.[5]

This Report includes the following:

- Background information on the proposals that are being considered by the CFPB and were reviewed by the Panel;
- Information on the types of small entities that would be subject to those proposals and on the small entity representatives ("SERs") who were selected to advise the Panel;
- A summary of the Panel's outreach to obtain the advice and recommendations of those SERs;
- A discussion of the comments and recommendations of the SERs; and
- A discussion of the Panel's findings, focusing on the following statutory elements:[6]

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[1] Pub. L. 96-354, September 19, 1980, 94 Stat. 1164 (codified at 5 U.S.C. §§ 601-612) (http://143.231.180.80/view.xhtml?path=/title5/part1/chapter6).

[2] Under section 609(b) of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA") and the Dodd-Frank Wall Street Reform and Consumer Protection Act, a Panel is required to be convened prior to the publication of the initial regulatory flexibility analysis that the CFPB may be required to prepare under the RFA.

[3] Pub. L. No. 111-203, July 21, 2011, 124 Stat. 1376.

[4] This proposal will not implement TILA section129B(c)(3).

[5] Dodd-Frank §§ 1402-1403 (amending TILA to add § 129B(b) and (c)) (codified at 15 U.S.C. § 1639b(b) and (c)); *see also* Dodd-Frank § 1400(c) (codified at 15 U.S.C. § 1601 note). The Bureau may provide up to a year for a transition period to implement new rules.

[6] *See* RFA section 603 (codified at 5 U.S.C. § 603); RFA section 609(b)(5) (codified at 5 U.S.C. § 609(b)(5)).

- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

- A description of projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the rule's requirements and the type of professional skills necessary for preparation of the report or record;

- An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and

- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

This Panel Report will be included in the public rulemaking record. The CFPB will consider the Panel's findings when preparing the proposed rule and initial regulatory flexibility analysis ("IRFA").

It is important to note that the Panel makes its report at a preliminary stage of rule development and this report should be considered in that light. The Panel's findings and discussion are based on the information available at the time the final Panel Report was prepared. The CFPB may obtain new information or conduct additional analysis during the remainder of the rule development process. At the same time, the Panel Report provides the Panel and the CFPB with an opportunity to identify and explore options to shape the proposed rule to mitigate the burden of the rule on small entities, while still achieving the rule's purposes.

Any options identified by the Panel for reducing the rule's regulatory impact on small entities may require further consideration, analysis, and data collection by the CFPB to ensure that the options are practicable, enforceable, and consistent with the Truth in Lending Act ("TILA"), Dodd-Frank, and their statutory purposes.

2. BACKGROUND

2.1 Statutory and Regulatory Background

In response to concerns that certain MLO compensation arrangements lacked transparency, confused consumers, and created financial incentives to steer consumers into loans with higher interest rates or other less favorable terms, the Federal Reserve Board of Governors ("Board") issued MLO compensation regulations pursuant to TILA (referred to herein as the "Loan Originator Rule" or "Rule").[7] The Loan Originator Rule has been effective since April 2011 and was transferred to the CFPB.[8]

The Loan Originator Rule was intended to address compensation practices for MLOs such as loan officers and mortgage brokers that can create incentives and confusion that lead to consumer harm. Certain compensation structures may create financial incentives to steer consumers to loans that are more costly and for which MLOs will receive greater compensation. For example, payments that are based on a transaction's terms potentially give an incentive to MLOs to provide consumers loans with higher interest rates or other less favorable terms.

Additionally, certain MLO compensation arrangements are not transparent; consumers may not know or understand how the MLO's compensation is structured or that compensation arrangements may present a conflict of interest. Consumers may believe that the fee they pay is the MLO's sole compensation. This, in turn, may lead consumers to mistakenly believe that MLOs are working on their behalf and are obligated to provide the most favorable loan terms.

To address these concerns and reduce or eliminate steering incentives, the Loan Originator Rule generally prohibits payments to MLOs that are based on a loan's terms and conditions (except for payments that consumers make directly to MLOs). Where the consumer directly pays the MLO, the Rule prohibits the MLO from also receiving compensation from any other party in connection with that transaction.

Dodd-Frank generally builds on, but in some cases imposes new or different requirements than, the Loan Originator Rule. Like the Loan Originator Rule, Dodd-Frank generally prohibits compensation that varies based on the terms of a mortgage loan. Dodd-Frank also addresses dual compensation of MLOs from multiple parties not only in cases where the consumer pays the MLO directly, but also where the creditor or brokerage compensates the MLO. Dodd-Frank does more to address potential consumer confusion regarding payment for upfront costs, including discount points and origination points and fees, than the Loan Originator Rule.[9] It also builds on the qualification requirements issued by several federal agencies pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act").[10]

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[7] *See* 75 FR 58509 (Sept. 24, 2010); 76 FR 43111 (July 20, 2011).

[8] *See* Dodd-Frank sections 1061 and 1100A. Section 1029 of Dodd-Frank excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

[9] Points on a residential mortgage loan are a fee, expressed as a percentage of the loan amount, to be paid by the borrower to the lender at the time of loan origination. In some cases, lenders will offer a reduced interest rate in return for the payment of points; for clarity, these are referred to as "discount points." In contrast, "origination fees" are discrete, fixed-dollar, upfront payments meant to cover the costs related to the origination of a mortgage loan, including for example, underwriting and preparing legal documents. Similar upfront charges computed as a percentage of the loan are referred to as "origination points."

[10] 12 U.S.C. §§ 5101-5116.

Significantly, Dodd-Frank responds to concerns that points and fees cause significant confusion among consumers. For example, consumers may have difficulty understanding tradeoffs between upfront points and fees and paying for these charges through increases in the interest rate or the loan amount. Furthermore, even consumers who generally understand such tradeoffs may not be able to determine in a particular instance whether discount points paid up front will result in a reasonably proportionate interest rate reduction or whether they are receiving appropriate value for origination fees. Finally, it is possible that the availability of multiple permutations of points and fees makes it difficult for consumers to shop, compare prices, and receive fair value.

To respond to these concerns, Dodd-Frank generally prohibits consumers from being charged discount points, origination points, or fees where an individual MLO is being compensated by the creditor or brokerage firm. Dodd-Frank gives the CFPB authority to waive or create exemptions from this prohibition where doing so is in the interest of consumers and in the public interest.[11]

2.2 Related Federal Rules

Dodd-Frank codified requirements for MLO compensation contained in Regulation Z and, in some cases, added to or altered those requirements. Through the current proposals under consideration, the CFPB is working to conform the Loan Originator Rule to the new statutory requirements. In general, the existing and expanded regulations cover the following topics:

- The CFPB's Regulations G and H implement the SAFE Act, which imposes licensing and registration requirements on individual MLOs and sets minimum standards for licensing and registration.[12] The proposal currently under consideration would not alter the scope of individuals who are subject to licensing or registration, and the proposal would not alter the minimum standards for licensing or registration. Instead, the proposal defines what is necessary for entities that employ or retain the services of such individuals in order to comply with the new Dodd-Frank requirement that they also be "qualified."

- A separate proposal previously issued by the Board addressed new ability-to-repay requirements that generally would apply to consumer credit transactions secured by a dwelling and the definition of a "qualified mortgage."[13] This proposal provided that bona fide discount points are excluded from the determination of whether a mortgage is a qualified mortgage.[14] The CFPB is in the process of finalizing this proposal. If, as described below, the CFPB permits bona fide discount points in creditor-paid and brokerage-paid compensation structures, the CFPB intends to use a consistent definition of bona fide discount points in both rules.

[11] TILA section 129B(c)(2)(B)(ii) (codified at 15 U.S.C. § 1639b(c) (2)(B)(ii)).

[12] 12 CFR part 1007; 12 CFR part 1008.

[13] 76 FR 27390 (May 11, 2011).

[14] 76 FR 27390, 27398–99 (May 11, 2011).

- The Board's proposal on ability-to-repay requirements addressed the magnitude of MLO compensation for the purpose of determining whether a mortgage is a qualified mortgage.[15] The proposals presently under consideration in this rulemaking do not address the magnitude of compensation that an MLO may receive other than to provide that the compensation may not vary based on the terms of the loan and may not come from both the consumer and a person other than the consumer (*e.g.*, compensation to an MLO from both a consumer and creditor).

3. OVERVIEW OF PROPOSALS UNDER CONSIDERATION AND ALTERNATIVES CONSIDERED

This section describes the CFPB's considerations as of the time of the SBREFA Panel Outreach Meeting

The Panel and SERs reviewed proposals that the CFPB is considering. These proposals would apply only to residential mortgage loans, which include consumer credit transactions secured by a mortgage, deed of trust, or other security interest on a residential dwelling or a residential real property that includes a dwelling, but not open-end credit plans, such as home equity lines of credit, or timeshare plan transactions. The requirements also would not apply to loans obtained primarily for business purposes.

The CFPB plans to implement the Dodd-Frank requirement by proposing to amend Regulation Z, which implements TILA. Dodd-Frank makes the following amendments to TILA that are relevant to this rulemaking:

- Section 1402 imposes new duties on MLOs "in addition to the duties imposed by otherwise applicable provisions of State or Federal law." The first duty is to be "qualified" and (where applicable) registered and licensed in accordance with the SAFE Act and other applicable state or federal law. The second duty is to include on all loan documents the MLO's identifier number from the Nationwide Mortgage Licensing System and Registry.

- Section 1403 also builds upon the Loan Originator Rule by imposing limitations on MLO compensation to reduce or eliminate steering incentives for residential mortgage loans.[16]

    - Section 1403 generally prohibits MLOs from receiving compensation for any residential mortgage loan that varies based on the terms of the loan, other than

[15] 76 FR 27390, 27402–03 (May 11, 2011).

[16] The Board proposed the Loan Originator Rule prior to the enactment of Dodd-Frank using general authority under TILA to prohibit acts or practices relating to the origination or refinancing of mortgage loans that are unfair, abusive, or deceptive. 74 FR 43232 (Aug. 26, 2009). Dodd-Frank incorporated key language and concepts from the proposal. The Board then finalized its rule, but acknowledged that further proceedings would be required to address certain issues and adjustments made by Dodd-Frank. 75 FR at 58509–10.

the amount of the principal.[17]

Where an MLO is compensated by someone other than a consumer, the "points and fees provision" of Dodd-Frank section 1403 bans the MLO from receiving compensation from the consumer and also prohibits charging the consumer upfront points or fees to the MLO, creditor, or their affiliates (except for bona fide third-party charges). Dodd-Frank permits the CFPB to create exemptions to the points and fees provision if the exemptions are "in the interest of consumers and in the public interest." The CFPB is considering using this exemption authority to permit consumers to pay discount points and upfront origination fees under certain conditions. The proposals under consideration are outlined in paragraphs 3.1 through 3.3 below.

Compensation structures may create financial incentives for an MLO to steer consumers to loans that are more costly or have less favorable terms, but for which an MLO will receive greater compensation. To reduce the risk of steering, Dodd-Frank limits the sources of MLO compensation. Under Dodd-Frank, MLOs may not receive (and no person may pay to MLOs), directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of principal).[18] While the current Loan Originator Rule contains a similar prohibition against compensation based on loan terms and conditions, the Rule applies where a creditor compensates a brokerage firm or its MLOs, but does not apply to consumer-paid compensation.[19] The statutory prohibition applies even to transactions where the consumer compensates the brokerage firm.[20]

The CFPB is also considering clarifying the Loan Originator Rule to permit MLOs to make certain types of pricing concessions to cover unanticipated increases in third-party settlement charges where those settlement charges are not controlled by the MLO, the creditor, or their affiliates and exceed or are in addition to the amounts disclosed on the Good Faith Estimate disclosure required by the Real Estate Settlement Procedures Act (RESPA).

Paragraphs 3.1 through 3.7 below outline the specific CFPB proposals under consideration and alternatives considered as they were presented to the SERs. A more detailed summary of those proposals and alternatives is appended to this Panel Report as Appendix C, and focuses in part on the benefits and costs of the proposals under consideration for small entities. The CFPB also believes that the proposals under consideration will have substantial benefits for consumers, as described below:

3.1 Payment of Discount Points

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[17] TILA section 129B(c)(1) (codified at 15 U.S.C. § 1639b(c)(1)). Additionally, TILA section 129B(c)(4)(D) (codified at 15 U.S.C. § 1639b(c)(4)(D)) states that no provision in that subsection shall be construed as "prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time."

[18] TILA section 129B(c)(1) (codified at 15 U.S.C. § 1639b(c)(1)).

[19] 12 CFR 1026.36(d)(1), 12 CFR part 1026, Supplement I (Comment 36(d)(1)-7).

[20] The proposed rule under consideration would implement this statutorily-mandated extension.

- The current Loan Originator Rule allows a consumer to pay upfront discount points.

- Dodd-Frank substantially differs from the Loan Originator Rule in generally prohibiting consumers from paying discount points to the MLO, creditor, or their affiliates where an individual MLO is being compensated by the creditor or brokerage firm. Dodd-Frank gives the CFPB authority to waive or create exemptions from this prohibition where doing so is in the interest of consumers and the public interest.[21]

- Because MLOs are compensated by the creditor or brokerage firm in the vast majority of originations and the payment of upfront discount points is widespread, implementation without exemption would significantly change the price structure for most current mortgage loan originations.

- The CFPB is considering using its exemption authority under Dodd-Frank to allow creditors to charge consumers discount points under certain conditions. These conditions are designed to limit the charging of points and fees where the possibility of consumer confusion (and thus harm) is greatest.

- Specifically, the CFPB is considering exercising its exemption authority to permit creditors to charge discount points, provided:

  (1) the discount points are bona fide, for instance that they result in a minimum reduction of interest rate for each point paid;[22] and

  (2) the creditor also offers the option of a no-discount-point loan.[23]

- Permitting the creditor to pay the MLO's compensation and to charge the consumer for discount points would allow creditors and brokerages, including small creditors and brokerages, to be more flexible in offering different mortgage loan products to consumers and would increase the range of mortgage transactions and payment options available to consumers. Conditioning the creditor's ability to charge discount points on compliance with the provisions listed above would decrease the potential consumer confusion that the statutory ban was intended to address.

- By mandating a minimum reduction of interest rate for each point paid, the CFPB would foreclose the possibility that a consumer pays points either due to mathematical error or an uncalculated assumption that the payment of points provides a financial advantage. Mandating a minimum interest rate reduction would also ensure that all points purchased provide a consumer benefit.

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[21] TILA section 129B(c)(2)(B)(ii) (codified at 15 U.S.C. § 1639b(c) (2)(B)(ii)).

[22] The CFPB is already in the process of defining "bona fide discount points" for the purpose of a separate rulemaking on ability to repay requirements under Dodd-Frank. *See* 76 FR 27390 (May 11, 2011).

[23] Alternatively, the CFPB has considered requiring the creditor to offer consumers the option of a no-point, no-fee loan.

- Requiring lenders to offer a no-discount point loan to consumers would make it easier for consumers to understand and compare a no-discount point loan with a loan where the consumer pays for discount points. This increased transparency could help consumers determine what benefits they would receive from an upfront payment for discount points in the loan transaction.

3.2 Payment of Origination Points and Fees in Creditor-Paid Compensation

- The current Loan Originator Rule allows a consumer to pay upfront origination points and fees where the creditor compensates the MLO.

- Dodd-Frank substantially differs from the Loan Originator Rule in generally prohibiting consumers from paying upfront origination points and fees (other than bona fide third party charges) to the MLO, creditor, or their affiliates where an individual MLO is being compensated by the creditor. Dodd-Frank gives the CFPB authority to waive or create exemptions from this prohibition where doing so is in the interest of consumers and the public interest.[24]

- Because the payment of upfront origination points and fees is widespread, for the same reasons described in section 3.1 above, implementing this prohibition without exemption would significantly change the financing for most current mortgage loan originations.

- As a result, the CFPB is considering proposals that would balance the objective of reducing consumer confusion and harm with the objective of preserving the ability of MLOs and creditors to receive, and consumers to pay, upfront fees. The conditions that are included in the proposal under consideration are designed to limit the payment of fees where the possibility of consumer confusion (and thus harm) is greatest.

- The proposal under consideration would ban those fees calculated as a percentage of the loan and often referred to as "origination points."

- Specifically, the CFPB is considering using its exemption authority under Dodd Frank to allow consumers to pay upfront fees under certain conditions where the creditor pays compensation to an MLO. The proposal under consideration would:

  1. Prohibit the payment of origination points to an MLO.

  2. Permit creditors to charge consumers upfront origination fees (except compensation to the MLO, which is prohibited by the statute), provided that the origination fees are "flat" and thus do not vary with the size of the loan; and

  3. Permit affiliates of the MLO or affiliates of the creditor to charge consumers upfront fees, provided that such fees are "flat" and thus do not vary with the size of the loan. Payments for title insurance to affiliates of the MLO or affiliates of the creditor, however, would be

[24] TILA section 129B(c)(2)(B)(ii) (codified at 15 U.S.C. § 1639b(c) (2)(B)(ii)).

permitted to vary with the size of the loan.

Alternatives Considered

- As an alternative, the CFPB has considered exercising its exemption authority to permit consumers to be charged upfront origination points and fees provided that the creditor offers a no-fee loan, and the difference between the higher interest rate on the no-fee loan and interest rate on the loan with upfront fees is reasonably related to the amount of upfront fees.

- The CFPB has also considered exercising its exemption authority to permit consumers to be charged upfront origination points and fees provided that the consumer is offered the option of a no-point, no-fee loan.

3.3 Payment of Origination Points and Fees in Brokerage-Paid Compensation

- The Loan Originator Rule prohibits a brokerage firm that receives compensation from a consumer from paying compensation to its employee brokers that is tied to that particular transaction (*e.g.*, a commission); brokerages are permitted to pay their employees a salary, hourly wage, or other compensation that is not tied to a particular transaction. Thus, the Rule allows "consumer-paid compensation" but bans "brokerage-paid compensation" because of the prohibition on the payment of commissions to brokers.

- Dodd-Frank also bans "brokerage-paid compensation," but for a different reason than the Loan Originator Rule. Under Dodd-Frank, when a brokerage firm pays its employee broker a commission, the points and fees provision prohibits the consumer from compensating the brokerage firm.

- Outside creditor-paid compensation, a brokerage firm must earn its revenue from the consumer. However, under both the Loan Originator Rule and Dodd-Frank, brokerage firms, including small firms, are unable to pay commission payments to brokerage employees when the consumer pays the brokerage. Brokerage firms are thus limited in their ability to offer their employees performance-based incentives in transactions where the consumer pays the brokerage, even though banks and thrifts are allowed to compensate their MLOs through commissions when the consumer pays the bank or thrift. As a result, the CFPB is considering a proposal that would permit the brokerage-paid compensation structure under certain conditions.

- Specifically, the CFPB is considering using its exemption authority to permit brokerages to pay a commission or other compensation tied to a particular transaction, provided that any discount points and origination fees paid to the creditor or its affiliates (other than bona fide third-party charges) satisfy the same conditions discussed in section 3.2 above (*i.e.*, discount points are bona fide, a no-point option is offered, and origination fees are flat and thus must not vary based on the size of the loan). The CFPB is also considering relaxing the proposed requirement that the fee paid by a consumer to a brokerage firm be flat and thus not vary with the size of the loan.

3.4 MLO Retirement Plans, Profit-Sharing, and Bonuses

- The CFPB is also considering certain changes to the Loan Originator Rule to clarify or address interpretive and compliance issues relating to limitations on compensation that have arisen since the Rule went into effect in April 2011, and to continue to control the financial incentives that may lead to steering while reducing any unintended consequences and unnecessary burdens.

- Under the Loan Originator Rule and the Official Interpretations, MLOs cannot be paid more compensation as a result of their origination of mortgages that have specific loan terms or conditions.[25]

- The CFPB has received a number of questions on the application of the Loan Originator Rule to employer contributions to qualified retirement and profit-sharing plans, such as 401(k) plans, and to non-qualified retirement plans, bonus plans, and profit-sharing plans. Questions have arisen because for many companies the amount of the employer's contribution to retirement plans that include MLO participants or to fund a profit-sharing or bonus pool used to make payments to MLO employees will vary based on the company's profits, which in turn vary, in part, on the terms of the loans (such as the interest rate) that the company's MLOs originate.

- As noted above, Dodd-Frank generally follows the principles governing employee compensation in the Loan Originator Rule in prohibiting an MLO from receiving, directly or indirectly, compensation that varies based on the terms of the loan.[26] However, the CFPB believes that Dodd-Frank provides some flexibility regarding treatment of such plans and that a strict prohibition may not be necessary or appropriate to implement Dodd-Frank's objectives, provided that potential steering incentives can be sufficiently addressed.

- To reduce any unintended consequences and unnecessary burdens, the CFPB is considering proposals to clarify the application of the general prohibition against compensation that varies based on loan terms to employer contributions to qualified and non-qualified retirement plans, bonus plans, and profit-sharing plans in which MLOs participate. The proposals would address the circumstances in which payments from these plans to MLOs are permissible.[27]

- The three proposals under consideration, discussed below, would each permit employers in certain circumstances to use profits derived from the company's mortgage business to fund retirement plans, profit sharing plans, or bonus pools from which MLOs are compensated under

[25] 12 CFR 1026.36(d)(1). The Official Interpretations to the Loan Originator Rule state that "compensation" includes salaries, commissions, and any similar payments, as well as annual or periodic bonuses. 12 CFR part 1026, Supplement I (Comment 36(d)(1)-1). The Official Interpretations also provide that "terms or conditions" of the transaction include the interest rate, annual percentage rate, loan-to-value ratio, and the existence of a prepayment penalty. 12 CFR part 1026, Supplement I (Comment 36(d)(1)-2).

[26] The Rule allows MLO compensation based on "a fixed percentage of the amount of credit extended," *see* 12 CFR 1026.36(d)(1)(ii). Dodd-Frank similarly allows an MLO to receive compensation that varies with the amount of the principal and with loan volume. *See* TILA section 129B(c)(1),(4)(D) (codified at 15 U.S.C. § 1639b(c)(1),(4)(D)).

[27] On April 2, 2012, the CFPB issued a bulletin clarifying that, until it adopts final rules implementing Dodd-Frank's mortgage loan origination standards, employers may make contributions to qualified retirement plans for MLOs out of a pool of profits derived from loans originated by MLO employees. *CFPB Bulletin 2012-02* (Apr. 2, 2012).

conditions that mitigate potential steering incentives. However, consistent with the general Dodd-Frank prohibition on MLO compensation that varies based on loan terms, these proposals would *not* permit an employer to distribute funds and compensate individual MLOs differently depending on the terms of the loans he or she originates.

1. *Qualified Plans*

- Employers would be permitted to make contributions to qualified retirement plans, qualified profit-sharing plans, and qualified employee stock ownership plans in which MLO employees participate, even if the contributions to the plan are made from profits derived from the company's mortgage business.

2. *Non-Qualified Plans and Bonuses*

- Employers would be permitted to pay bonuses to MLO employees or to make contributions to non-qualified profit-sharing or similar non-qualified plans in which MLO employees participate from profits derived from the company's mortgage business, provided that mortgage-related revenue does not contribute more than a set percentage of the company's total revenue. The CFPB is considering setting that percentage at a fixed percentage between 20 percent and 50 percent of total revenue.

3. *De Minimis Originations*

- Employers would be permitted to make contributions to MLO employees' qualified or non-qualified plans and to pay MLO employees bonuses from profits derived from the company's mortgage business provided: (1) the number of loans originated by the MLO is below a set small number; and/or (2) the MLO has originated a small proportion of the total loans originated by the company.

3.5 Pricing Concessions and Point Banks

- The Loan Originator Rule does not allow creditors and brokerages to set an MLO's compensation at a certain level, but later adjust it in selective cases where an MLO negotiates different loan terms. Such adjustments could be used to circumvent the ban on compensation based on a transaction's terms or conditions.[28]

- The CFPB is considering a proposal that would allow MLOs flexibility to make some types of pricing concessions in circumstances that do not present a danger of steering or other consumer harm. The proposal under consideration would allow an MLO to close loans in certain circumstances where the creditor will not agree to a pricing concession for a new or additional

[28] The Official Interpretations to the Loan Originator Rule note an example of a "pricing concession," stating that a creditor may not offer to extend a loan with specified terms and conditions (such as the rate and points) and then increase or decrease the MLO's compensation for that transaction if different loan terms are negotiated. 12 CFR part 1026, Supplement I (Comment 36(d)(1)-5).

settlement charge and the consumer is unable or unwilling to pay it.

- The CFPB is considering clarifying the Loan Originator Rule to permit MLOs to make certain types of pricing concessions to cover unanticipated increases in third-party settlement charges where those settlement charges are not controlled by the MLO, the creditor, or their affiliates and exceed or are in addition to the amounts disclosed on the Good Faith Estimate disclosure required by RESPA.

- The CFPB is also considering addressing point banks, where a creditor contributes points to an MLO for each transaction that the MLO closes and the MLO may then use these points to obtain pricing concessions from the creditor. The CFPB is considering clarifying that MLO point banks fall within the definition of "compensation" and providing guidance on the award of points to MLOs that would not violate Dodd-Frank's prohibition against compensation that varies based on loan terms.

3.6 MLO Qualification and Training Requirements

- Employees of depositories and bona fide nonprofit organizations currently do not have to meet the SAFE Act standards that apply to licensing, such as taking pre-licensure classes, passing a test, meeting character and fitness standards, having no felony convictions within the previous seven years, or taking annual continuing education classes.

- Section 1402 of Dodd-Frank amends TILA to impose a duty on MLOs to be "qualified" and, where applicable, registered or licensed as an MLO under state law and the federal SAFE Act.

- To implement Dodd-Frank's requirement that entities employing or retaining the services of MLOs be "qualified," the CFPB is considering requiring entities whose employee MLOs are not subject to SAFE Act licensing (*e.g.*, depositories and bona fide nonprofit MLO entities) to: [29]

    (1) Ensure that their MLO employees meet character and fitness and criminal background standards equivalent to the licensing standards that the SAFE Act applies to employees of non-bank MLOs; and

    (2) Provide appropriate training to their MLO employees commensurate with the size and mortgage lending activities of the entity.

        - The proposed requirement to provide appropriate training to MLOs who are not subject to SAFE Act licensing is analogous to the continuing education requirement that applies to individuals who are subject to SAFE Act licensing. The proposed requirement under consideration would be tailored to correspond to the actual lending activities of the MLO and would not impose a minimum number of training hours.

[29] The CFPB is not currently considering imposing these requirements on governmental entities.

3.7 Other Proposals Under Consideration

Other proposals that the CFPB is considering relate to unique identifiers, proxies, recordkeeping, and a possible sunset provision.

Pursuant to section 1402 of Dodd-Frank, MLOs would be required to include on all documents any unique identifier of the MLO provided by the Nationwide Mortgage Licensing System and Registry. This new requirement may impose some additional costs relative to current practice. The CFPB is considering clarifying that only disclosure and closing documents that include loan terms must include the required unique identifiers and the names of individual MLOs. The CFPB is also considering clarifying which MLOs must include their unique identifiers and names on the documents in cases where multiple individuals (or entities) meet the Dodd-Frank definition of an MLO.

The Official Interpretations of the Loan Originator Rule state that MLO compensation "based on a factor that is a proxy for a transaction's terms or conditions" is prohibited because compensation based on proxies could potentially lead to circumvention of the ban on compensation based on the terms and conditions of the loan.[30] The comment identifies credit scores and debt-to-income ratios as examples of factors that are proxies for loan terms.

Based on the numerous inquiries received by the CFPB, there appears to be uncertainty regarding the scope of the prohibition of receiving compensation based on a proxy of a loan term or condition under the Loan Originator Rule.

The CFPB is considering proposing that a factor is a proxy if: (1) it substantially correlates with a loan term; and (2) the MLO has discretion to use the factor to present a loan to the consumer with more costly or less advantageous term(s) than term(s) of another loan available through the MLO for which the consumer likely qualifies.

The CFPB is also considering proposing changes to record retention requirements. Under the Loan Originator Rule, a creditor maintains records of the compensation it provided to the MLO for the transaction and of the compensation agreement in effect on the date the interest rate was set for the transaction.[31] The creditor must maintain these records for two years after a mortgage transaction is consummated.[32] However, an MLO is not required under the Loan Originator Rule to maintain records of the compensation it receives from a creditor, directly from the consumer, or from the brokerage firm. Under section 1404 of Dodd-Frank, MLOs are subject to civil liability for violations of TILA, including liability for receiving compensation that varies based on the terms of the loan, regardless of whether that compensation comes directly from the consumer or from a

[30] 12 CFR part 1026, Supplement I (Comment 36(d)(1)-2).

[31] 12 CFR part 1026, Supplement I (Comment 25(a)-5).

[32] General guidance for maintaining these records is set forth in Regulation Z and accompanying Official Interpretations. *See* 12 CFR 1026.25.

person other than the consumer.[33]

Thus, the CFPB is considering requiring brokerages (in addition to creditors) to maintain: (1) records of MLO compensation arrangements and agreements; and (2) records of compensation provided to MLOs by a consumer or a person other than the consumer. This new record-keeping requirement would improve the CFPB's ability to monitor compliance with applicable requirements and to better protect consumers, and will assist entities in assessing their compliance with the rule. However, MLOs currently without record-keeping procedures will incur the costs associated with the establishment and maintenance of such procedures.

Finally, CFPB is considering whether to "sunset" the proposed partial exemptions from the restrictions on MLO compensation when a consumer pays points or fees, as described above in Sections 3.1 and 3.2. Under the sunset provision under consideration, after a specified period (*e.g.*, three or five years), the proposed rule permitting creditors to compensate MLOs when consumers paid points or fees would automatically expire (and the points and fees provision would take full effect) unless the CFPB takes affirmative action to extend it.[34] At that time, the CFPB would have had time to conduct a more detailed assessment of the payment of points and fees in a more stable regulatory environment to determine the long-term regulatory regime that would maximize consumer protections and credit availability. A sunset provision may be beneficial because predicting outcomes of a full and permanent prohibition on payment of upfront points and fees is particularly difficult at this time because data are limited generally on the prevalence, size, and distribution of upfront points and fees in the mortgage market and specifically on the interaction of these points and fees with MLO compensation or with consumer decision making. In addition, there are many recent and pending additional regulatory changes (such as implementation of new federal mortgage disclosures) that could impact consumer understanding.

4. APPLICABLE SMALL ENTITY DEFINITIONS

For purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions.[35] A "small business" is determined by application of SBA regulations and reference to the North American Industry Classification System ("NAICS") classifications and size standards.[36] A "small organization" is any "not-for-profit enterprise which is independently owned

[33] TILA section 129B(d) (codified at 15 U.S.C. 1639b(d)).

[34] With or without a sunset provision, the CFPB would review the regulation within five years of its effective date pursuant to section 1022(d) of Dodd-Frank, which requires the CFPB to "conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law" and publish a report of its assessment. 12 U.S.C. § 5512(d). The assessment must address, among other relevant factors, the effectiveness of the rule or order in meeting Dodd-Frank's purposes and objectives and the specific goals stated by the CFPB, and it must reflect any available evidence and data collected by the CFPB. Before publishing a report of its assessment, the CFPB is required to invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

[35] 5 U.S.C. § 601(6).

[36] 5 U.S.C. § 601(3). The current SBA size standards are found on SBA's website at http://www.sba.gov/content/table-small-business-size-standards.

and operated and is not dominant in its field."[37] A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.[38]

5. SMALL ENTITIES THAT MAY BE SUBJECT TO THE PROPOSALS UNDER CONSIDERATION

The CFPB identified six categories of small entities that, for purposes of the RFA, may be subject to the proposed rule under consideration. These are the categories of entities that are engaged in originating mortgages either as creditors or as mortgage brokers.

The categories and the SBA small entity thresholds for those categories are:

CATEGORY	THRESHOLD FOR "SMALL"
Commercial Banks	$175,000,000 in assets
Savings Institutions	$175,000,000 in assets
Credit Unions	$175,000,000 in assets
Real Estate Credit (Non-bank lenders)	$7,000,000 in revenue
Mortgage Brokers	$7,000,000 in revenue
Nonprofit Organizations	Not for profit; independently owned, operated; not dominant in field

6. SUMMARY OF SMALL ENTITY OUTREACH

6.1 Summary of the Panel's Outreach Meeting with Small Entity Representatives

Representatives from 17 companies and organizations were selected as SERs for this SBREFA process and participated in the Panel Outreach Meeting (either in person or by telephone). The CFPB convened the Panel on May 9, 2012. The Panel held an outreach meeting/teleconference with SERs on May 23, 2012 (the "Panel Outreach Meeting"). To help the SERs prepare for the Panel Outreach Meeting, the CFPB sent to each of the SERs the materials described in Appendix B as "Materials Circulated in Advance of Panel Outreach Meeting." In addition, the CFPB posted these materials on its website and invited the public to email remarks on the materials. The PowerPoint slides that were presented during the meeting and formed the basis of the discussion are attached as Appendix D.

The CFPB convened two calls on June 7 and June 8 with SERs and their guests (who were invited to listen) on the proposal under consideration whether to require that origination fees in transactions with creditor-paid and brokerage-paid compensation be "flat" – i.e., do not vary with the size of the loan. The CFPB clarified some aspects of the flat fee proposal and other proposals under

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[37] 5 U.S.C. § 601(4).

[38] 5 U.S.C. § 601(5).

consideration, responded to questions about the proposals under considerations, and received comments about the proposals under consideration and other options from the SERs.

The CFPB also provided the SERs with an opportunity to submit written feedback or comments. The original due date was June 4, but at the request of several SERs and in light of the additional calls, the deadline was extended to June 11, 2012.[39] The CFPB received written comments from 11 of the SERs and shared these comments with the other members of the Panel. Copies of these written comments are attached as Appendix A.

6.2 Other Outreach Efforts, Including to Small Entities

In addition to conducting the SBREFA process, the CFPB has organized and will continue to organize extensive outreach efforts to consumers, industry members, and representative groups—including small entities and representative organizations—regarding the development of regulatory proposals.

In conjunction with this matter, the CFPB has met with and received feedback from other businesses and industry representatives, as well as facilitated roundtable discussions with affected businesses and organizations, industry groups, consumer advocates, and other government agencies. Some of the individuals attending these meetings and roundtables represented small entities from various regions. The CFPB has also received feedback from affected businesses and consumers through emails submitted directly to the CFPB. The CFPB will continue to collect information from stakeholders, including small entities, as the Bureau refines the proposal.

7. LIST OF SMALL ENTITY REPRESENTATIVES

The following 17 SERs were selected to participate in the Panel process:[40]

NAME	BUSINESS NAME/LOCATION
Charles Brown	Insignia Bank Sarasota, FL
Maureen Prentice	Logansport Savings Bank Logansport, IN
Lisa Brown	Tallahassee-Leon Federal Credit Union Tallahassee, FL

[39] The Panel extended its deliberations in order to allow full consideration and incorporation of the written comments of the SERs.

[40] Three additional individuals representing two different industry categories (commercial banks and credit unions) were identified by the CFPB as potential SERs. However, shortly before the Panel Outreach Meeting, these three individuals notified the CFPB that they would be unavailable to attend the meeting either in person or by telephone and ultimately did not participate in the process. The CFPB identified and contacted several potential substitute representatives during that short time frame, but was only able to find one available replacement.

Roger Jones	WestStar Mortgage Woodbridge, VA
Michael McQuiggan	Tri-Emerald Financial Group, Inc. Lake Forest, CA
Larry Moss	Augusta Mortgage Augusta, GA
Carol Gardner	Lending Network, Inc. Palos Heights, IL
Bob Duquette	Adirondack Funding Services Peru, NY
Ronald Lauren	SIR Federal Credit Union Neguanee, MI
Don Derispinis	Charter Oak Lending Group Danbury, CT
Valerie Saunders	RE Financial Service Inc. Jacksonville, FL
Mike Anderson	Essential Mortgage Mandeville, LA
Robin Coffey	NHS of Chicago Chicago, IL
Tony Armstrong	Maine Home Mortgage Portland, ME
Elyse Cherry	Boston Community Capital Boston, MA
Robin Loftus	Security Bank Springfield, IL
Ginny Ferguson	Heritage Valley Mortgage, Inc. Pleasanton, CA

These SERs were selected from the following six industry categories:

Commercial Banks	3
Credit Unions	2
Mortgage Companies (non-bank lenders)	3
Mortgage Brokers	7
Nonprofit Housing Organizations	2

8. SUMMARY OF SMALL ENTITY REPRESENTATIVE COMMENTS

This Chapter summarizes the feedback provided by SERs during the Panel Outreach Meeting and in the written comments received by the Panel.

As discussed above, the SERs consisted of representatives from the following industry categories: commercial banks, credit unions, mortgage companies, mortgage brokers, and nonprofit housing organizations.

In general, the SERs expressed concern about the cumulative level of regulation in response to the mortgage crisis, suggesting that the pendulum may have swung too far in favor of increased regulation. They noted that large numbers of lenders and brokers had ceased operations in 2007 and expressed fear that additional companies would exit the marketplace because of concerns about compliance burdens. The SERs asserted that small lenders and brokers provide consumer choice and high levels of customer service, enhancing competition in the marketplace. They stated that small lenders and brokers are generally responsible members of the communities in which they operate and, by and large, did not participate in the practices that contributed to the mortgage lending crisis. They urged the CFPB to exercise its authority in a way that provides stability to the market, does not favor particular segments of the industry over others, and recognizes the unique role that small lenders and brokers play in their communities. They also urged the CFPB to coordinate closely with other regulators, Fannie Mae, and Freddie Mac.

8.1 Payment of Points and Fees

8.1.1 In General

- General concern. SERs expressed concern and puzzlement about Dodd-Frank's prohibition on points and fees, suggesting that while there may be some consumer confusion about tradeoffs between rate, points, and fees, such confusion was not central to the mortgage market crisis or current foreclosure issues. The SERs emphasized that the prohibition or even the more modest restrictions under consideration by the Bureau would be extremely disruptive to the market as a whole. They questioned whether such disruption was warranted given competitive pressures, the extensive regulation of MLO compensation, and the Bureau's work to redesign mortgage disclosures.

- Focus on research and disclosures. Several SERs suggested alternative approaches, urging the Bureau to concentrate on improving disclosures, supplemental tools, and education programs to help consumers better understand pricing tradeoffs. Other SERs urged the Bureau to delay action until it can conduct a study of the current mortgage market to assess post-crisis business practices and conditions and the efficacy of recent regulations.

- Studies submitted. SERs submitted studies showing the decline in the share of loans originated by brokers, the decrease in the number of MLO entities over the past five years, and the rates of default among various classes of loans. One submitted study, which was commissioned by the Board and predated the existing Loan Originator Rule, concluded that disclosures of broker compensation to consumers had limited effectiveness because the consumers did not understand how compensation to a broker could affect a broker's decision about which loan terms to present to a consumer. One submitted study described subprime loan pricing practices among lenders and brokers and concluded that consumers who obtained loans from brokers generally paid the same or less than consumers who obtained loans from lenders.

- Other concerns. One SER submitted a summary of concerns from colleagues identifying restrictions in the existing rule on MLO concessions to address errors in the Good Faith Estimate or to cover rate lock extension fees. Other comments from these colleagues stated that MLOs tend to avoid consumers seeking low balance loans because MLOs' compensation is set as a percentage of the loan balance, and that rates and administrative fees have increased since promulgation of the Loan Originator Rule.

- Sunset. SERs urged the Bureau not to adopt an automatic sunset in connection with any regulation relating to points and fees. They warned that an automatic sunset would be extremely disruptive to the market at a time when it is still fragile. Instead, the SERs urged the Bureau to review the impact of the regulation in five years, as required under Dodd-Frank.

8.1.2 Payment of Discount Points

- SERs strongly supported the CFPB's use of its exemption authority to preserve the ability of consumers to pay upfront discount points. SERs generally believed that offering an option for the payment of discount points would be in the interest of consumers.

    - SERs reported that a fair number of borrowers have specifically requested to pay discount points to reduce their rate. The SERs strongly encouraged the CFPB to allow these consumers the flexibility to consider their particular circumstances and decide if paying discount points makes sense for them. Where there is confusion, SERs reported that their MLOs work closely with consumers to explain tradeoffs so that consumers can choose the financing structure that best meets their needs.

    - Several SERs reported instances where consumers needed to pay discount points in order to qualify for a particular loan or to keep monthly payments affordable. One nonprofit SER stated that it was particularly important for the SER's organization to be able to offer discount points to its borrowers to keep the monthly payment within an affordable range. Another SER estimated that discount points were paid in about 20 percent of the loans the SER's company made, and emphasized that consumers often would not otherwise qualify for loans based on debt-to-income ratios.

    - SERs urged the CFPB to consider requiring additional disclosures or developing better educational materials about tradeoffs between points and rates as an alternative to direct regulation.

- SERs generally expressed concern about a requirement that discount points be bona fide so that they must result in a minimum reduction of interest rate for each point paid.

- SERs stated that it is difficult to set discount point value as equal to a fixed percent of the interest rate on a loan because the pricing of discount points is non-linear, which, for example, would make the reduction in the interest rate for the first discount point paid different than the reduction for the second discount point. In addition, the point values to buy rates down/trade off will vary with loan type (*e.g.*, FHA, and VA).

- Many SERs also anticipated that requiring a fixed minimum reduction in interest rate would be problematic because rates are not static. These SERs noted that rates change constantly based on market conditions and may even vary minute by minute, making it difficult to assign a specific interest rate or buy down of the rate as "bona fide." Some SERs supported a requirement for a reduction in the interest rate but emphasized the difficulty in defining a minimum reduction. They also asked that the requirement be coordinated with corresponding requirements in the Home Ownership and Equity Protection Act and Qualified Mortgage rules.

- Some SERs suggested that constantly changing rates could also make documentation of compliance difficult, given the widespread use of automated pricing engines and electronic rate sheets. One SER predicted that certain states would not permit the use of an electronic rate sheet, but rather would require paper rate sheets to document compliance. However, another SER stated that the SER is able to print out a hard copy of the rate sheet generated by the electronic pricing engine used by his business, which could be used to document market conditions and prices when a loan is offered to a consumer.

- One SER suggested that the CFPB attempt to monitor the market and periodically publish an index that could be used to determine whether a discount point is bona fide. Another SER suggested that using rates and reductions in rates straight from a rate sheet or pricing engine without any adjustment should be sufficient for a discount point to be considered "bona fide."

- With respect to whether to propose requiring that the creditor offer a no-discount point loan, several SERs reported that they were currently offering consumers this option. They were thus comfortable with or in favor of such a requirement, provided there was flexibility for consumers to choose loans that best meet their needs. Other SERs cautioned against requiring the offering of any particular product.

8.2 Payment of Origination Points and Fees in Transactions with Other Than Consumer-Paid Compensation

- SERs were appreciative that the CFPB was considering using its authority to create an exception to the points and fees provision but expressed significant confusion about the proposal under consideration to prohibit origination fees from varying based on the amount of the loan. Several SERs explained that they had restructured their MLO compensation to provide compensation as a flat percentage of the loan amount to comply with the Loan Originator Rule. They stated that these changes had already eliminated steering incentives. They also suggested that prohibiting overall origination fees from varying based on the amount of the loan creates tension with Dodd-Frank, which specifically permits MLO compensation to vary with the amount of the loan. The SERs predicted that the prohibition would be difficult to administer and would require the CFPB to issue significant guidance.

- Some SERs stated that they generally opposed a flat fee for core underwriting and processing services. In addition, while one SER stated that the SER's company charges a flat fee now, many SERs noted several types of other origination fees that vary with the amount of the loan, including secondary market loan level pricing adjustments. They stated that origination fees also vary based on other factors, such as geography and type of loan, and urged the CFPB to state explicitly that it was not requiring a single fee to cover all origination costs and that variances in particular types of origination fees based on other factors besides amount of loan would still be permitted. Some SERS cited government-sponsored lending programs that require origination fees to be charged as a percentage of the loan. Some SERs advocated exempting any pass-through fees from the flat fee requirement.

- Several SERs stated that prohibiting variances based on the amount of the loan would disadvantage borrowers with smaller loans, particularly low- and moderate- income borrowers. The SERs predicted that brokerage firms and creditors would have to set their fees under the new system using some sort of average price that would exceed current fees for smaller amount loans. Some SERs predicted that the proposal would negatively impact access to credit because shifting costs into the rate would trigger status as high-cost mortgages. Others SERs stated that certain government programs, such as those of the Department of Veterans Affairs, prohibit fees that exceed 1 percent of the loan amount. The SERs stated that if a flat fee exceeded that threshold, then a loan would not be permissible.

- Several SERs predicted that prohibiting variances based on the amount of the loan would disadvantage smaller lenders, which do not benefit from the same economies of scale, opportunities to hedge or cross-market other services and products, and various other advantages as large lenders.

- Some SERs predicted that the proposal under consideration could disadvantage particular segments of the market, for example parties that cannot earn compensation from the backend by selling to the secondary market or small brokers.

- SERs also sought clarification on the definition of "affiliate" under the proposals under consideration. Some SERs criticized the idea of subjecting fees paid by consumers to affiliates to the same restrictions as fees paid to MLOs and creditors, stating that affiliates have separate operations and pricing and do not share profits with their affiliated MLOs and creditors. Some SERs also suggested that particular types of affiliates, such as real estate agents, should not be subject to the points and fees provision.

- SERs asserted that disclosures already address potential consumer confusion and could be further strengthened by adding information regarding break-even points or mandating that MLOs walk through tradeoffs with borrowers rather than regulating fee structures.

- SERs encouraged the CFPB to find a solution that preserved options for consumers. Some SERs opposed requiring MLOs to present consumers more options to choose from, stating the requirement would only increase consumer confusion and slow down the process. Other SERs stated that the flat fee requirement should be limited to subprime loans.

8.3 Payment of Origination Points and Fees in Brokerage-Paid Compensation

- Many SERs were strongly supportive of the proposal under consideration that would allow transactions with brokerage-paid compensation (*i.e.*, permit brokerage firms to pay to their brokers a commission or other compensation tied to a particular transaction when a consumer pays a brokerage firm), which would again make it possible for brokerage firms to split commissions with their brokers. Several broker SERs praised the CFPB for considering such a proposal, and no SER stated that they opposed such a proposal.

- SERs had little comment on the Bureau's proposal under consideration to permit origination fees that consumers pay to brokerage firms to vary based on the amount of the loan. The Bureau was considering the exception because it would be difficult for brokerage firms to pay their brokers commissions that varied based on loan amount (which is expressly permitted by Dodd-Frank), if the brokerage firms had to charge consumers origination fees that do not vary based on loan amount. One SER stated that such an exception would not fix the broader problems with the general proposal to prohibit fees to vary based on the amount of the loan. This SER reported that some community banks have been discussing whether to create a separate brokerage firm for each MLO.

8.4 MLO Retirement Plans, Profit-Sharing, and Bonuses

- SERs reported a variety of current practices regarding retirement plans, profit-sharing, and bonuses for MLOs after implementation of the Loan Originator Rule. Several SERs reported confusion regarding the current standards on whether they are required to segregate MLOs from retirement plans, profit-sharing, and bonuses that use funds derived from mortgage revenue. They stated that it was not practicable for small companies to maintain two sets of benefits programs for MLOs and non-originators because of practical limitations on human resources systems and because employees are required to play many roles. One SER said that restrictions on bonuses should not force businesses to discriminate against their MLOs. SERs also asserted that using mortgage revenue as a standard would be over-inclusive because the standard would capture income from all mortgage loans, including existing portfolio loans, rather than only newly originated loans.

- SERs praised the Bureau for considering proposals to provide greater clarity and allow reasonable accommodations where incentives to steer consumers into disadvantageous loans did not appear significant. Some SERs asserted that existing protections were so strong that additional concerns about incentives to steer consumers were not warranted. However, another SER urged the Bureau to consider incentives issues carefully, questioning whether the incentives were significantly different for benefits structured as qualified plans versus non-qualified plans.

- A few SERs asserted that some of the proposals under consideration to relax requirements for qualified plans would not help or would actively disadvantage particular segments of the industry. For example, one SER stated that the proposal under consideration to allow non-qualified plans where a company's revenues from mortgage-related business did not exceed a specified threshold would not help the SER's companies if mortgage revenue increased. One SER said that any mortgage-related revenue limit should be no lower than 50 percent. Another SER asserted that options involving qualified plans would not be helpful to small providers because the overhead involved in such plans makes them prohibitive for small companies. Another SER said there should be no limit because any limit would disadvantage small businesses that only originate mortgages, and that no limit is necessary provided bonuses were not tied to any one particular loan's terms. A bank SER said that the exemption for qualified plans should be expanded to cover all non-qualified plans in the case of small, federally-insured depositories.

8.5 Pricing Concessions, Point Banks, and Proxies

- SERs praised the Bureau for considering a proposal that would permit pricing concessions where there are unforeseen circumstances, but urged the Bureau to also permit concessions in other situations, such as to correct bona fide errors or to compete with another lender's offer. For instance, a number of SERs suggested that companies should be able to dock MLOs' pay where their errors cost the companies money. Other SERs urged flexibility to meet competing offers and suggested that change in circumstances notices under RESPA could help document that concessions are being given in appropriate circumstances. SERs stated that flexibility was particularly critical for small businesses to compete with large ones. Another SER said that allowing pricing concessions would reduce the current incentive to inflate charges on the Good Faith Estimate.

- Broker SERs also urged the Bureau to permit more flexibility on the use of concessions to allow them to compete with direct lenders. Some suggested providing brokerage firms (rather than MLOs) flexibility to grant concessions would help provide appropriate controls. Lender SERs did not voice objections to a consistent rule.

- No SER indicated that its business used a point bank system. One SER stated a personal preference against them but might consider such a system if necessary to be competitive. A number of other SERs expressed concern that point banks create incentives for MLOs to upcharge some consumers in order to create flexibility for themselves to provide concessions to other consumers. Other SERs said point banks would permit loan officers to treat one consumer better to the detriment of another, leading to fair lending concerns. Another SER said point banks would cause brokers to become excessively bound to the lender that provided them with the most points, creating incentives to steer consumers to that lender.

- SERs generally indicated that it would be beneficial for the Bureau to clarify the circumstances in which a factor used to determine compensation for MLOs was prohibited as a proxy for loan terms.

8.6 MLO Qualification and Training Requirements

- Broker SERs expressed strong support for consistent standards, reporting that many MLOs had switched to bank employment when the SAFE Act took effect because they did not want to take tests under the new system. They urged development of a single national platform rather than allowing each state to set separate requirements. Several broker SERs stated that the proposal under consideration did not go far enough and should impose the same testing, training, and state licensing requirements on depository institution MLOs that were already imposed on non-depository institution MLOs. One broker SER stated that non-depository institution-employed MLOs should not be permitted to self-certify that they are qualified.

- Depository institution SERs stated that they are already required to engage in vigorous screening of and training programs for their MLOs by their prudential regulators. They asserted that current standards are equivalent to the ones in the proposal under consideration and urged the Bureau to avoid layering on duplicative regulations and to coordinate closely with prudential regulators. One depository institution SER opposed any requirement for depository institution loan officers to have to take the same training as that required for non-depository institution MLOs.

- Non-depository institution lenders liked that the proposal under consideration would focus on the particular role played by individuals. They stated that an exemption for bona-fide nonprofit organizations under the SAFE Act granted by HUD had not actually helped nonprofits because many states had already decided to regulate them when the exemption was issued and had not repealed these regulations.

8.7 Cost of Small Business Credit

- SERs generally stated that the proposals under consideration would affect their small businesses by increasing their compliance costs. However, SERs did not state that they expected the proposals under consideration to have particular impacts on the cost of credit for small businesses.

9. PANEL FINDINGS AND RECOMMENDATIONS

9.1 Number and Types of Entities Affected

The following table provides the CFPB's estimate of the number and types of entities that may be affected by the proposals under consideration, as described in this Report:

Category	NAICS Code	Total Entities	Small Entities	Entities That Originate Any Mortgage Loans[b]	Small Entities that Originate Any Mortgage Loans
Commercial Banking	522110	6,596	3,764	6,362[a]	3,597[a]
Savings Institutions	522120	1,145	491	1,138[a]	487[a]
Credit Unions	522130	7,491	6,569	4,359[a]	3,441[a]
Real Estate Credit[c e]	522292	2,515	2,282	2,515	2,282[a]
Mortgage Brokers[e]	522310	8,051	8,049	N/A[d]	N/A[d]
Total		25,798	21,155	14,374	9,807

Source: HMDA, Bank and Thrift Call Reports, NCUA Call Reports, NMLS Mortgage Call Reports.

[a] For HMDA reporters, loan counts from HMDA 2010. For institutions that are not HMDA reporters, loan counts projected based on call report data fields and counts for HMDA reporters.

[b] Entities are characterized as originating loans if they make one or more loans. If loan counts are estimated, entities are counted as originating loans if the estimated loan count is greater than one.

[c] NMLS Mortgage Call Report ("MCR") for Q1 and Q2 of 2011. All MCR reporters that originate at least one loan or that have positive loan amounts are considered to be engaged in real estate credit (instead of purely mortgage brokers). For institutions with missing revenue values revenues were imputed using nearest neighbor matching of the count of originations and the count of brokered loans.

[d] Mortgage Brokers do not originate (back as a creditor) loans.

[e] Data do not distinguish nonprofit from for-profit organizations, but Real Estate Credit and Mortgage Brokers categories presumptively include nonprofit organizations.

9.2 Related Federal Rules

As discussed above, Dodd-Frank codified requirements for MLO compensation contained in Regulation Z and, in some cases, added to or altered those requirements. Through the current proposals under consideration, the CFPB is working to harmonize the earlier rules with the new statutory requirements. There was a separate proposal previously issued by the Board on ability-to-repay requirements that generally would apply to consumer credit transactions secured by a dwelling, which included the definition of a qualified mortgage. The CFPB is in the process of finalizing this rule, which will provide that bona fide discount points are excluded from the determination of whether a mortgage is a qualified mortgage.[41]

The Panel recommends that, before issuing a final rule implementing the Dodd-Frank provisions on mortgage loan originations, the CFPB consider how any bona fide discount point requirement relates to and impacts other rulemakings. If the CFPB adopts the option described above permitting bona fide discount points in creditor-paid and brokerage-paid compensation structures, the Panel recommends harmonizing the term among the various rulemakings.

9.3 Panel Findings and Recommendations

[41] 76 Fed. Reg. 27,390 (May 11, 2011).

9.3.1 Payment of Upfront Discount Points

SERs strongly supported CFPB using its exemption authority to allow consumers to pay upfront discount points, but expressed concerns about the specific details of requirements to make these discount points bona fide. Many SERs pointed out difficulties in mandating a discount equal to a fixed percent of the interest rate for each discount point given the non-linearity of the value for each point, and some SERs recommended exploring other options for ensuring that discount points are bona fide, including basing the discount on market rates or a lender's rate sheet. SERs expressed different opinions on the requirement that lenders offer a no-discount point loan, with a sizable number stating that they already offer such a loan.

The Panel recommends that the CFPB consider proposing to allow consumers to pay upfront discount points and to solicit comment on mechanisms to ensure that the discount points are bona fide. In addition, the Panel recommends that the CFPB solicit public comment on a proposed requirement that lenders make available a no-discount point loan.

9.3.2 Payment of Origination Points and Fees in Creditor-Paid Compensation

By and large, SERs were strongly opposed to the requirement that origination fees do not vary with the size of loan. SERs' opposition to the flat fee requirement was based on the view that the costs of origination varied for loans with different characteristics, such as geography and loan type, and GSE-imposed loan level pricing adjustments vary by loan size. In addition, SERs stated that the imposition of the flat fee requirement would disproportionately harm small lenders and would be regressive because borrowers with smaller loan amounts would be charged more than they are typically charged currently.

The Panel recommends that the CFPB consider further the potential costs and unintended consequences associated with a flat fee requirement before determining whether to propose it for comment. The Panel further recommends that the CFPB consider proposing and seeking public comment on alternative approaches to exercising its exemption authority to ensure that consumers are in the position to shop and receive fair value for origination points and fees and to minimize adverse industry consequences.

9.3.3 Payment of Origination Points and Fees in Brokerage-Paid Compensation

Many SERs strongly supported the proposal to allow brokerage firms to pay to their brokers a commission or other compensation tied to a particular transaction when a consumer pays a brokerage firm. While SERs made their general opposition to the flat fee requirement clear, they did not voice specific support for an exception to this requirement that would allow consumers to pay brokerage firms commissions that varied with the size of loans. The Panel recommends that the CFPB go forward with its proposal to allow brokerage firms to allow their brokers a commission or other compensation tied to a particular transaction when a consumer pays a brokerage firm and to consider allowing consumers to pay brokerage firms commissions that vary with loan size in transactions with brokerage-paid compensation.

9.3.4 MLO Retirement Plans, Profit-Sharing, and Bonuses

SERs welcomed clarification on rules governing compensation to MLOs from retirement plans, profit-sharing, and bonuses. SERs also urged the CFPB to analyze the incentive issues arising from qualified and non-qualified plans carefully before issuing clarifications on existing regulations or proposing new regulations. SERs were concerned that mortgage-related revenue limits, even if set at 50 percent of company revenue, may not provide relief for many small businesses because their revenues are often derived predominately from mortgage originations. Moreover, SERs urged the Bureau to consider relaxing the revenue test to exclude revenue derived from existing loans held in portfolio.

The Panel recommends that the CFPB solicit public comment on the treatment of qualified and non-qualified plans and whether treating qualified plans differently than non-qualified plans would adversely affect small lenders and brokerages relative to large lenders and brokerages. The Panel also recommends that the CFPB seek public comment on the ramifications for small businesses and other businesses of setting the revenue limit at 50 percent of company revenue or at other levels.

9.3.5 Pricing Concessions, Point Banks, and Proxies

SERs were supportive of the CFPB's proposal to permit pricing concessions where there are unforeseen circumstances. SERs also urged the Bureau to consider providing companies flexibility to use concessions in other circumstances, including reducing an MLO's compensation where an MLO's error costs the company money. SERs were wary of the prospect of allowing the use of point banks because of the fear that legitimizing their use would place responsible MLOs on an uneven playing field with less responsible MLOs and the possibilities of abuse in their use, including fair lending and steering violations. SERs also sought clarification from the Bureau on when factors used to compensate MLOs functioned as proxies for loan terms.

The Panel recommends that the CFPB continue to explore the use of pricing concessions and proceed with a proposal to allow pricing concessions where there are changes to terms not controlled by the MLO, the creditor, or their affiliates. The Panel also recommends that the CFPB solicit comment on whether there are other situations where pricing concessions should be allowed to provide MLOs with flexibility where the risk of abuse is low. The Panel recommends that the CFPB go forward with its proposal under consideration to clarify that point banks are compensation. The Panel recognizes the SERs' concerns for the potential of abuse in the use of point banks and further recommends that the CFPB propose limiting their use. The Panel also urges the CFPB to use the proposed rule to clarify when a factor used to determine compensation for an MLO serves as a proxy for loan terms.

9.3.6 MLO Qualification and Training Requirements

Broker SERs strongly supported the same testing, training, and state licensing standards for depositories and non-depositories, reporting that many MLOs had switched to bank employment when the SAFE Act took effect because they did not want to take tests under the new system. They urged development of a single national platform rather than allowing each state to set separate requirements. Depository institution SERs disagreed and stated that they were already required to engage in vigorous screening of and training programs for their MLOs by their prudential regulators. They urged the Bureau to avoid imposing new or adding duplicative or ambiguous requirements.

The Panel recommends the CFPB solicit comment on ways to provide greater clarity about what is required to meet the financial responsibility, character, and fitness criteria. The Panel recommends the CFPB consider clarifying what role, if any, an individual's credit score should have in the required financial responsibility determination.
The Panel recommends the CFPB consider ways to ensure that depository institutions and non-profit organizations are not required to provide training that is duplicative of training they are already required to provide to their MLOs.

9.3.7 Other Requirements

SERs generally preferred the CFPB to follow its Dodd-Frank requirement to review the impact of whatever regulation is adopted concerning the points and fees provision after five years instead of adopting an automatic sunset. The SERs believed an automatic sunset could be disruptive to the market. The Panel recommends that the CFPB solicit public comment on whether an automatic sunset for the points and fees provisions would be beneficial.

Appendix A

Written Comments Submitted by SERs

[See attached]

COMMENTARY ON LO COMPENSATION

QUALIFICATION AND SCREENING STANDARDS

I have been in the mortgage industry since 1977. In my 35 years of industry experience working with hundreds of borrowers trying to achieve the "American *Dream of Homeownership" I* can tell you what their resounding questions have been and still are.

HOW MUCH OF A MORTGAGE CAN I QUALIFY FOR?

I ONLY HAVE SO MUCH MONEY SAVED, WHAT KIND OF PROGRAM CAN I QUALIFY FOR?

WHAT IS MY MONTHLY PAYMENT GOING TO BE?

WHAT WILL MY INTEREST RATE BE?

WHAT ARE MY CLOSING COSTS?

And the question that gives them the greatest concern ....

HOW MUCH MONEY WILL I NEED TO BRING TO CLOSING

In the past five years the mortgage industry has been required to assimilate an inordinate number of changes, many of which have not had time to even begin to demonstrate a net effect, good or bad. The common denominator driving most of what we are here to discuss today is the allegations that mortgage loan originators were somehow abusive, deceptive or unfair to consumers. It appears that the attempt to ***protect the consumer*** has done nothing but ***confuse the consumer.***

The ideal situation would be to gather studies and data and make meaningful revisions with the Dodd Frank Act. Realistically that is not going to happen. (see Section 1 Emperical study A-4) . The CFPB has the power to correct a confusing system that was designed to protect the consumer. This system to date has had a major effect on small business, creating added costs and liability to small mortgage brokers. It would appear that these rules have been instituted to replace the small "shops" that have effectively worked within their local communities in providing guidance and assistance throughout the mortgage process, steering the consumer to the "big banks". ***The very spirit of competition is being threatened.***

Consumer confusion, HVCC, and all the regulatory "trial and error" mandates have brought the entire housing industry to a screeching halt. The consumer has lost up to 60% of their home equity, housing values have decreased to the point that properties are totally upside down. Foreclosures and short sales continue to devalue the entire real estate industry. Knowing all of this, we continue to charge on making the mortgage process more costly to the consumer (See Examples A 1-3).

It is my opinion that the CFPB is trying to make a positive step in requiring interest rate reductions when consumers pay discount points, as well as requiring lenders to offer consumers a no-discount point loan option. I would propose a solution to both of the proposed rules based on the addition of a pricing grid disclosure that would be made part of the disclosure process encompassing the GFE. This proposal gives

total transparency when the MLO and consumer are discussing rate and program options. Once again the spirit of competition is evident when the MLO discloses the different price variations since the MLO would have already discussed the dollar amount of their fee plus processing and administrative costs lenders charge (Block 1 of the GFE). Example B1-3.

Small business and MLO's are being forced by Lenders to sign documentation that demands repayment of any fees that if there is a change in the fees originally quoted, (ie title charges) the LO is required to come to the closing with funds payable to the borrower or lender. ***Have the regulations imposed further restrictions on the small mortgage brokerage and the MLO?*** See Example C-1)

Lastly, the idea of a FLAT FEE for the MLO goes against the entire real estate industry standards. The mortgage process is the most significant component to a real estate transaction. Realtors charge a percentage of the sales price on their transactions. Title companies charge a sliding scale fee calculated on the purchase price/mortgage amount of the transaction.

It appears as though the mortgage broker's fee is being carved out of what has been standard procedure as a % of loan amount, just as the Realtors commission structure is a negotiated % of the actual sales price. In my 35 years, I have never had a consumer question my fee as equated to a percentage of their loan amount.

Let's equate a "flat fee" discussion to other industries that deal with the consumer. We the people own General Motors. We all know how exasperating it is to purchase an automobile including the "finance man" who sets up the financial portion of the purchase. Why don't we impose a flat fee on the sales force and pay them $150.00 on each transaction. I'm sure that would be a major upheaval in the marketplace. This country's economic system is based on capitalism which is designed for free enterprise to develop competition. By trying to institute a flat fee for the mortgage industry you are essentially shutting down a small business that effectively has served their local communities. A flat fee will create a loss of income for a small entrepreneurial business owner forcing them to shut down and work for "the big banks" . Now the consumer has no choice. How does the government have a right to set our income?

Moving the discussion on to revising current MLO qualification requirements Dodd-Frank requires that MLO's be "qualified".

Based on Appendix D of your presentation, there is still a great disparity between the Banks, Non-Banks and Non-Profits. My question is this. Why is 10% of the industry (mortgage companies and mortgage brokers) held to standards over the bar as compared to the 90% of the industry that has minimal or no requirements imposed on them. ***HOW DOES THIS PROTECT THE CONSUMER?***

I would suggest that greater oversight needs to be focused on the banks and non-profits. I'm sure the CFPB is well aware of the fact that the banks have registered all of their employees with the NMLS system. There is a major difference between REGISTERING AND LICENSING. What informational documents are supplied to the consumer explaining the differences between a registered MLO vs. a Licensed MLO. At the present time all bank personnel, including the tellers, tout their NMLS#. Does that procedure not deceive the consumer.

How does the CFPB quantify the standards that the banks and non-profits use for the education and continuing education of their MLO's? Why wouldn't they have to meet the same educational requirements and pre-licensing requirements that a Non-Bank is subject to. Has the bureau ever done a study based on the number of loan officers who migrated to a bank to work because they couldn't pass the required tests administered through the NMLS.

I believe that the way to correct the housing industry is a major overhaul in the actual delivery system of mortgage originations. We believe that any person who takes a loan application and quotes an interest rate should be licensed, that includes any bank or non-profit individual including the President of a Bank if he/she is taking a loan application. If we are going to be transparent and assist the consumer, they should be informed that all originators are not equal.

Possibly your agency should modify the loan products that are offered to be limited to 15, 30 or 40 year fixed rate product, 3,5,7 year ARM loans and Balloon loans allowing terms for modification when the notes become due and payable. We need to keep in mind the actual truth of the fact that the "bad" mortgage products, the sub-prime loans that brought us to the mortgage crisis we experienced in 2008 was due to the product design that was given to the American public and introduced to the mortgage markets by Countrywide Home Loans, (owned by a Bank), BOA, CHASE and let's not forget Washington Mutual. Carve out the sub=prime product that is beginning to surface in the market place.

Your agency has the broad power to correct a bad situation for the consumer allowing the spirit of competition to once again flow through the economy.

Thank you for the opportunity to serve on SBREFA panel in an effort to express my views as a small, female owned mortgage brokerage firm.

Respectfully,

Carol Gardner, CMC, CRMS NMLS# 148681

Lending Network, Inc. NMLS#148672

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Subject: Loan Impacted Negatively by LO Comp
From: "Dennis J. Papiernik, CMPS | 630.708.TEAM (8326)" <dpapiernik@addvalueinc.com>
Date: Mon, May 21, 2012 2:01 pm
To: Bob Perry <bperry@iamp.biz>, Carol Gardner <cgardner@lendingnetwork.net>

$74,000 purchase price, 20% down, Loan Amount $59,200

Due to the low loan amount interest rate bumped to 4.125%, a .250% rate hike due to branch minimums.

Dennis J. Papiernik
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Senior Loan Officer
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ColeTaylor Mortgage
A Division of Cole Taylor Bank

My profiles:

My blog: Warren Buffett Says Buy A Home...NOW!

Latest tweet: Underwater on your house...like to get a better rate and reduce your payment...tried in the past with no luck?... http://t.co/8K61Tu1O
Follow @dpapiernik Reply Retweet 07:01 May-14
Get this email app!

Example A-1

IMPACT OF MORTGAGE INSURANCE INCREASES ON CONSUMERS' MONTHLY MORTGAGE PAYMENTS - FEBRUARY 2012

Purchase Price	$200,000.00
3.5% Down Payment	$7,000.00
96.5% Base Loan Amount	$193,000.00
Interest rate = 4% (30 yr Fixed)	

UFMIP : Up front mortgage insurance - payment made into FHA insurance fund at closing
This amount is financed - it is added to the loan amount

Annual Premium: This is the mortgage insurance paid monthly and added to the monthly payment
This amount is paid monthly until the loan balance reaches 78% of the original loan amount

	2008	March 2010	September 2010	January 2011	April 2011	Legislation Pending
	1.5% UFMIP	1.5% UFMIP	2.25% UFMIP	1% UFMIP	1% UFMIP	1% UFMIP
	.5 bps Annual MIP	.55 bps MIP	.55 bps MIP	.90 bps MIP	1.15 bps MIP	2.05 bps MIP
UFMIP	$2,895.00	$2,895.00	$4,342.00	$1,930.00	$1,930.00	$1,930.00
FHA Total Loan Amount	$195,895.00	$195,895.00	$197,342.00	$194,930.00	$194,930.00	$194,930.00
4% Prin. & Int. Payment (30 yr fix)	$935.00	$935.00	$935.00	$931.00	$931.00	$931.00
Annual/Monthly (MIP)	$82.00	$89.00	$90.00	$146.00	$187.00	$333.00
Monthly Payment(Prin.+ Int.+MIP)	$1,017.00	$1,024.00	$1,025.00	$1,077.00	$1,118.00	$1,264.00

Conclusions:

The annual mortgage insurance rate should be decreased to early 2010 level to minimize borrowers' payments.

As increases in the up front mortgage insurance have minimal impact on borrowers' payments, any required increases should be made to up front mortgage insurance premiums.

As increases in up front mortgage insurance premiums provide relatively large immediate payments into the fund, as annual premiums decrease, up front payments can increase if necessary .

FHA STIMULUS STREAMLINE REFINANCE PROGRAM

Same guidelines as current FHA Streamline Refinances *EXCEPT* :

1. Borrower's keep current Annual MIP Premium.

2. The UPFMIP Premium at 1%.

Rational:

1. This is a budget neutral program in monthly premiums paid to FHA and actually provides additional funds in UPFMIP premiums and increased number of months borrowers pay into fund.

2. Borrowers who qualify for the streamline refinance programs are low risk to the insurance program as they have to prove acceptable payment history.

3. Qualified borrowers will pay the same monthly amount into the FHA insurance fund - AND will pay another UPFMIP fee that will strengthen the fund.

4. Borrowers save money each month on their mortgage payment, putting additional funds in their pocket and into the economy monthly.

5. The only losses are to the banks who loose the profit from higher than market interest rate payments from good borrowers who qualify for market rates.

Prepared by Jeri Lynn Fox, MBA
630-247-7235
IL Association of Mortgage Professionals

Example A-2

SECTION 2

EXAMPLES OF CONSUMER HARM CAUSED BY IMPLEMENTATION OF THE LO COMP RULE

Example A-3

Section 2- Examples of Consumer Harm Provided By the Industry

Unable to amend fees in customer's favor

Seattle WA – SVP, Mortgage Company

"Can't tell you how frustrating it is when I have to tell a client that I can't cut my fee to help with things such as lock extensions or any other cash to close issues. To me it makes no sense that we can't do something like this to HELP our clients. I thought the new legislation was put in place to protect the client, but with no ability to reduce our fees we can't help them at all in these instances. Sure would be great if they would tweak things to compensation could change in favor of the client if necessary."

Indianapolis, Indiana; Originator and Principal Manager

Borrower purchasing a short sale (For sale by owner). Lender approving short sale closing documents took 2 weeks. Rate Lock expired and needed extended. Borrower didn't have the money for extension fee. Short sale lender refused to pay any additional fees. Deal died. Buyers homeless and sellers going into foreclosure. Mortgage originator would have paid to save transaction.

Santa Barbara, CA; Senior Residential Loan Specialist

". . . . here is a recent nightmare (and has happened several times since April, 2011): Extension fees. The client and/or lender caused delays which resulted in the need to pay extension fees. These fees range from .125 per day to .125 per week. On $417,000 loan (average for Santa Barbara Ca.) that adds up to $521.25.

In the past, I would eat the first extension (or force the funding lender to eat it). Now, not only do "they" require it be passed along to the client, but they also need to re-disclose, causing a few more days delay and a potential for more extensions.

The whole current system is difficult when volume is low and absolutely unworkable if/when volume increases. Consumers aren't robots. They change their minds. They delay in providing data. They get sick. They go on vacations.

The new system is anti consumer, inconvenient and should only be applied to SUB PRIME loans and lenders. That they have implemented these rules for PRIME deals is a farce, a disgrace and a sham!

Oh, by the way, I've been originating Prime loans for almost thirty years.. . . . "

Second Example - Lynchburg, Virginia; Registered Mortgage Advisor

"When mistakes are made in GFE calculations (even very minor calculation errors of less than $1.00), borrowers are harmed because the lenders refuse to cure the GFE defect, and I am not allowed to cure the defect, so the loan application is not accepted by the lender and cannot be resubmitted. The borrower is left either finding a new lender because of a minor calculation error or we're left to work with another lender that I can broker the borrower's loan to. In some cases, there are few options available for a borrower based on the loan parameters (loan type, property type, credit profile, property location, etc.) and the elimination of a viable lender choice over a very minor calculation error is extremely harmful."

California; Loan Officer and Realtor

"My client was waiting for a specific interest rate (3.75% and NO points) before continuing with the loan. Yesterday, the rate of 3.75% was there and the interest rate buydown cost was 1/8 of a point, which I stated to my client and he vehemently stated "I don't want to pay ANY points!!!". The total cost of the points was less than $300, which I would have eaten through my YSP had the new LO Comp rules not been in place."

Fort Myers, Florida; State-Licensed Originator

"I have a number of examples from past closings that I could share, I have one from yesterday that is fresh in my mind.

We locked in a loan for 30 days and due to some appraisal delays and just typical end of month log jamming, we had to extend my client's lock 3 days. That 3 days cost .15 or $480 in this case. I do not directly blame anyone for these delays, especially the borrower, so I would have typically just paid the $480 out of my commission and chalked it up to the cost of doing business and making a client happy. WELL, unfortunately I cannot do that and the client had no choice but to pay the $480. Do you think he is happy? Of course not, especially when it's hard to understand why 3 days could make such a financial impact. I cannot blame him for being upset, but for the very reasons why I am emailing you this example, I didn't create the problem, I have to just play by the silly rules given."

Sierra Vista, Arizona; Owner, Originator

"I have an approved loan that is ready for docs. It is a no cost refinance so obviously the lo comp is lender paid. My lock expires today and the lender will not grant a free extension. It will cost 20 BP to extend long enough to get this doc'd and closed. I can not absorb the .20 extension fee under these regulations and the borrower says she doesn't feel like she should have to pay it because the lender took so long to underwrite the file. I would be happy to absorb the 20 BP hit but I am prevented from doing so. Either the customer pays $399 in the additional fee or does not do the refinance which will save her $226.52 in her monthly payment."

Brea, California; State Licensed Originator

"Am just closing an FHA purchase where the LO comp plan cost my clients about $1,072. Here's the story:

Clients have been looking for a home to buy in our area for several months. In January 2012 they get an offer accepted. I locked the loan in for 30 days on a lender paid comp plan. Because of the pricing I was able to credit $3,000 towards the buyer's closing costs. Appraisal came in $32,000 low. Buyer and seller took over 10 days to renegotiate the sales price. Less than 7 days left on the lock when docs were ordered so we had to extend the lock for 15 days per the lender at a cost of .25% ($1,072). Before the new comp plans we would have absorbed most or all of the extension fee as this was clearly not the buyer's fault. Lender paid comp plan now prohibits us from absorbing the fee so the buyer lost $1,072 of the credit towards his closing costs."

Newport Beach, California; MBA and Loan Originator

"The Loan Officer Compensation Rule also hurts the consumer in a number of way. Here is a list of some of the ways consumers are hurt:

- Borrower has to pay for rate lock extensions even if borrower did nothing to delay the process
- Borrower has to pay for rate lock extension caused by 3 and 7 day re-disclosures – borrower should be able to sign a form allowing them to waive the wait period on initial disclosures and re-disclosures
- Borrower has to pay for an appraisal and other charges when a loan is declined because one of the disclosed fees was accidently over 10% more than initially disclosed.
- The borrower should be able to sign something stating that they are aware of the mistake and they accept the new fee. They always have the right to cancel the loan but they should also have the right to accept the new fees."

Bellevue, Washington; Compliance Vice President

"The following is an example of consumer harm caused by the LO Comp rule from 4/1/11:

Borrower's cash to close requirements exceed the estimated CTC. Prior to the 4/1/11 rule, the LO could make a concession by lowering his/her commission and issue a credit to the consumer to get the loan closed. Now the borrower is faced with the reality of the transaction not closing if the lender is unwilling to make a concession."

Denver, Colorado; Author's on personal example

In early 2010 I arranged a construction loan for a very strong customer. The loan was arranged through a local commercial bank and had a short, but flexible maturity which would be adjusted to accommodate possible building interruptions in the mountain areas of Colorado. I explained to my customer that my normal compensation is about 1.5% paid either directly by him, directly by the lender or some combination. In his situation a direct payment from him was elected. I also said that since this was a construction loan I would reduce the construction loan compensation to 1.0% and simply collect the balance of my compensation (0.5%) at the time I arranged his permanent financing. Since the construction loan and permanent loan were not related this provided my customer with the most flexibility while I hoped the structure motivated him to come back to me for the permanent financing.

My customer is now scheduled to receive his certificate of occupancy in the next two weeks. We are in the final stages of completing the application package for his permanent financing. Since April 2011 and the LO Comp Rule has been in effect my basic contract with the company for which I originate is a fixed 2.0% which allows me to net approximately 1.5% after the fees I am invoiced for as administrative support by the company. The company is a traditional broker so as an employee I am not allowed to use a borrower paid alternative to structure my compensation.

I have advised my customer that although he does not have to carry any amount in his loan balance nor does he have to cover the up front amount as part of closing costs, in spite of my offer to close his permanent loan for an origination fee of 0.5% I am contractually bound to receive 2.0% from my employer due to the LO Comp Rule and that the 2.0% will be paid by the lender. So, while it appears "free" to my borrower, the reality is that the borrower is forced to pay in his rate. In this case his loan is a $417,000. Based on recent pricing, if he were allowed to pay me 0.5% he would have access to 3.5% interest and would have received (based on 3/9/12 available pricing) $3,128 (more than my entire fee) credit toward closing costs which would have reduced the amount he will borrow in the form of a HELOC to pay off his larger construction loan. Instead because of the LO Comp Rule and my decision to work for a traditional mortgage brokerage company I am forced to earn a net of $7,450 on a transaction I would be perfectly happy to make the pre-agreed to $2,085 on and over the first seven years of the loan my customer will realize a negative cash flow of $8,283 while he will be further harmed by virtue of the higher interest rate in the context of his liability balance which in seven years will be $3,194 higher even though he has paid over $7,424 more in monthly P&I payments.

But for the inexplicable provisions of the FRB's interpretation of its own rule that mortgage broker companies may not pay their employees on each transaction if the borrower pays (by the way this has been objected to by Congressman Barney Frank [D-MA]) my customer would enjoy a lower rate and a lower total cost and I would have been compensated adequately for my services.

Can not modify compensation in favor of borrower

Jefferson City. Missouri; Originator/Recruiter

"I recently completed a VA refinance for a veteran that was wanting to buy down their rate to a below market interest rate. When originally structured I wanted to charge the borrower a little less than our "contracted" compensation rate with our preferred lender(best pricing & service for the customer) due to the fact that the loan amount was considerably larger than our normal average. So to do So I originally structured the loan as a "borrower paid" transaction. Only to later find out that VA never eliminated the 1% origination fee cap, Like FHA did when the 2010 GFE went into effect. To make a long story short, It was decided by the original lender that there was no way to reconcile the issue, and the loan had to be moved to another lender, with substantially worse pricing and much longer turn times. This caused significant additional delays, and it took a total of 73 days to close the loan from start to finish. That combined with a deteriorating market pricing between the time of the initial lock and the lock replacement with the new lender hit the customer in the wallet pretty hard.

The net harm to the borrower? = increased discount costs by $1394, and for a 0.125% worse rate than when originally locked, this on a Loan amount $149,500 = increased interest cost of 186.87/ yr for the life of the loan.

Total 10 yr Cost to the Veteran= $3254...

.... to a retired combat veteran who is still having to work to support his family after serving 22yrs in the armed forces; that money would go a long way to helping him actually be able to slow down and enjoy his sunset years."

Unidentified Location

"I had an FHA streamline refi of an $850,000 Duplex Loan. The borrowers are currently at 4.75%. I offered them 3.75%. The total yield spread premium was over $20,000. The total non-recurring closing costs were about $2,500.

I locked "lender paid" (the only way I could) and my comp level of 1.75% forced me to "make" almost $15,000. I would have been happy with $4,000, or less.

My borrowers had to bring in $10,000 to close (FHA; Impounds; etc.). They did NOT have the funds, and I was NOT allowed to credit my commission to them for prepaids.

The deal died. My borrowers are stuck with 4.75% for life now. And I lost $4,000.

I have 100 stories like this. . . . "

Third example - Indianapolis, Indiana; Originator and Principal Manager

"VA loan. Originator Compensation Rule abuses Veterans. VA limits total origination costs to Veteran of 1% which includes all Box 1 GFE fees. If loan amount is $80,000 lender underwriting fee is $725. Broker can make $75 on borrower compensation method. In the real world... borrower paid compensation is eliminated as a viable option for 99% of all VA transactions. This is especially damning in small rural communities where a mortgage broker may be ***one of 2 local options*** for a VA mortgage. The Originator Compensation rule prohibits the broker from ***lowering his lender paid fee*** to fairly compete. Even if the regulators don't give a damn about the Originator, they are stacking the deck against the veteran."

Johnston, Rhode Island; Certified Mortgage Coach and Certified Mortgage Planning Specialist (CMPS)

"This example comes up every day in my business as a loan originator for a mortgage broker.

Example

Client wants:
- 5% down
- Conventional Program
- They want 4% rate. It makes payment comfortable.
- No points
- close ASAP seller is willing to close as soon as buyer is ready

Lender paid compensation is not an option due to limited closing funds available to buyer. Seller is paying 3% in closing costs and cannot pay any more to help buyer with discounts points.

Specifics:

We have over 50 lenders , but the clients credit specifics (limited credit does not have 3 open trade lines) directs my 15 yrs experience to pick a lender that is local and will quickly handle problems if they arise.

They also allow no minimum trade lines with DU approve/eligible which we have in this situation and is paramount to gaining an approval for buyer.

This lender is easy to work with and will push the approval process along quickly since seller and buyer want to close ASAP.

Today's pricing

4% 30 yr fixed conventional at BEST lender FOR THE CLIENT is a national lender who has local office. Today it would cost buyer .345 % in points since our compensation is locked due to Frank/Dodd.

I would gladly take the .345% out of my compensation to get loan locked and client is happy to go forward. It is important that the buyer pays no points because their closing funds are limited.

If pricing is headed worse, I have no choice of taking LESS on the loan in compensation and giving the client what they want.

I must wait to SEE to if rates gets better and HOPE that they get the 4% rate with no points.

Remember client wants 4% rate because that makes payment comfortable for them.

If rates get worse I may be forced to offer a HIGHER rate to client since that would be their only option with no points.

How is this fair to client? I cannot help out client and take less compensation, get them locked, send them to the proper lender and allow to save money by paying no points and send them to the best lender for their situation.

I am forced to have client possibly take a higher rate, higher payments or risk using a lender that will not close on time or even deny them due to their limited trade lines issues."

Wenatchee, Washington; Loan Originator

"On the other end of the spectrum. One of my clients that has a $520,000 home loan, works at Microsoft in Redmond Washington asked me to refinance his home loan. I told him I couldn't do that. Why he asked me? I had to explain that I am on a 2% commission comp program.... and he has great income, great credit scores (pushing the 810 mark), great job and tons of cash in the bank and 401k. I would have to charge him $10,200.00 to do the job. I cannot reduce my fee to $3000, after all that is all my fee is worth with a great client like him. I could not over charge him by over $7000 and I could not legally give the funds back to him under the table. I would have to charge that amount as the federal law states I must as I have a contract. He looked at me like I was crazy, and walked away. I told him to write his congressperson, Patty Murray. I saw him a few weeks later. I said did you write her? He said "Yes". "She wrote me back....telling me all the great things she is doing for me in the congress." He said "She never mentioned my concern about my loan and about my refinance".............go figure!"

Small Balance Borrowers Harmed in Spite of Min / Max Rule Provision

Fort Lauderdale, FL; Mortgage Banker

"I don't want to do loans under $75k as I lose money based on the flat fee I collect on the smaller loan balance. I have to make a business decision."

Yardley, Pennsylvania; Senior Loan Officer

"If I have two leads, one for a $100,000 mortgage and one for a $400,000 mortgage, I work on the $400,000 loan so my boss can make a profit on it and so I can keep my job.

This LO compensation rule will only serve to limit the financing choices of lower income/lower loan amount borrowers. I have many previous customers in my client database who might benefit from HARP 2, HAMP, lower rates, etc. But, if these customers owe $150,000 or less on their mortgages I probably won't call them. I can't afford to. I need to expend every effort to go after larger loans so I can feed my family."

Royal Oak, Michigan; Senior Loan Officer

"Prior to LO compensation I spent my marketing dollars and my time working with Realtors and clients in the lower end of purchasing range. I've been working this market since 1988 and they are the ones in the most need for an honest detailed loan officer. Since I was able to control my income depending on the loan size I was able to service this community along with me making a living and paying my bills.

Since the LO compensation came in to place and my income is fixed no matter what size loan amount I do I now spend my marketing dollars and my energy searching for higher price clients. What I mean here is that I still want to pay my bills and make a living.

I still help those clients who search me out and need my help (no matter the income) but I do not spend my time searching for these clients. These client now are not getting the experience of someone like myself and this opens up the market for hard money lenders or no lending at all.

Once again the little guy pays the price....It's always the little guy who pays the price."

Wenatchee, Washington; Loan Originator

"A Realtor friend of mine wanted me to meet up with a prospective client. Seems the client wanted to look at buying his first home. He is a low income Mexican American living in Wenatchee Washington. When I found out that he was looking at an $80,000 home and wanted to go FHA, I told my Realtor friend he should take his client to another lender. He asked why? I explained to him that I was on a 2% commission comp program with my office. That means that the most that I can charge the client is $1600. Out of that I have to pay processing fees, income taxes, ss, Medicare, state industrial ins, state unemployment ins and B and O insurance. When I get done paying out all this I would have to write a check to do this loan. The man asked me "Where can I go to get a loan?" I had to tell him look in the

Yellow Pages. I felt badly that I had to turn him away as I had done lots of loans like his a few years ago. But no longer an option. The underserved gets kicked in the teeth again. . . . .

. . . . . A couple of months later I ran into him. He said he ended up buying on a contract at 7% interest as he could not find anyone who would do his loan. . . . "

Confusion – Borrower and Rule / APR

Second example - Indianapolis, Indiana; Originator and Principal Manager

"This rule is Abusive and Deceptive to consumer from confusion due to APR. Borrower shopping for best deal on refinance gets multiple GFE's.

- Mortgage broker quotes borrower paid compensation (rather than lender paid) which increases APR to 4.391.
- Note rates for 30 year fixed are same at 4.125%
- Broker GFE Total estimated settlement charges ***is lower*** by $833 (GFE A +B is lower).
- Borrower chooses bank GFE because APR is lower 4.297 vs 4.391 for Broker.

Borrower deceived by Government rule and chooses higher cost loan thinking they are saving money."

Multiple Sources of Harm in One Transaction

Duncan, South Carolina; Mortgage Company President

"I have been in this industry for over 30 yrs. . . . .

In October of 2011 our previous clients who were a Church Pastor and a teacher with over 20 years in their chosen profession and scores in the high 700's and low 800's were presented a USDA streamline refinance opportunity that would reduce their interest rate save them over $100 a month and absorb any closing cost so as to avoid a large increase or increase in their mortgage balance. Due to the fact that they are at the top of the income parameter for household income the bank that already held the paper scrutinized this loan to the point where a delay caused the program to change from a 1% upfront fee to a 1.5% fee. [BORROWER PAID/LENDER PAID ISSUE] Since this loan can only be done as" lender paid" (unless the client wishes to come out of pocket) and because borrower paid option does not allow a broker to contribute to the fees we were forced because of the compensation rule to charge the client a 2.5% fee and to be quite honest a 2.5% on a $300,000 loan was not needed. Because of the delays the lender now had to re-do the paperwork and we had to re-disclose not once but three times. The costs of extensions were now added to the loan and we were unable to cure this. Now due to delays and the implementation of this unfair law the clients now had to pay 1.5% upfront rural guarantee fee and still absorb the unfair cost of extensions due to the lender's delays. [PROHIBITION FOR ORIGINATOR TO ASSIST WITH FEES] After we finally turned this around and had to have several meeting and conversations with these clients this had to be sent to the USDA for final approval. The bank once again told us to amend the paperwork so that we were in compliance. In doing so it was later discovered that this requirement posed by the lender and in fear of violating the Frank Dodd act and that of the broker compensation rule that this had to be sent to the bottom of the pile [MARKET FAILURE TO UNDERSTAND RULE] and start all over waiting for the rural USDA approval. Once again I am not permitted to help in absorbing these costs or contribute because this was a lender paid. When the lender finally got the approval they forwarded this package to the CHOSEN attorney who took another day in preparing this. NOTHING was allowed to be changed and the attorney only forwarded this to us less than ½ hour before the closing was to occur. The client was already in transit to our office and by the time we realized that the payoff was higher(and once again even if we had it was not permitted to be altered without sending this loan back to the USDA again), along with paying a third extension cost which would only result in the client parting with additional funds, **so the client would have to close by taking $3300.00 out of their pocket which we in no way expected them to do so we CANCELLED this closing**. We were unable to contribute to this because of the FRANK Dodd LAW and the broker Compensation Rules. We were unable to go back to the bank and ask for a different lender Compensation because of the implementation of this unfair FRANK DODD ACT and the broker compensation Rule. Our clients are trusting individuals for whom we have befriended over the years and this is just one of the many instances where our inability to be paid from both the YSP and or from a combination of the borrower and the YSP has hurt our industry, our client relationships and the client. . . .

Morristown, New Jersey; Originator

1. "The inability to do a no cost refinance for a Co-Operative Property due to the Lender Paid Compensation Rule.

2. When unexpected expenses arise in a loan refinance like a quarter of property taxes being due or a 1 year premium of home owners insurance policy being due, or a home under appraising and now the borrower is subject to the Fannie Mae/Freddie Mac Risk Adjusters which is an additional unexpected expense. The lender paid compensation does not allow the broker to credit a portion of the loan proceeds to the borrower to cover the cost.

   The cash strapped borrower who would benefit from the new loan with a lower monthly payment and/or lower interest rate now has the choice of : bringing additional funds to closing that they might not have budgeted for, or take a higher interest rate so the borrower can get a credit from the lender to pay the cost, or if the money is not available, cancel the loan and not reap the benefit of the lower payment and/or rate."

Miscellaneous Comments Offered in Response to Request

Banks, Oregon; Small Company Owner

"My wife and I own a small mortgage brokerage company in XXXX, Oregon. I have been in this business over 30 years and we have owned XXXXX XXXXXXX Corporation for the past 14 years. We have a good reputation and most of our business is customer referrals and Realtors.

Beyond the normal garbage that we have to go through recently, I had an issue that was totally outrageous.

I have been working with a borrower that has a second home near Portland where the loan was owned by FHLMC. I ran LP and received an approval back in November with a CLTV of 103%. The program max was 105%. The middle of I January submitted all the conditions into the lender (XXXXX XXXX Mortgage) and they reran LP with the updated information. It came back denied. After some checking the underwriter said that FHLMC changed their max CLTV guidelines on 2nd homes to 100% and now the loan did not qualify. Talk about an angry borrower and a more angry broker. The lender said that there was nothing that they or I could do. That is BS!

The borrower is a committee secretary for the Alaska legislature so this may not be the end of it.

This type of junk happens every day at some level. It does not usually kill the loan, but it does infuriate a bunch of people."

SECTION 1

EMPIRICAL INFORMATION DEMONSTRATING INCREASED CONSUMER INTEREST RATE COSTS SINCE THE IMPLEMENTATION OF THE LO COMP RULE

A-4

Section 1 -

General Cost Increase – Lenders

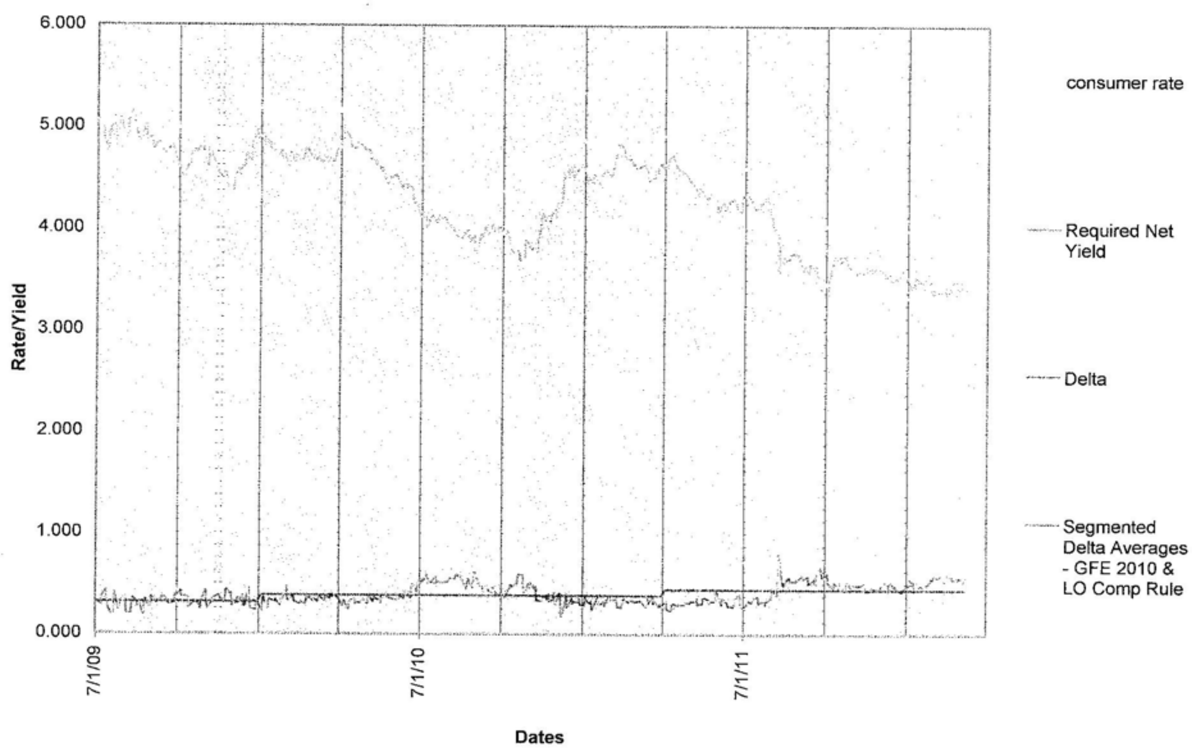
Lynchburg, Virginia; Registered Mortgage Advisor

"Lenders have increased their administrative and underwriting fees across the board to comply with both the FRB LO Comp Rule. Every one of my consumers has been harmed by the increased lender fees."

St. Charles, Illinois; Mortgage Company President

The following chart is undeniable proof that consumers are paying more than they otherwise have to pay. [redacted]

Conforming Mortgage Loan Origination Margin Difference & Impact to Consumer



The above chart demonstrates that since the introduction of the changes to the GFE and the LO Comp Rule, consumers in general are now paying an additional eighth percent (0.125%) with no other changes except increased consumer protection legislation and regulation.

Assuming a loan amount of $185,000 and a rate of 4.0% the borrower cost increase during the first seven years of the loan is over $1,100 and the mortgage liability balance is $461 higher, a combined cost to the borrower of over $1,500 in the average time a loan is held by a consumer. It is important to recognize that the LO Comp Rule as written by the Board anticipated this and even suggested that creditors could, for example, use an across the board increase of 0.25% in rate to accommodate the rule. The 1/4th% was just an example. (See 75 FR 58524, "*For example, a creditor could add a constant premium of ¼ of one percent to the interest rates on all transactions to recoup loan originator compensation. See comment 36(d)(1)–5.*")

I have highlighted for discussion purposes, a Lenders price sheet creating a block of interest rates from 3.5% to 4.25% along with lender pricing adjustments and their fees.

I would propose that under the CREDIT FOR SETTLEMENT COSTS FROM THE MORTGAGE LENDER IN EXCHANGE FOR YOUR SELECTED INTEREST RATE (This will be reflected as a credit to you on Block 2 of your Good Faith Estimate) The additional box could include the following:

(Hypothetical loan choice by the borrower: Requested loan amount of $200,000.00. Purchase transaction for a Condo at 80%LTV, Credit score: 722) Borrower does not want to pay more than $2000.00 out of pocket for closing .

4% rate yields a premium price of 103.492 or $6984.00

Less: Condo Adjustment Fee: .750% (1500.00)

Credit Score /LTV Adj. .500% (1000.00)

Net amount of credit given to borrower $4484.00

BLOCK #1: $5175.00 ($4000,00 origination fee, 675.00 lender admin fee, 500 broker's processing fee.)

BORROWER CREDIT: $4484.00

ADJUSTED BROKER FEE: $691.00

The Borrower is left with $1300.00 for additional closing costs, (title, recording fees, etc.)

THIS ADDITION TO A MORTGAGE BROKER FEE AGREEMENT IS TOTALLY TRANSPARENT. THE CONSUMER REFVIEWS THE PRICE SHEET, REVIEWS THE FEES NECESSARY **TO OBTAIN AN INTEREST RATE OF 4%. IF THE CONSUMER WANTS A LOWER RATE SAY, 3.5%, THE CONSUMER WOULD THEN HAVE TO PAY 2.462% TOWARDS A DISCOUNT TO GET THE RATE OF 3.5% OR $4924.00 TO BUY THE RATE DOWN. IN THE EVENT THE CONSUMER WANTS A NO POINT CLOSING COST LOAN TO INCLUDE ALL CLOSING COSTS THEY COULD SELECT A HIGHER PREMIUM SUCH AS A 4.5% RATE.**

I would suggest this type of disclosure be added as an alternative to the flat fee proposal. The consumer selects their own rate and terms and knows exactly how the credit for the rate is determined. This could be utilized for all MLO's including the banks.

It is a known fact that the premiums we see on our wholesale rate sheets is a fraction of what the lender/bank is really receiving on each transaction.

This allows for total transparency.

Example B-1

Mortgage Broker Fee Agreement and Disclosure

This Mortgage Broker Fee Agreement and Disclosure ("Agreement") is by and between ____________________ ,a mortgage broker ("we," "us," "our") and the Borrower(s) who sign(s) below ("you," "your"). This Agreement discloses and governs the overall fees that will be paid to your mortgage broker for the origination of your loan.

1. OUR SERVICES: A mortgage broker charges fees to arrange a loan from a mortgage lender who will fund the loan. As your mortgage broker, we will assist you in obtaining a loan, but we do not offer the products of all mortgage lenders, and so we cannot guarantee you the lowest price or best loan terms available. Be sure that you understand and are satisfied with the mortgage loan product and terms we arrange for you. By signing below, you request us to arrange a mortgage loan from a mortgage lender and you agree to the fees listed below for our services.

2. YOUR MORTGAGE LOAN

You are currently applying for a mortgage loan in the amount of $ 200,000.00 may increase if the loan amount increases, or decrease if the loan amount decreases. The fees in this Agreement are for broker services only and do not include other closing costs or credits from us or other parties for non-broker related services.

3. BROKER FEES: Depending on the loan program you select and subject to applicable legal requirements, our fees may be paid by you directly or indirectly, or a combination of both. For the portion of our fees paid directly, you will pay our fees from your own funds at or prior to the loan closing. For the portion of our fees paid indirectly, you may elect to include our fees in your loan amount and pay us at closing out of your loan proceeds. In addition, you may pay our fees by electing to pay the mortgage lender a higher interest. When you elect to pay a higher interest rate, the mortgage lender will provide you with a credit which will be applied against and reduce your settlement charges, including our fees. Paying our fees directly versus indirectly may result in a lower interest rate. We have discussed these fee payment options with you. In addition to our fees, estimates of other fees you will pay in connection with your loan will be shown on your Good Faith Estimate. Once your interest rate is locked and your loan amount and terms are finalized, we will be able to tell you the exact amount of all fees.

NOTE: You may not be charged any fee, other than a reasonable credit report fee (if applicable), prior to (i) receiving your Good Faith Estimate from us, (ii) expressing your intent to proceed with the loan transaction and (iii) receiving the initial disclosures from the mortgage lender.

Amount

MAXIMUM BROKER FEE (1) - All fees that are paid to us for arranging your loan with a mortgage lender. This amount is included in the "Our origination charge" of Block 1 of your Good Faith Estimate. The "Our origination charge" amount represents the total sum of all origination charges and fees for your loan from the mortgage broker, mortgage lender and other third parties, as applicable. — 5175.00 ***(Must be completed)***

Interest Rate: 4.0% Premium: 30 day 3.492 $ 6984.00

Lender price adjustments: Loan Amount Adj. %___ (0)

Condo Adj. % .750 (1500.00)

FICO/LTV Adj. % .500 (1000.00)

NOO/LTV adj. %___ (0)

Escrow waiver adj. %___ (0)

Net adjusted credit due borrower: $ 4484.00

CREDIT FOR SETTLEMENT COSTS FROM THE MORTGAGE LENDER IN EXCHANGE FOR YOUR SELECTED INTEREST RATE – This will be reflected as a credit to you on Block 2 of your Good Faith Estimate: — 4484.00 ***(Must be completed)***

YOUR ADJUSTED BROKER FEE - The portion of our fees that will be paid by you to us directly after applying the above credit of the mortgage lender, if applicable. This amount is included in the "Your Adjusted Origination Charges" of Block A of your Good Faith Estimate. The "Your Adjusted Origination Charges" amount represents the total sum difference of Box 1 and Box 2 of your Good Faith Estimate.: — 691.00 ***(Must be completed)***

By signing below, you acknowledge that:
(i) You have received an initial Good Faith Estimate within three (3) business days of the mortgage loan application date and you intend to proceed with the loan transaction.
(ii) The Agreement has been explained to you and you understand it.
(iii) You have not been charged any fees, other than a reasonable credit fee (if applicable), prior to entering into this Agreement
(iv) You voluntarily enter into this Agreement and agree to the fees above.
(v) The fees above are based on current market rates and your current loan request.

☐ **If this box is checked, the form has been amended. All amendments must be initialed by borrower, or a new agreement must be completed.**

Borrower: ____________________ Co-Borrower: ____________________

Signature: ____________________ Signature: ____________________

Date: ____________________ Date: ____________________

Broker Name: ____________________ (Printed Name) By: Signature: ____________________

Date: ____________________

MSI
Mortgage Services III, LLC

Mortgage Services III, L.L.C.

Current Wholesale Rate Sheet

Home Office Ph. #: 888-664-9108
Oakbrook Office Ph. #: 630-396-3553
Pricing E-Fax #: 309-807-4993
Web Site: www.msiloans.biz
Pricing E-Mail: msipricing@msiloans.biz

Daily Special!

Purchase Transactions:
30 Yr FHA/VA: +.125
30 Yr Conv: +.125
Program #'s: 300000 / 301500 / 301600

Market conditions are generally:
(compared to previous price sheet)
Unchanged to Slightly Worse!

May 18, 2012
Rate Sheet Updated as of: 9:20 AM

CONFORMING -- FIXED RATE PROGRAMS

#300000 - 30 Year Fixed

Rate	15-Day	30 Day	45 Day	60 Day
3.250%	99.446	99.236	99.026	98.796
3.375%	100.282	100.072	99.862	99.632
3.500%	101.240	101.030	100.820	100.590
3.625%	101.860	101.650	101.440	101.210
3.750%	102.314	102.104	101.894	101.664
3.875%	102.815	102.605	102.395	102.165
4.000%	103.702	103.492	103.282	103.052
4.125%	104.248	104.038	103.828	103.598
4.250%	104.636	104.426	104.216	103.986
4.375%	104.984	104.774	104.564	104.334
4.500%	105.290	105.080	104.870	104.640
4.625%	105.753	105.543	105.333	105.103
4.750%	106.082	105.872	105.662	105.432
4.875%	106.384	106.174	105.964	105.734
5.000%	106.195	105.985	105.775	105.545

#200000 - 20 Year Fixed

Rate	15-Day	30 Day	45 Day	60 Day
3.250%	100.632	100.422	100.212	99.982
3.375%	101.443	101.233	101.023	100.793
3.500%	102.229	102.019	101.809	101.579
3.625%	102.732	102.522	102.312	102.082
3.750%	103.106	102.896	102.686	102.456
3.875%	103.602	103.392	103.182	102.952
4.000%	104.240	104.030	103.820	103.590
4.125%	104.474	104.264	104.054	103.824
4.250%	104.806	104.596	104.386	104.156
4.375%	105.103	104.893	104.683	104.453
4.500%	105.322	105.112	104.902	104.672
4.625%	105.762	105.552	105.342	105.112
4.750%	106.121	105.911	105.701	105.471
4.875%	106.255	106.045	105.835	105.605

#150000 - 15 Year Fixed

Rate	15-Day	30 Day	45 Day	60 Day
2.750%	100.530	100.320	100.110	99.880
2.875%	101.233	101.023	100.813	100.583
3.000%	101.858	101.648	101.438	101.208
3.125%	102.208	101.998	101.788	101.558
3.250%	102.532	102.322	102.112	101.882
3.375%	102.968	102.758	102.548	102.318
3.500%	103.557	103.347	103.137	102.907
3.625%	103.909	103.699	103.489	103.259
3.750%	104.160	103.950	103.740	103.510
3.875%	104.433	104.223	104.013	103.783
4.000%	104.563	104.353	104.143	103.913
4.125%	104.847	104.637	104.427	104.197
4.250%	105.115	104.905	104.695	104.465
4.375%	105.363	105.153	104.943	104.713

#100000 - 10 Year Fixed

Rate	15-Day	30 Day	45 Day	60 Day
2.750%	101.269	101.099	100.949	100.769
2.875%	101.984	101.814	101.664	101.484
3.000%	102.684	102.514	102.364	102.184
3.125%	103.044	102.874	102.724	102.544
3.250%	103.358	103.188	103.038	102.858
3.375%	103.339	103.169	103.019	102.839
3.500%	103.842	103.672	103.522	103.342
3.625%	103.842	103.672	103.522	103.342
3.750%	103.951	103.781	103.631	103.451
3.875%	103.842	103.672	103.522	103.342
4.000%	103.842	103.672	103.522	103.342

LPMI Program #'s
30 Yr LPMI - #300100
25 Yr LPMI - #250100
20 Yr LPMI - #200100
15 Yr LPMI - #150100
10 Yr LPMI - #100100

LTV	LPMI 740+	720-739	680-719	640-679
90.01 - 95.00%	-2.15	-2.35	-3.29	-4.20
85.01 - 90.00%	-1.37	-1.72	-2.17	-2.66
80.01 - 85.00%	-0.99	-1.12	-1.33	-1.54
LPMI Adjustments (in addition to above if applicable)				
25 Yr Term or Less	0.18	0.18	0.28	0.39
Rate/Term Refinance	No Adj	No Adj	-0.53	-1.05
Second Home	-0.25	-0.49	-0.70	-1.23

For pricing, use the regular pricing above and apply the LPMI adjustments.
All LPMI adjustments are in addition to the standard agency (FICO/LTV) adjustments below.

Split MIProgram #'s
30 Yr Split MI - #305700
25 Yr Split MI - #255700
20 Yr Split MI - #205700
15 Yr Split MI - #155700
10 Yr Split MI - #105700

Split MI with FICO 720+

LTV	Upfront .50%	Upfront .75%	Upfront 1.00%	Upfront 1.25%
90.01 - 95.00%	.53	.47	.40	.33
85.01 - 90.00%	.31	.24	.18	.12
80.01 - 85.00%	.18	.14	.05	.04

(Factors listed above indicate monthly MI payment factor in addition to the upfront borrower paid premium)

CONFORMING -- ARM PROGRAMS

#319100 (DU) / #319200 (LP) - 3/1 Arm
Caps: 2/6 Margin: 2.250 Index: Libor

Rate	15-Day	30 Day	45 Day	60 Day
2.625%	100.921	100.681	100.561	100.441
2.750%	101.166	100.926	100.806	100.686
2.875%	101.389	101.149	101.029	100.909
3.000%	101.610	101.370	101.250	101.130
3.125%	101.774	101.534	101.414	101.294

Arm Features/Adjustments
Agency adjustments do apply (see below
Max all-in price on all Arm's is 102.250

LTV 90.01 - 95.00% (non-Condo)	-.250
LTV 90.01 - 95.00% Condo's	-.750

#519100 (DU) / #519200 (LP) - 5/1 Arm
Caps: 5/2/5 Margin: 2.250 Index: Libor

Rate	15-Day	30 Day	45 Day	60 Day
2.500%	100.701	100.461	100.341	100.221
2.625%	100.998	100.758	100.638	100.518
2.750%	101.294	101.054	100.934	100.814
2.875%	101.590	101.350	101.230	101.110
3.000%	101.886	101.646	101.526	101.406
3.125%	102.029	101.789	101.669	101.549
3.250%	102.269	102.029	101.909	101.789
3.375%	102.365	102.125	102.005	101.885
3.500%	102.365	102.125	102.005	101.885

#719100 (DU) / #719200 (LP) - 7/1 Arm
Caps: 5/2/5 Margin: 2.250 Index: Libor

Rate	15-Day	30 Day	45 Day	60 Day
2.875%	101.460	101.220	101.100	100.980
3.000%	101.914	101.674	101.554	101.434
3.125%	102.129	101.889	101.769	101.649
3.250%	102.391	102.151	102.031	101.911
3.375%	102.465	102.225	102.105	101.985
3.500%	102.624	102.384	102.264	102.144
3.625%	102.831	102.591	102.471	102.351
3.750%	103.027	102.787	102.667	102.547
3.875%	103.223	102.983	102.863	102.743

#919100 (DU) / #919200 (LP) - 10/1 Arm
Caps: 5/2/5 Margin: 2.250 Index: Libor

Rate	15-Day	30 Day	45 Day	60 Day
3.000%	100.656	100.416	100.296	100.176
3.125%	101.165	100.925	100.805	100.685
3.250%	101.674	101.434	101.314	101.194
3.375%	102.183	101.943	101.823	101.703
3.500%	102.465	102.225	102.105	101.985
3.625%	102.465	102.225	102.105	101.985

CONFORMING -- PRICE ADJUSTMENTS

Loan Amount

$20,000 - $39,999	-1.000
$40,000 - $69,999	-.500
$70,000 - $99,999	-.175
$100,000 - $349,999	No Adj.
$350,000 to limit	+.125

Fixed Rate - State Adjusters

CO, MD, NV, RI, UT	-.125
AZ, MA, ME, NM, WY	-.050
AL, CA, CT, DC, DE, IA, ID, IL, IN, KS, KY, MI, MN, MO, MT, NH, NJ, NY, SD, TN, VA, WA, WI, WV	No Adj
AR, GA, LA, MS, NC, ND, NE, OH, OR, SC, VT	+.100
OK, PA	+.150
TX	+.250

Temporary buydowns are no longer available.
All adjustments are cumulative.
Min FICO of 640 required on all loans.
Lower of two median credit scores used for all programs.
Price cap = 104.000, unless otherwise noted.

Misc. Adjustments

Escrow Waiver (CA: < 90% allowed)	-.250
Escrow Waiver (Ins Only)	-.125
(Escrow waiver fee n/a for NY properties)	
2-4 Unit	-1.000
Condo - LTV>75.00% (> 15 yr terms)	-.750
N/O/O: LTV <= 75.00%	-2.000
N/O/O: LTV 75.01% - 80.00%	-3.250
N/O/O: * Max LTV for r/t refi is 75.00%	

Current Index
1-Year CMT 0.18
12 Month LIBOR 1.06895

Extended Locks
Available for Conv. 30 yr, 20 yr, 15 yr
90 Days: .500 Upfront Fee
120 Days: .875 Upfront Fee
150 Days: 1.250 Upfront Fee
180 Days: 1.500 Upfront Fee
(Upfront fee is non-refundable/not credited)
60 day pricing is used.

Agency FICO/LTV Adjustments (Updated 1/14/11)

FICO	<=60.00%	60.01 - 70.00%	70.01 - 75.00%	75.01 - 80.00%	80.01 - 85.00%	85.01 - 90.00%	90.01 - 95.00%	95.01 - 97.00%
>= 740	+.250	No Adj.	No Adj.	-.250	-.250	-.250	-.250	-.250
720 - 739	+.250	No Adj.	-.250	-.500	-.500	-.500	-.500	-.500
700 - 719	+.250	-.500	-.750	-1.000	-1.000	-1.000	-1.000	-1.000
680 - 699	No Adj.	-.500	-1.250	-1.750	-1.500	-1.250	-1.250	-1.125
660 - 679	No Adj.	-1.000	-2.250	-2.750	-2.750	-2.250	-2.250	-2.000
640 - 659	-.500	-1.250	-2.750	-3.000	-3.250	-2.750	-2.750	N/A

Applicable to all loan terms greater than 15 years.

Cash-Out - Agency FICO/LTV Adj. (Updated 3/1/12)

FICO	<=60.00%	60.01 - 70.00%	70.01 - 75.00%	75.01 - 80.00%	80.01 - 85.00%
>= 740	-.250	-.250	-.250	-.500	-.625
720 - 739	-.250	-1.125	-1.125	-1.250	-2.000
700 - 719	-.250	-1.125	-1.125	-1.250	-2.000
680 - 699	-.250	-1.250	-1.250	-1.875	-3.000
660 - 679	-1.500	-1.750	-1.750	-2.500	-3.500
640 - 659	-2.000	-2.250	-2.250	-3.250	-4.000

Cash out adjustments are applicable to all loan terms.

Secondary Financing

LTV	CLTV	FICO < 720	FICO >= 720
<= 65	>80 <=95	-.500	-.250
>65 <=75	>80 <=95	-.750	-.500
>75 <=80	>75 <=90	-1.000	-.750
>75 <=80	>90 <=95	-1.000	-.750
>80 <=90	>80 <=95	-1.000	-.750

Applicable to all loan terms.

Expiration Dates

15 Day	6/4/12
30 Day	6/18/12
45 Day	7/2/12
60 Day	7/17/12
90 Day	8/16/12

NEWS & NOTES

U/W Turn Times
Working on files rec'd:
(Updated 5/18)

Conv:	FHA/VA:
Purchase: 5/14	Purchase: 5/16
Refi: 5/3	Refi: 5/3

USDA: 5/15

In accordance with the final Federal Reserve Board ruling, this published pricing structure may be used in connection with your "Borrower Paid Compensation structures. Please refer to your individual company's executed compensation agreement with MSI, to determine your prescribed premium/commission structure if opting for the "Lender Paid Compensation" structure.

B-3

MSI
Mortgage Services III, L.L.C

Mortgage Services III, L.L.C.

Current Wholesale Rate Sheet

Home Office Ph. #: 888-664-9108
Oakbrook Office Ph. #: 630-396-3553
Pricing E-Fax #: 309-807-4993
Web Site: www.msiloans.biz
Pricing E-Mail: msipricing@msiloans.biz

Conforming FNMA HomePath Program

FNMA HomePath Program
30 Year Fixed HomePath - #308900

Rate	15-Day	30 Day	45 Day	60 Day
3.625%	101.860	101.650	101.440	101.210
3.750%	102.314	102.104	101.894	101.664
3.875%	102.815	102.605	102.395	102.165
4.000%	103.702	103.492	103.282	103.052
4.125%	104.248	104.038	103.828	103.598
4.250%	104.636	104.426	104.216	103.986
4.375%	104.984	104.774	104.564	104.334
4.500%	105.290	105.080	104.870	104.640
4.625%	105.753	105.543	105.333	105.103
4.750%	106.082	105.872	105.662	105.432
4.875%	106.384	106.174	105.964	105.734
5.000%	106.195	105.985	105.775	105.545
5.125%	106.636	106.426	106.216	105.986

FNMA HomePath Adjustments

No MI LTV 95.01 - 97%	-3.750
No MI LTV 90.01 - 95%	-2.500
No MI LTV 85.01 - 90%	-1.750
No MI LTV 80.01 - 85%	-1.000
Condo	-.750
N/O/O LTV <= 75.00%	-1.750
N/O/O LTV 75.01 - 80.00%	-2.000
N/O/O LTV 80.01 - 90.00%	-2.500

Secondary Financing

LTV	CLTV	Adj
90.01 - 95.00%	90.01 - 95.00%	-1.000
<= 95.00%	95.01 - 97.00%	-1.500

Agency FICO/LTV adjusters from page 1 do apply.

State & loan amount adj from page 1 apply.

Important Information About MSI:

MSI Sales Managers:

Don Starks - National Sales Manager	donstarks@starband.net	Ph. 815-378-8551
Andy Pettola - Regional Sales Manager CT, DE, ME, MA, NH, NJ, NY, PA, RI, VT	apettola@msiloans.biz	Ph. 860-372-2569
Dennis Patchett - Regional Sales Manager IL, IN, MD, MN, NC, OH, PA, SC, VA, WI, WV	dpatchett@msiloans.biz	Ph. 614-581-9276
Jim Manley - Regional Sales Manager CA, ID, MI, MT, NV, OR, WA	jmanley@msiloans.biz	Ph. 248-887-6262
Keith Kitterman - Regional Sales Manager AL, AZ, AR, GA, KY, LA, MS, NM, TN, TX	kkitterman@msiloans.biz	Ph. 480-580-6700
Pete Jackson - Regional Sales Manager CO, IA, KS, MO, NE, ND, OK, SD, UT, WY	pjackson@msiloans.biz	Ph. 913-221-6466

Extension Policy

2 Days (Only if 2 is all that is needed)	Free!
1-30 Days (Max = 30 days)	-.020/day

Re-Lock Policy
15 Day Relock: Worse Case Pricing
30 Day Relock: Worse Case Pricing
(Max of 2 relocks allowed)

Current Fees

Standard Conv. Admin. Fee	$675
~~Standard Non-Conv Admin. Fee~~	~~$775~~
Non-MERS Fee	$75
UW File Return Fee	$175
Doc Redraw Fee	$75

Doc prep for purchases requires 48 hrs notice.
Doc prep for refi's requires 72 hrs notice.
MSI MERS Org ID # 1005883

** Rate lock requests accepted until 8:00 pm central time. Overnight price protection is not available.
** Rates/Prices are subject to change without prior notice. This rate sheet should not be used to determine eligibility.
** All loans must disburse by expiration date and be delivered to MSI within 4 days of disbursement.
** Lower of two median credit scores used for all programs.
** All extension/relock requests must be requested prior to 5 pm ct.

MSI offers Reverse Mortgages and wants to be your resource for Reverse Mortgages.
Call your AE or 855-901-3100 and ask how you can qualify for our incentive program.

Corporate Office:
502 N. Hershey Rd.
Bloomington, IL 61704
Ph. 888-664-9108

Oakbrook Terrace Office:
17W662 Butterfield Rd., Suite 203
Oakbrook Terrace, IL 60181
Ph. 630-396-3553

Mortgage Services III, L.L.C. is a majority owned subsidary of First State Bank
This rate sheet is intended for Mortgage Professionals only.
Max price paid is 104.000 unless otherwise noted.

B-4

Sierra Pacific
MORTGAGE

50 Iron Point Circle, Suite 200 / Folsom, CA 95630
P 916.932.1700 / F 916.932.0528

Date: ____________________ Loan Number: ______________________________

Borrower Name: ______________________________

____

Property Address: ______________________________

____

The undersigned is the Loan Originator (LO) on the above captioned transaction. LO hereby certifies that s/he conducted a thorough analysis of the fees charged by the LO, lender, escrow company, title company, closing attorney and all third parties and has accurately accounted for those fees when completing the Good Faith Estimate. LO acknowledges and accepts that failure to accurately collect and disclose all required fees may result in LO being required to come to closing with funds payable to borrower and/or lender for fees that may have been under disclosed, omitted or that LO failed to disclose properly. The closing instructions or additional instructions from Sierra Pacific Mortgage (Sierra) will indicate when this is required. LO acknowledges that fees cannot be changed unless there is a qualified "Changed circumstance", as defined under RESPA, and some fees are subject to a 10% variance only.

LO further acknowledges that the s/he has not issued any GFE's other than those which s/he is submitting to Sierra. That LO is providing to Sierra the initial and any/all subsequently issued GFE's provided to the customer due to any changed circumstances. LO has provided Sierra with a history of any changed circumstances for each GFE has / may have been issued, what the changed circumstance was and a breakdown of any / all fees that were modified as a result of the changed circumstance. LO certifies that the initial and any subsequent GFE's issued to the customer were issued within 3 business days of receipt of the loan application or knowledge of a changed circumstance as defined under RESPA.

LO is submitting ______________ (insert the #of GFE's issued to the customer prior to submission to Sierra).

______________________________________ ____________________

Signature of Loan Originator *Date*

______________________________________ ____________________

Printed Name of Loan Originator *LO's NMLS Code*

EXAMPLE C-1

Illinois Association of Mortgage Professionals
IAMP ESTABLISHED 1987

350 W. 22nd Street - Suite 104 - Lombard, Illinois 60148 (630) 916-7720

June 1, 2012

Via Email

Consumer Financial Protection Bureau
Attention: Rachel Ross
1700 G Street, NW
Washington, DC 20552

RE: SBREFA Panel Member - Carol Gardner
Follow Up Documentation for the Record

Dear Ms. Ross,

As you know I served as a SBREFA panel member for the meeting in Washington, D.C. on May 23, 2012. I also serve as President of the Illinois Association of Mortgage Professionals.

After my return from Washington we solicited the views of our 1300 members regarding the May 9, 2012 CFPB proposals to simplify mortgage points & fees for consumers.

We received nearly 400 letters from our members overwhelmingly opposed to the May 9, 2012 proposals. We've selected a few of these letters to include with this letter to be incorporated into my written remarks for the record. We also produced 2 videos for our members and we had a "mini-viral" response with well over 1000 views. Our Association offices received over 100 telephone calls and additional emails also voicing opposition to the proposals.

As a panel member and President of the Illinois Association of Mortgage Professionals I cannot support the May 9, 2012 CFPB proposals. I recognize the mandates of Dodd-Frank and I know the tasks charged to the CFPB are daunting, but these proposals will not help consumers. In all my years in the mortgage and real estate industry and despite the volumes of evidence to the contrary, our government has shouldered blame on the wrong parties in this housing crisis. It turns out that attempts at simplifying the mortgage process is not so simple. A one-size-fits-all solution is not what is needed by consumers. Most people have borrowed money from their parents or other family members during their life and the terms were usually very simple. Adding more and more paper depicting multiple versions of the same information only makes for more confusion for many people. Borrowing money should be very simple to understand. When boiled down, loans are comprised of principal, interest and costs associated to obtain the loan. It seems that in spite of all the good intentions we the people have thus far failed to find a way to convey the loan information in a way that benefits all Americans.

Illinois Association of Mortgage Professionals
IAMP ESTABLISHED 1987

350 W. 22nd Street - Suite 104 - Lombard, Illinois 60148 (630) 916-7720

Page 2 Letter to Consumer Financial Protection Bureau
Attention: Rachel Ross

Part of the reason for this is due to an un-level playing field. FDIC insured institutions are treated differently than mortgage brokers or bankers. Its seems that the pattern of disparate treatment is likely to continue and that the desire of the American people will be overlooked once again. The current combined CFPB proposed GFE/TIL disclosure has lots of pages that do little to convey the few simple things our parents or family found ways to accomplish long ago.

I stand ready to participate with the CFPB in any way to remedy mortgage regulation.

Sincerely,

Carol Gardner
SBREFA Panel Member
President, Illinois Association of Mortgage Professionals

EXPERT MORTGAGE ASSOCIATES, INC.

Mortgage Brokers

645 Balmoral Lane
Inverness, IL 60067

Phone: (847) 705-7500
Fax: (847) 705-7505

May 31, 2012

Consumer Financial Protection Bureau
P.O. Box 4503
Iowa City, Iowa 52244

Re: Proposal to ban origination charges that vary with the size of the loan

To Whom It May Concern:

I have just been made aware that there is a proposal that would require mortgage brokers and loan officers to be paid a "flat fee" for each loan transaction and I am concerned about how it will affect the consumer and the free market system. I think that while the government has good intentions they often do not realize the ramifications of their new rules and regulations.

In short, the idea of a flat fee for compensation will negatively affect the lending business by:

1. This will eliminate the small boutique mortgage broker that provides the highest levels of service while charging a little more for their services. These companies are not built for volume. If the fee they can charge is limited they will go out of business. This means less competition and fewer choices for the consumer.
2. Essentially allowing government to set pricing for a service. Who is next......realtors, athletes, doctors? Is the government going to reach down into every industry and place caps on the compensation a salesperson can earn. That is why it is called sales. Mortgage brokers provide a service that consumers desire. This proposed rule is anti –free market. What has happened to capitalism?
3. The finance business has always worked on percentages. A flat fee would create logistical nightmares for banks pricing loans for mortgage brokers. Banks may just decide to stop doing business with mortgage brokers because the pricing of a flat fee, that is different for every

broker that they do business with, it too time consuming, expensive, etc. Again, the result is negative for mortgage brokers and consumers.....Fewer choices for both.

4. Borrowers with low loan amounts (who already have fewer choices) will have even less. There must be considerations for "High Cost Rules." Banks will likely decide not to lend to borrowers with loan amounts under $100,000.

I feel that this proposal is one more attempt to eliminate mortgage brokers from the mortgage financing business. You must know that the reason mortgage brokers became so prevalent in the 1990s is because originating a mortgages through a mortgage broker is the most cost effective way to originate. This means that mortgage brokers can offer loans at better prices than banks because they have low overhead.

There are already rules and laws in place that address fraud and deception. Rather than impose new rules we merely need to enforce the laws we already have.

Thank you for your time.

Sincerely,

Marc LaGasse
Expert Mortgage Associates, Inc.

TIGER FINANCIAL SERVICES, INC.

2025 S. Arlington Heights Rd., Suite 118
Arlington Heights, IL 60005
TEL: (847) 593- 3600 <=> FAX: (847) 593-1333
"AN ILLINOIS & WISCONSIN RESIDENTIAL MORTGAGE LICENSEE"

To: Bob Perry, President
IAMP

RE: Flat Fees will cause harm to Illinois consumers

Flat fee pricing would force us to overcharge borrowers with fixed pricing for small loan amounts. There would be no benefit to the borrower. It would limit or eliminate competition for the consumer therefore costing the borrower/consumer more money both in the long and short term.

Price fixing would be a curse to any capitalistic society. This kind of fixed pricing discriminates against small loans and large loans and the consumer by limiting competition.

Cordially,
Scott Berns
President

May 29, 2012

To Whom It May Concern;

We are writing to let you know that we strongly oppose a FLAT FEE compensation model for mortgage originations. This model will cause harm and provides absolutely no benefit to the consumer. With all the recent changes to the mortgage industry, especially the LO Compensation changes, any further changes will cost lenders more money to implement which will get passed onto the consumer. The biggest issue with a Flat Fee structure is that consumers that are seeking smaller loan amounts may not have the opportunity to obtain a loan due to the High Risk Home Loan Act (Illinois) that restricts the fees to 5% of the loan amount. A Flat Fee structure does not make sense, will harm the consumer and provides no benefit. We strongly urge you to oppose the Flat Fee.

Regards,

The Employees of Capital Financial Bancorp, Inc.

Brian Augustine

Amy M Loerzel

Headquarters
1699 E. Woodfield Road, Suite 500
Schaumburg, Illinois 60173
Toll Free: 866.FUND.789
Office: 847.240.2442

Downtown Chicago
2538 W. Chicago Ave.
Chicago, IL. 60622
Toll Free: 866.FUND.789
Fax: 847.240.1442

MORTGAGE ENTERPRISES
800 Enterprise Drive • Suite 202 • Oak Brook, Illinois 60523

May 30, 2012

Illinois Association of Mortgage Professionals
Executive Director – Robert Perry
350 W. 22nd Street, Suite 104
Lombard, IL 60148

Re: CFCB Proposed Flat Rate

Dear Mr. Perry;

I'm sending this letter to you regarding the above pending proposal to move to Flat Rates This proposal will cause undo harm on the individuals who want to do loans under $100,000, since in Illinois we have a High Risk Home Loan Act. This will not allow these borrowers to have any competitive advantage in the marketplace since they will be forced to go to a FDIC Bank.

With all the new Loan Office Compensation regulations along with other Dodd-Frank Regulations I'm finding the cost of adhering to these rules along with normal operational costs of running the company could become unmanageable. It could reach a point where economically companies like mine won't be able to continue. This will impact my employee's employment, their families, and the communities they live in; along with the State of Illinois if they are unemployed. In addition our clients who since 1985 have looked to us for assistance with their lending requirements should this become a reality.

Please feel free to forward this letter to whomever you deem needs to be aware of what the consequences could be if this rule is passed without and due diligence

Respectively,

David A. Marquardt
President

HMS

HOME MORTGAGE SPECIALISTS, INC.

To Whom It May Concern,

Flat Fees will cause harm to Illinois Consumers. In Illinois we have the High Risk Home Loan Act that will also cause problems for low loan amounts and it will also prevent competition with FDIC insured banks.

As a down state broker, where the average loan amount is $125,000 a Flat Fee will prohibit consumer choice and eliminate consumers from obtaining certain home loans due to the High Risk Home Loan Act.

A Flat Fee would increase costs to the borrower by eliminating the consumers' choice to secure competitive mortgage financing that makes homes affordable

Respectably Submitted

Nathan W Durst

Illinois Residential Mortgage Licensee
MB. 6760824 - NMLS # 695728
EQUAL HOUSING LENDER
4700 N University St., Suite 65B • Peoria, IL 61614 • P: 309.222.8286 • F: 309.222.8287

CROSSCOUNTRY
MORTGAGE, INC.

Price fixing is a curse to any capitalistic society. Stop the insanity. Flat fee pricing - where all loans generate the same compensation regardless of loan amount - discriminates against the small loans. A Flat Fee (no matter the amount) results in the smaller loan paying a Higher percentage for the same product.

If the Fee is $2000.00 then a client with a $100,000.00 loan is paying a fee of 2%.

If the Fee is $2000.00 then a client with a $400,000.00 loan is paying a fee of .5%.

This results in an inflated Annual Percentage Rate for the smaller loans.

Once again we have figured out a way to hurt the LITTLE GUY.

Is there any way this makes any sense? Has anyone asked the consumers if they see this as good idea?

I THINK NOT

Sincerely

David M Ischkum

NMLS #221466

IL license # 031.0000151

CROSSCOUNTRY
MORTGAGE, INC.

May 30, 2012

Petitioning

The Congress and the CFPB

Greetings,

I just signed the following petition addressed to: The Congress and the CFPB.

A petition for simple changes that will help millions of home owners and prospective home buyers

The Dodd Frank Act (DFA or the Act) was signed into law on July 21, 2010 by President Obama. Certain of the Act's provisions in Title XIV, Title X and Title IX when implemented as required in January 2013 will cause additional consumer harm rather than protect consumers as the law ostensibly was passed to do.

IMPACT Mortgage Management Advocacy and Advisory Group (IMMAAG) has drafted amendments to several provisions of this law. The amendments need to be passed NOW. If not acted on immediately there is no way to prevent the automatic effective date or regulatory required implementation date of January 2013. The amendments allow the primary regulator, the Bureau of Consumer Financial Protection (CFPB) an opportunity to prioritize the incredible regulatory challenge it was handed from this legislation. It allows them to focus on work that has a real chance to achieve the stated objectives of: simplification, clarity and consumer protection. Without the amendments, the regulations will force the agency to implement bad consumer law.

The amendments, while straightforward address more than just the Act. Regulation X which implements the Real Estate Settlement Procedures Act of 1974 and Regulation Z which implements the Truth in Lending Act of 1968 are both outdated and out of touch with efficient and effective business practices; and they harm consumers. They have been independently modified so many time since 2008 that consumers are harmed by the very changes that have been implemented. The continued changes prescribed in the Act, as in the case of required disclosure integration, are too little, too late and more importantly not on point, harmful and misguided in the first place. The amendments provide for a conditional, fundamental reassessment of both RESPA and TILA and their implementing regulations. Further the amendments provide the opportunity for the Bureau to act and the amendments allow RESPA and TILA to be reformed as necessary to incorporate fact based change.

NMLS ID #3029 • 5005 Newport Drive Suite 402 • Rolling Meadows, IL 60008

CROSSCOUNTRY
MORTGAGE, INC.

The IMMAAG draft DFA amendments require an independent evaluation of the mortgage and related provisions of the Dodd Frank Act. The evaluation is intended to determine if the "cure" actually addresses a problem that exists. In other words, will implementing Dodd Frank do anything positive or is it just more "action" without solving a problem. Even worse, is it laden with action and distraction which cause more problems, confusion and harm. My signature is placed on this petition because I believe an independent evaluation will prove that the causes and effects the Act's supporters cited to justify its passage simply do not exist. The amendments include the conditional provision to re-engineer both RESPA and TILA and their implementing regulations should the evaluation prove them to be the out of date, misguided laws they appear to be and to provide integrated changes that meet the market, consumer and industry realities of the 21st century.

By signing this petition I am asking my Congressional Representative and my Senators to take whatever action is necessary to either sponsor, co-sponsor or support IMMAAG's Dodd-Frank Act amendments. Further, by signing this petition I am asking the head of each of the affected regulatory agency(ies), especially the CFPB, to join in the effort to gain additional time to implement regulations which are responsive to the issues at hand and not just myth-based, misguided actions leading to more negative results than positive outcomes.

Failure to act NOW on this important evaluation of the problematic provisions of the Dodd Frank Act identified in the offered amendments will increase the harm caused by the inappropriate actions driven by existing law. A failure to act NOW will mandate additional overly prescriptive regulations which bear no relationship to implementing the good they claim to do. RESPA, TILA and the Act already harm consumers on a daily basis. By acting on the request to support the DFA amendments made by the thousands of us who have signed this petition consumers will be given a realistic chance realize the result of some properly focused congressional and regulatory initiatives. Failure to act in support of this initiative will guarantee your constituents suffer needlessly as a direct result of your inaction.

Sincerely,

James Yeung

NMLS ID #3029 • 5005 Newport Drive Suite 402 • Rolling Meadows, IL 60008

Pacific ONE
MORTGAGE, INC.

Date: May 28, 2012

RE: Flat Fee Proposal

The above proposal will not only hurt lower loan amounts due to IL High Cost law but also eliminate our flexibility as a company in adjusting our compensation to help borrowers in need.

Thank you very much.

Sincerely,

Chris Zabat
President

From:	cgardner@lendingnetwork.net
To:	Ross, Rachel (CFPB)
Subject:	[FWD: Comment letter]
Date:	Tuesday, June 12, 2012 6:19:21 PM
Attachments:	June 4th Comments.pdf

Good afternoon Rachel:

I am forwarding a commentary letter that was signed by NAIHP and 4 other states. As a SER I signed the letter as the President of the State of Illinois's Mortgage Brokers Association. I would appreciate it if this letter is made a part of the commentary for the Federal Register's Commentary from the SER's. Thanks.

Carol Gardner, CMC, CRMS

President NMLS# 148681Lending Network, Inc. NMLS# 148672 MB.6759598

President, Illinois Association of Mortgage Professionals 2011-2012 Past President IAMP 1998-1999Broker of the Year Award 1999Office # 847-624-2066Fax # 708-925-0241 Cell # 847-624-2066

cgardner@lendingnetwork.net

-------- Original Message --------Subject: Comment letterFrom: "Marc Savitt" msavitt@mortgagefinancing.comDate: Tue, June 12, 2012 1:36 pmTo: cgardner@lendingnetwork.net

Marc S. Savitt, CRMS

President

The Mortgage Center

President

National Association of Independent Housing Professionals

Past President

National Association of Mortgage Brokers

115 Aikens Center, Suite 20-B

Martinsburg, WV 25404

304-267-9040

304-267-9046 Fax

Cell: 540-550-4496

www.mortgagefinancing.com

NMLS License # 239263 Equal Housing Lender

CFPB answers

I. Dual Compensation

1. % MLO compensation from following:
   a. Consumer—0%
   b. Brokerage---0%
   c. Creditor—100%
   Sidebar—consumer always pays no matter how you regulate things.
2. % purchased points to lower rate
   a. Out of 152 Fannie loans processed, only a few people wanted to buy the rate down (2-3). The buy down dropped the rate 1/8th of a point per 1% fee. Only 1 member has requested to do this in 2012 out of 69 loans processed.
3. We do not market to the member to buy down the rate. They are low enough that it really doesn't pay for the member to buy it down. There is not enough of a savings to the member to make it worth their while. If the rates start to climb back up into the 6%-7% range, this option may be feasible again to inform the member of the possible savings.
4. We do not charge origination points on our loans BUT we have to charge loan level pricing points that Fannie Mae requires that is listed as origination points. If the exemption isn't implemented, it forces the majority of Fannie/Freddie mortgages being processed to either increase the interest rate on the loan to offset the lose from fees/points not getting paid upfront or not compensating an employee that is doing their job.
5. Prohibited upfront pmts. for credit paid compensation problems.
   a. Losing the upfront fees would cause the credit union to increase the loan interest rate in order to offset the immediate lose it would have from having to pay out to other vendors for their services to complete the mortgage.
6. Fees that vary by loan amount: Title insurance, realtor costs (% of sale amount), interest due, Fannie Mae loan level pricing fees, PMI insurance if needed……Fees that don't vary: flood, processing, recording, appraisal, credit report, property tax service, property taxes, homeowner's insurance It doesn't matter how large the loan amount is for processing and servicing the loan, those expenses are the same.
7. Extra requirements for upfront fees:
   a. The burden on this regulation is the consumer is confused enough concerning their mortgage and this will further confuse them. The majority of the American public is financially illiterate and puts a lot of trust into their financial institution. They do not want to take the time to learn or look at different options, their biggest concern is what is my monthly payment and then the rate. If they can afford the payment in their mind, they really do not care what the rate is or what it costs….They want what they want NOW…Giving the consumer more options to pick from will only

slow the process down because they have no clue on how to even pick an option……

8. Affiliate payments: We have none, does not apply to us.
9. See answer #5…..If the exemption went away….

II. Compensation based on term

1. We compensate our officers with a salary. Employees are exempt and receive a wage based on position, not workload. They get paid regardless of how many loans they process and close….
2. Qualified retirement plan:
    a. We provide a 401(k) plan for our all of our employees.
    b. The credit union matches the employee's contribution UP TO 5% regardless of position. If these regulations go into effect, they would violate the ERISA rules by discriminating our mortgage officers from the remainder of the staff. We will follow the ERISA regulation before we follow these.
    c. We feel, if we understand the proposal correctly, the proposed restriction on total mortgage revenue would lower our option to help our employee's retirement by lowering the amount we can match up to. With the mortgage rate drop the past few years and our success in marketing our mortgage services, the total revenue from processing mortgages has fluctuated the last 3 years from 28% to as high as 36% of total revenue. We are also looking for our future and expanding our mortgage department expertise to other, smaller credit unions to help their membership have access to a fixed rate mortgage without having to go to a mortgage broker. Our total revenue could also increase with further restrictions on our checking accounts and overdraft program that helps the consumer. If these fees are eliminated, our total mortgage revenue will exceed the 50% mark.
3. Bonus plans: We offer our entire staff a bonus each year but not non-qualified plans.
    a. NA
    b. NA
    c. In the past, we have determined the bonus pay outs by positional structure. i.e. depending on position, the employee received a portion of their monthly wages. It never was given to them by how much they contributed to the bottom line as some positions cost money but are needed to keep the business running and they should be rewarded as well. In 2012, we have gone to an incentive program. i.e. the more business the person, be it a teller or loan officer, brings into the credit union they receive a monetary pay-out for the product they bring in from another institution.
    d. The restrictions would prevent us from giving the mortgage staff the same type of bonus as our other employees since the proposal uses the mortgage

revenue that is generated to possibly lower their bonus pool. We feel it is discriminating our mortgage staff from performing their duties in an efficient manner.

4. % cap to determine bonus.
   a. We feel the cap should be at a minimum of 50% so it doesn't restrict our institution from growing this department. If it is lowered, it restricts the market and the credit union from trying to become better for the consumer.
   b. If the restriction is set at 20%, we would have to turn consumers away from processing and giving them a mortgage which we feel will also restrict the market and make it harder for people to obtain a mortgage. The only people that would get a mortgage would be the no-brainer consumer where getting them qualified is easy. The lower scored, lower-income consumer creates a little more work and the loan officers would spend less time trying to get them qualified since it wouldn't pay. The higher % will allow some growth and give the committee time to evaluate the restriction's purpose.
5. Cost of restriction:
   a. Our actions to comply would cause us to need a monitoring system to be sure we are below the restricted %. Monthly monitoring would take time away from our staff on their other duties assigned to them. In the future, it may cause the credit union to need to hire an individual to monitor the entire mortgage program to be sure we are in compliance with these new proposals that really won't help the consumer anyway. More regulations create higher costs which ALWAYS get put onto the consumers back to pay for them.
   b. As of right now, I don't feel we'll have an immediate out of pocket expense but as the program continues to grow, who knows what the costs may add up to.

Pricing concessions: We don't offer to our officers.

1. With the previous regulations created, the good faith estimates are priced very high to offset the possibility of a problem with the loan where the officer needs to get another vendor involved for an inspection, title work increases, a problem occurs when the title work comes back and something needs to be fixed which may add another fee onto the loan, etc. The % of this occurring is small BUT they do happen. We feel the GFE would be more accurate to the consumer if it wasn't restricted as it is now. Instead of having to price some of the items on the GFE as a worst-case scenario, we feel it would be better to be more accurate than not. If the pricing concession was implemented, we feel the GFE's would reflect a closer end figure than the worst-case scenario figures that are used now. Consumers are confused when they see the high costs initially compared to the closing figures.

Point Banks: NA

Proxies: NA

Record Retention:

1. Our employees are salaried and are on the payroll software. Their records are saved on the software server and a hard copy in a fire file if needed.
2. We don't feel that we would need to change the way we retain our records unless the proposal for the total revenue changes. If that restriction occurs, it would cause us to purchase monitoring software to be sure we were in compliance with the new restriction. No current expense will we incur if the restriction is not implemented.

III. Qualifications/screening:

1. We are required to follow the SAFE Act and are currently registered.
2. Costs associated with complying is the fees to register, background checks, finger printing, compliance monitoring. Currently the total cost for all of our registered officers is approximately $1,000 to complete the first time registration and is $100 annually.
3. We don't feel being "qualified" or registered helps anyone. The majority of the officers in the industry in the past and currently "qualify" and it didn't stop the market collapse.
4. Currently the only document required to have the numbers is the 1003 application.
5. If the numbers had to be placed on additional documents, the cost would be a one-time fee charged from the software company and it is unknown what they may charge to implement it. *Why would using these numbers help the consumer?*

IV. Potential Effect:

1. Yes. The impact of having to pay upfront costs for the consumer and needing to wait to receive the income back from interest paid each month, waiting on yield spreads to be paid, and loss of opportunity costs of funds being tied up paying for services the consumer should pay for doing a mortgage.
2. With more regulations, it requires more compliance monitoring to make sure the program doesn't violate any of the new regulations. This in turn will cause the small entities to need to hire an employee or hire an outside monitoring firm to keep them out of trouble. Regulations cost society and the consumer more money the majority of the time than it saves.
3. We feel these proposals and the Dodd-Frank Act should be revisited and have EXPERTS in the financial industry sit down with the Congressional Committees

to perform a common sense approach to fix some of the problems that occurred in the past. The biggest factor that is needed in this Country is to REQUIRE financial literacy instead of a foreign language or calculus or chemistry. Every consumer uses some form of financial product in their lifetime and it is not taught to them in the school systems. I feel a lot of these issues would not have happened if the consumer was informed on how much house they really could afford and why. If the consumer was better educated, the con artists that gave them the mortgage to purchase their now foreclosed house couldn't have conned them. Education is very important and is a great tool to keep the consumer from being harmed by ignorance.

V. Feedback:

Reading through the proposal and past regulations, the best way to not need to implement these proposals is to eliminate commission-based earnings and have all of the different types of compensation become wage-based either hourly or salary and not base it on sales, loan pricing, etc. If a person gets paid regardless of how they process the mortgage and do not get paid extra to dupe the consumer, it won't happen. Honesty goes a long way. Educate the consumer with a school program. Consumers not in school should be required to take a class on how to get financing before they get a mortgage, not after they get their home foreclosed upon and then need a modification. The system is currently backwards and needs to be straightened up with more common sense, education, and less government regulation.

These regulations should NOT include the prime mortgage market since the SUB-prime mortgage market is what caused all of the disaster. A previous White House administration stated they wanted every American to own a home thus creating numerous mortgage brokerage firms coming to life, decreasing the requirements to qualify for a home and giving the American citizen a new home through the SUB-Prime market something they could not afford. Since the housing crash, these unscrupulous brokerage firms have gone out of business and the legitimate ones still exist. The market took care of these firms and now these regulations are going to make things worse for the consumer by not giving them the necessary options to obtain a mortgage. More regulations harm the consumer in more ways than one. They take away a consumer's options of a free market, limits their choices, and in some cases, prevents good, qualified citizens from obtaining a mortgage. If these are implemented, it will decrease the consumer's choices to shop for a mortgage since only the big institutions will be the only ones that can afford to provide them thus giving them the option to increase closing costs and interest rates.

June 10, 2012

Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street N.W.
Washington, DC 20036

RE: SBREFA Review Panel Comments Residential Mortgage Loan Originations Standards

Dear Director Cordray,

I appreciated the opportunity to serve on the SBREFA review panel meeting on May 23, 2012 in Washington DC as a small business entity via phone. The 2008 financial crisis has obviously been one of the greatest economic challenges in US history and as such it is imperative that we must implement regulations which will prevent such a disaster from ever occurring again. Having said that, I think we need to first look at what caused the crisis. Clearly the predominate cause was **LOAN TYPE,** non-prime, pay-option ARMS, stated income and no doc loans and the very relaxed underwriting of loans that occurred in not only the non-prime market, but by the GSEs as they worked to satisfy the ever increasing demand by HUD each year to meet the higher and higher required percentages affordable loans in their portfolios. Credits scores were ignored and debt to income ratios were also ignored to meet those goals. The GSE's charter was never affordable housing, it was to create and maintain monetary liquidity in the marketplace, FHA was to provide affordable housing, however between 2003 and 2007 FHA was not meeting its charter particularly in many high cost areas and thus the Non-prime loan market was developed.

There were millions of 100% loans approved and made by the GSEs where debt to income ratios were allow to go as high as 65% of a consumers gross monthly income, credit scores were allowed down to a low of 585, and in some cases even lower. The non-prime market took things to the extreme by using negatively amortizing first mortgages and interest only second combination loans, placing consumers in underwater positions almost from day one as a disaster waiting to happen. These are the types of loans that caused the crisis. They had nothing to do with the Loan Originator compensation, but they did however have everything to do with the profit margins which were significantly larger for the creditors and Wall Street on these types of loans. Loan Originators did not create these products; they were created on Wall Street. Loan Originators did not underwrite these loans; or approve these loans; fund the loans; nor did they bundle and sell these loans into the derivative markets on Wall Street - that was all done by the creditors in the industry – whether retail or wholesale. Many companies like Washington Mutual, Countrywide, Ameriquest, World Savings, New Century Mortgage and Wachovia, none of which were brokers, sold these non-prime type loan products, none of these companies still exist today. In 2010 when HUD finally released its changes to the Good Faith Estimate, which is a contract now; no longer an estimate, in an attempt to make disclosures to the consumer more transparent. It took 63 pages of Q&A from industry experts to tell us how to complete and explain a three page form that did not tell the consumers how much their monthly payment was going to be, what the breakdown of the fees was going to be and either how much cash they needed to bring to closing on a purchase or refinance or how much cash they were to receive back on a cash-out refinance. The new disclosures added a huge compliance burden to the entire industry adding hours of work to create and re-create these disclosures for the consumers who truly do not understand them, so in the name of transparency and clarity, we issue additional disclosures to try to help them better understand the fees and costs for the loan they are requesting. Every wholesale lender's legal department has a different determination of where they want fees disclosed on the required documents. We on average issue at a minimum 3 complete sets of compliance documents for every transaction, by the issuance of the third or fourth set of documents the consumer is looking at us like we are nuts, but they still have no better understanding of what the documents are supposed to be telling them. Less than two years later we are looking to again completely revamp that set of disclosures.

In the fall of 2010 the Federal Reserve decided to jump into the game with its proposed Loan Officer compensation plan even though at that point the bulk of the bad players had left the industry and even though the new GFE precluded the originator from increasing the compensation once quoted despite the fact that in many instances complying with the Fed LO Compensation Rule meant we were out of compliance with HUD's required drafting of the GFE! The Fed LO Compensation Rule restricted the MLO's compensation and the consumer's right to choose the pricing structure appropriate for their transaction by mandating that the compensation could no longer come from the lender and the consumer in the same transaction. Now less than a year later CFPB is looking to overhaul the LO compensation format yet again just when the industry has adjusted to the changes made by the Federal Reserve in April of 2011.

Neither the Fed LO Compensation Rule nor The Wall Street Reform Act (Frank Dodd) have addressed the primary problem of the development and sale of the non-prime loan products that caused such huge damage to the economy of our country and the lives of so many consumers. Instead Congress and the Federal Reserve Board have continued to impose new and often conflicting rules and regulations on top of recently released rules and regulations for the originator/distributors of the loan products before allowing those newly released regulations to actually work. No where in Dodd Frank are there rules regarding oversight of non-prime loan products or any compensation for the developers of these products – Wall Street. Attached please find a chart from the Federal Reserve Board illustrating loan defaults by loan type that clearly shows that Prime fixed rate mortgages DID NOT cause the mortgage crisis.

I have the following comments and suggestions to the proposals discussed in the review panel.

DISCOUNT POINTS:
The agency is considering allowing a consumer to pay bona fide discount points resulting in a lower rate of interest when and if the creditor also offers a no discount-point option. This practice of consumers being given these options has been going on for decades and I applaud the CFPB for considering this exemption, so that the practice may continue and consumers make elect to pay discount points to reduce their interest rate permanently when they find that option appropriate. The idea that a consumer would not be able to pay any discount points, origination fees or closing costs would completely eliminate consumer paid choices forcing consumers to take higher rate options.

FLAT FEE:
Like all who attended the meeting either in person or on the phone, **I am adamantly opposed to a flat fee of any kind**. The industry has traded, sold and priced mortgages around the world in basis points/percentages and the addition of a flat fee will only disrupt the way mortgages are priced to the consumer and any potential write-off of origination costs for a purchase transaction by the consumer as allowed by IRS if the cost is shown as a percentage of the loan amount. The real result will mean higher costs to the minority and lower income home buyers while affording the higher income earners a lower cost structure. The restrictions in Dodd Frank are based on terms and loan type NOT on the loan amount. It is the actual basis that IS ALLOWED by Dodd Frank and CFPB now looks to eliminate basis in favor of an as yet undefined set of variables setting up a future litigation nightmare for everyone, especially small business who will just be driven out of the marketplace further reducing the origination chain to four or five large creditors and driving up the cost to the consumer due to lack of competition in the marketplace. In the spirit of transparency and a level playing field **ALL origination channels should disclose in the same manner**. If the purpose of your changes is clarity to the consumer, the simple solution is to create a GFE with three columns shown next to all of the itemized fees/closing costs shown as Paid to Lender, Paid to Broker and Paid to Others. Clearly describe the origination fee to the lender/creditor, the Broker fees to the brokerage and the lender credit as a credit for the rate selected. If you make the form simple and clear for the consumer to understand the cost of the transaction will be transparent and this issue will be resolved. This recommendation has been made in the past by the brokerage industry but has fallen on deaf ears.

I support your consideration of allowing the mortgage brokerage to pay its originators a commission on a Consumer paid transaction just as they are allowed to be paid a commission

on a Creditor paid transaction. Whether a MLO is paid on salary, hourly or commission compensation has nothing to do the total fee being charged by the brokerage firm to the consumer as long as the ability for an originator to steer a consumer to a higher priced loan for added profit is eliminated and that in fact already been accomplished. <u>For the record dual compensation IS NOT double compensation</u> and defining a mortgage brokerage firm by the same definition as a loan originator is inaccurate. The mortgage brokerage firm has expenses like any other origination channel such as rent, insurance, benefits and other expenses, the wholesale lenders have their origination contracts with and compensate the brokerage firm NOT the brokerage firm's MLOs. The definition of a Mortgage brokerage firm should be clarified to reflect the separate and distinct definition to show that it oversees and pays its MLOs just like a creditor pays its MLOs. It is my recommendation that the CFPB exempt prime and government fixed rate mortgages from the suggested "flat fee" compensation rules and apply those restrictions on non-prime and high cost mortgages.

MLO QUALIFICATIONS AND SCREENING:

There should be NO EXEMPTIONS for any origination channel from licensing requirements set forth from the SAFE act. **<u>All originators from all channels should abide by the same rules, requirements and regulations</u>.** We all know there are many loan originators who have failed the Federal and State Safe Act required exams or have failed the criminal background check and now work for an exempt financial institution or non profit groups. Allowing these unlicensed originators to work with the consuming public would seem to be a conflict of the purpose of the both the Safe Act and CFPB.

PRICING CONCESSIONS AND POINT BANKS:

There are many instances where a MLO or company should be allowed to LOWER its compensation in order to help a consumer close on a real estate transaction due to unexpected third party fees or in the case of a competitive bidding situation. As it stands now, a creditor may lower its origination fees and a brokerage firm MAY NOT because the firm is treated as a MLO under the definition. As a small business mortgage brokerage, we are not on a level playing field while competing with a creditor when it comes to pricing. There are many times when we are the same price as a creditor, but because the creditor can reduce their price quote to secure the transaction we lose out of any opportunity whatsoever to compete in the marketplace with other lenders. I favor the ability to make **voluntary** price concessions in order to compete or to cover unanticipated third party fees when requested by the consumer.

I am completely opposed to point banks as these would result in higher cost to consumers in order to fulfill the point bank. It would encourage a MLO to quote a higher rate just to stockpile points for later use and discrimination in the process.

IMPACT ON THE COST OF BUSINESS CREDIT:

Since the implementation of Dodd/Frank and LO Comp along with the ever so tight underwriting criteria, the cost of sustaining business operations has skyrocketed. We have been forced to hire more personnel and employee productivity has decreased due to the tremendous amount of paperwork and regulatory burden placed upon the small business entity and transactions on average take about four times longer to complete for the consumer. Approximately 60% to 75% of small business mortgage professionals have either been forced out of business or have gone to work for a creditor shutting down their long term operations and putting thousands out of work. The implementation of even more regulations will result in more small mortgage professionals exiting or closing their business operations altogether. To quote Elizabeth Warren **"I believe that clearer, simpler regulation-regulation that is designed to work for small businesses and consumers-can help make markets work better. The financial crisis showed us what happens when regulations aren't enforced and giant Wall Street businesses have too little oversight. Deregulation certainly didn't help the small banks and credit unions that got swept up in that mess. But we also can't keep layering on one regulation after another, adding more and more complexity, without assessing the effects on families and small business. We need a new approach that includes a serious assessment of the compliance cost of current regulations and whether adequate protection for consumers can be accomplished using cheaper, simpler approaches, or. In specific cases, if the regulations are so heavily layered on top of each other that some can be cut altogether"**

In closing, I would like to thank the CFPB once again for convening this small business review panel and considering the input from all of us involved. I would like to urge that the CFPB needs to finish its first goal to complete the "know before you owe" first and test the new combined GFE/TIL for one year before any new regulations are proposed or implemented.

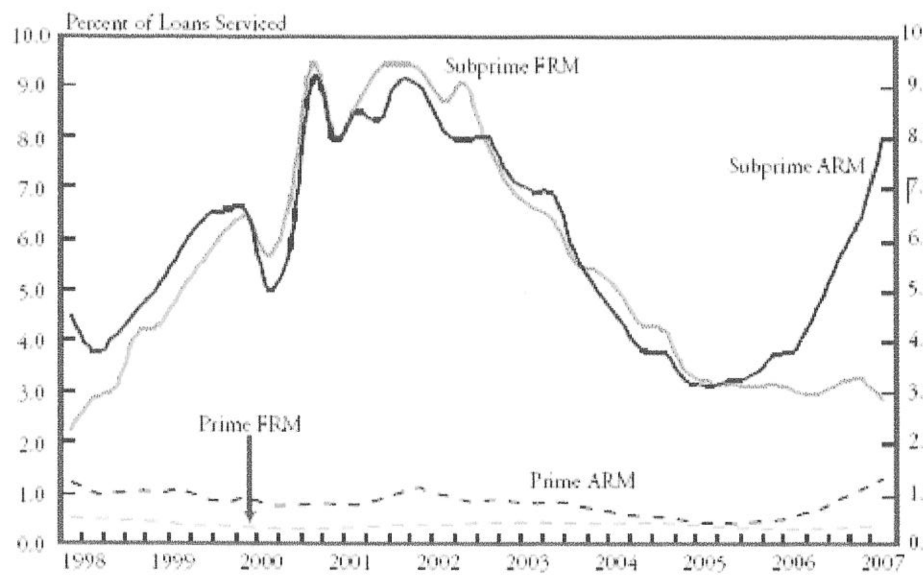
Sincerely,

Ginny Ferguson

Ginny Ferguson, CMC
NMLS # 246911
President/CEO
Heritage Valley Mortgage, Inc

Defaults by loan type

Chart 4
FORECLOSURE RATES BY LOAN TYPE, 1998-2007



Source: *Mortgage Bankers Association*

AUGUSTA MORTGAGE COMPANY

Making the Dream of home ownership a Reality...

June 11, 2012

Dan Sokolov
Small Business Review Panel Chairman
Consumer Financial Protection Bureau
1801 L Street NW
Washington, DC 20036

Dear Mr. Sokolov,

I wish to express my gratitude to the Consumer Financial Protection Bureau (CFPB) for inviting me to participate in its small business review panel on the coming mortgage loan originator (MLO) compensation and qualification proposed rule. I also deeply appreciate the opportunity to submit these comments on the proposals under consideration for the rule.

As both a small business and as a mortgage lender, my company faces particular challenges in today's regulatory environment, including in the areas of compensation and qualifications of our MLOs. The following offers comments on the CFPB's outline of proposals under consideration on these issues that I touched on at the meeting and in the follow-up calls, as well as other comments from this perspective:

Origination Charges: I am very glad that the CFPB is considering exercising its exemption authority to permit consumers to pay up-front origination fees and discount points where a lender or broker compensates an MLO. Our company faces significant costs in originating mortgage loans for our customers and discount points offer our customers the opportunity to buy down their rates and lower their monthly payments. Both origination fees and discount points are available in the market today and prohibiting them will only increase loan rates and monthly payments for our customers.

In exercising its exemption authority, however, I do not believe the CFPB should consider limiting origination fees only to those which are "flat" and do not vary with the loan amount, as suggested in the outline and follow-up calls. I simply don't see any basis for it.

Follow-up calls with CFPB staff last week suggested that the CFPB would allow for some variations of the flat fee across different loan products. Unfortunately though, I think this approach may also be confusing for the consumer and difficult for a small business to implement. After 35 years in the mortgage business, we have learned that keeping it simple is the best way to serve customers. We charge origination fees that

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are a fixed percentage of the consumer's loan amount and other companies do so as well.

Apparently, the CFPB is considering a flat fee requirement based on the concern that consumers confuse origination fees that vary with loan amount with discount points that also vary in this manner. If this is the concern, I believe the right place to deal with it is to ensure that the forthcoming RESPA-TILA forms are very clear in distinguishing and disclosing discount points and origination fees respectively. In fact, as a condition of the CFPB's exemption authority, use of the final disclosure language should be required.

On the other hand, a rule that would force us to charge flat origination fees is unnecessary and would result in unintended and costly consequences. Borrowers for loans with fees based on loan amounts that are smaller — ordinarily borrowers with lower incomes — would pay considerably more than they do today. They, in effect, would subsidize wealthier borrowers with greater loan balances, who would pay less. Even if different flat fees were established for different categories of loans, this effect would occur in each category.

Other borrowers, particularly those who otherwise might participate in government programs, may be precluded from doing so altogether. For example, the Georgia Dream Tax Exempt Mortgage Revenue Bond Program, administered by the Georgia Department of Community Affairs, is structured to require an origination fee as a percentage of the loan. Under this program, the option of even charging a higher interest rate in lieu of charging origination fees is not permitted under the program guidelines.

Smaller lenders today face an extraordinary amount of pressure as they seek to deal with both regulatory change and market pressures. A requirement for a flat fee would present a significant new disadvantage to them. Smaller companies with fees based on loan amount would have to determine an appropriate flat fee reflecting the origination costs of all their loans and then incur the costs of systems changes. Most importantly, smaller lenders could not set a lower than average cost flat fee and make up the difference through volume or non-mortgage business as larger competitors might.

As I have indicated, the new disclosures are the best and most workable place to address any potential customer confusion surrounding origination fees. I do not believe the CFPB should move forward to impose any restriction against origination fees varying with loan amount unless it is based on data showing this is a problem resulting in consumer harm.

If, however, the CFPB chooses to move forward notwithstanding, to minimize market disruption from any new limitation on fees varying with loan amount, any new limitation should exclude Qualified Mortgage (QM), prime and government loans at the very least. We cannot imagine that market competition, program requirements and disclosures would be insufficient to resolve any possible concerns in these cases.

Discount Points: I agree with the CFPB that discount points should result in a real reduction in the interest rate of loans. Nevertheless, based on my experience, any requirements regarding discount point reductions must be established very carefully. The amount of change in rate from a particular discount point varies considerably from loan to loan based on a range of factors. These include the rate of the loan, secondary market conditions and the present value of the dollar, to name a few.

I understand that the QM and HOEPA rulemakings will also deal with discount points. I urge that those rules be developed so that they are consistent with this rulemaking and the RESPA-TILA rulemaking as well. Uncertainty and inconsistency will result in unnecessary costs for my small business and might even result in the elimination of discount points altogether, which would harm consumers significantly as interest rates inevitably rise.

Price Concessions: I also support the CFPB's consideration of rule changes clarifying that MLOs may make pricing concessions that include reductions in their compensation in particular circumstances. I agree a mortgage loan originator should be able to make such concessions due to increased costs resulting from unforeseen circumstances, such as an unanticipated increase in third party costs. There is little real risk of chicanery here. Notwithstanding, when this occurs today, my company must absorb the entire cost difference. The MLO as well as the company should be able to absorb all or some portion of these unexpected costs to close a loan.

Also, to ensure consistent, quality service to consumers, a mortgage lender should be able to offer a price concession, with a reduction in an MLO's compensation, where a MLO makes a mistake on a GFE resulting in increased costs. Currently, a MLO may not offer a price concession and reduce his or her compensation in such a case, even though the need for the concession resulted from the MLO's error. Under these circumstances, lenders are forced to absorb these costs and state regulated, smaller lenders also face the even costlier choice, where such errors persist, of terminating the MLO and incurring the costs of hiring, training and licensing a replacement employee.

Point Banks: Clear rules regarding price concessions such as those described above and others will provide greater cost savings to consumers than point banks. While a point bank system may be helpful for some companies, I am concerned that the amount of discretion they provide will result in unfair outcomes for some borrowers and potential fair lending issues. Allowing price concessions in specific circumstances will achieve savings without inviting inconsistent savings for some borrowers.

Payments to 401 K Plans Derived From Mortgages: I also think the CFPB is on the right course in considering allowing companies to contribute to qualified 401(k) plans for their MLOs. There is no reason to prevent lenders from helping mortgage loan originators save for their futures and from assuring MLOs receive the same benefits as others in the mortgage industry and, for that matter, throughout the nation's economy.

While I support the clarification under consideration that employers can contribute to 401k's and other qualified plans, as a small business owner, I would strongly oppose those proposals that would allow these contributions only in cases where mortgage related profits are within prescribed limits. As a small mortgage lender, we derive 100 percent of our income from mortgage-related revenues. Accordingly, any such limits would preclude us from offering the benefits larger diversified lenders could, disadvantaging us greatly in competing for, and retaining well qualified MLOs.

Proxies: I am grateful that the CFPB is willing to give mortgage lenders clear guidance on what constitutes a "proxy" for a loan term precluding compensation on that basis. There are many areas where loan products differ, the revenue a company receives for them varies greatly and the danger of MLO steering is small or non-existent. These include refinances v. purchase loans, Community Reinvestment Administration (CRA) loans and state agency tax exempt bond revenue loans, among others. These cases should not be treated as "proxies." Specifying that these are not proxies through a list or examples and establishing a clearly worded test for what is, or is not, a proxy going forward would allow smaller lenders to better establish appropriate compensation packages for their MLOs.

Other Concerns: The follow-up phone calls with CFPB staff left me with the impression that the CFPB was possibly considering different rules on origination fees and MLO compensation for mortgage brokers versus mortgage creditors. If any such distinction is under consideration, I would strongly urge the CFPB to reconsider. There should be a level playing field for brokerages and lenders for both origination charges and MLO compensation. Both types of entities' origination fees should be permitted to vary based on loan amount and both types of MLOs should be permitted to be compensated based on loan amount

Additionally, at key places in the proposals, for example regarding the establishment of an exemption against the Dodd-Frank prohibition of up-front fees, the CFPB indicates it is considering "sunsets" of exemptions after three years. For the record, I oppose such provisions. The rules should be arrived at judiciously along the lines of this comment. If they are, they should not expire and expose the market and my business to confusion and unnecessary additional compliance costs.

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Mortgage Loan Originator Qualifications: I appreciate the CFPB's consideration of proposals to establish consistent qualifications for MLOs. As part of these qualifications, I believe that all MLOs, whether registered or licensed, should be required to prove their qualifications by passing a substantially equivalent exam for that purpose. I believe such an approach would ensure that all consumers receive competent service and also foster a competitive market with a level playing field for the recruitment and hiring of MLOs. I employ state licensed MLOs and believe that MLOs across the industry should be similarly knowledgeable and qualified no matter how the company is regulated.

Additionally, I strongly believe the CFPB also should revise its SAFE Act rules to foster a competitive market for hiring and recruitment. The CFPB recently indicated that its rules preclude states from allowing transitional licensing of well-qualified MLOs from federally regulated depositories while they complete state testing and licensure requirements. The inability to work right away discourages these MLOs from joining my company. At the same time, there is no such impediment to federally regulated depositories hiring my originators. As the CFPB continues to work to level the playing field regarding mortgage loan originator qualifications, I urge that revision of the rules to allow transitional licensing should be made a priority to remedy this discrepancy.

Again, thank you for inviting me to the panel and offering me the opportunity to provide comments on this important rulemaking. I would be happy to provide additional information in the future. Please contact me at 706-860-4200 if you have any questions.

Sincerely,

Larry D. Moss
President

Illinois Association of
IAMP ESTABLISHED 1987
Mortgage Professionals

350 W. 22nd Street - Suite 104 - Lombard, Illinois 60148 (630) 916-7720

June 1, 2012

Via Email

Consumer Financial Protection Bureau
Attention: Rachel Ross
1700 G Street, NW
Washington, DC 20552

RE: SBREFA Panel Member - Carol Gardner
Follow Up Documentation for the Record

Dear Ms. Ross,

As you know I served as a SBREFA panel member for the meeting in Washington, D.C. on May 23, 2012. I also serve as President of the Illinois Association of Mortgage Professionals.

After my return from Washington we solicited the views of our 1300 members regarding the May 9, 2012 CFPB proposals to simplify mortgage points & fees for consumers.

We received nearly 400 letters from our members overwhelmingly opposed to the May 9, 2012 proposals. We've selected a few of these letters to include with this letter to be incorporated into my written remarks for the record. We also produced 2 videos for our members and we had a "mini-viral" response with well over 1000 views. Our Association offices received over 100 telephone calls and additional emails also voicing opposition to the proposals.

As a panel member and President of the Illinois Association of Mortgage Professionals I cannot support the May 9, 2012 CFPB proposals. I recognize the mandates of Dodd-Frank and I know the tasks charged to the CFPB are daunting, but these proposals will not help consumers. In all my years in the mortgage and real estate industry and despite the volumes of evidence to the contrary, our government has shouldered blame on the wrong parties in this housing crisis. It turns out that attempts at simplifying the mortgage process is not so simple. A one-size-fits-all solution is not what is needed by consumers. Most people have borrowed money from their parents or other family members during their life and the terms were usually very simple. Adding more and more paper depicting multiple versions of the same information only makes for more confusion for many people. Borrowing money should be very simple to understand. When boiled down, loans are comprised of principal, interest and costs associated to obtain the loan. It seems that in spite of all the good intentions we the people have thus far failed to find a way to convey the loan information in a way that benefits all Americans.

Illinois Association of Mortgage Professionals
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Page 2 Letter to Consumer Financial Protection Bureau
Attention: Rachel Ross

Part of the reason for this is due to an un-level playing field. FDIC insured institutions are treated differently than mortgage brokers or bankers. Its seems that the pattern of disparate treatment is likely to continue and that the desire of the American people will be overlooked once again. The current combined CFPB proposed GFE/TIL disclosure has lots of pages that do little to convey the few simple things our parents or family found ways to accomplish long ago.

I stand ready to participate with the CFPB in any way to remedy mortgage regulation.

Sincerely,

Carol Gardner
SBREFA Panel Member
President, Illinois Association of Mortgage Professionals

EXPERT MORTGAGE ASSOCIATES, INC.

Mortgage Brokers

645 Balmoral Lane
Inverness, IL 60067

Phone: (847) 705-7500
Fax: (847) 705-7505

May 31, 2012

Consumer Financial Protection Bureau
P.O. Box 4503
Iowa City, Iowa 52244

Re: Proposal to ban origination charges that vary with the size of the loan

To Whom It May Concern:

I have just been made aware that there is a proposal that would require mortgage brokers and loan officers to be paid a "flat fee" for each loan transaction and I am concerned about how it will affect the consumer and the free market system. I think that while the government has good intentions they often do not realize the ramifications of their new rules and regulations.

In short, the idea of a flat fee for compensation will negatively affect the lending business by:

1. This will eliminate the small boutique mortgage broker that provides the highest levels of service while charging a little more for their services. These companies are not built for volume. If the fee they can charge is limited they will go out of business. This means less competition and fewer choices for the consumer.
2. Essentially allowing government to set pricing for a service. Who is next……realtors, athletes, doctors? Is the government going to reach down into every industry and place caps on the compensation a salesperson can earn. That is why it is called sales. Mortgage brokers provide a service that consumers desire. This proposed rule is anti –free market. What has happened to capitalism?
3. The finance business has always worked on percentages. A flat fee would create logistical nightmares for banks pricing loans for mortgage brokers. Banks may just decide to stop doing business with mortgage brokers because the pricing of a flat fee, that is different for every

broker that they do business with, it too time consuming, expensive, etc. Again, the result is negative for mortgage brokers and consumers.....Fewer choices for both.

4. Borrowers with low loan amounts (who already have fewer choices) will have even less. There must be considerations for "High Cost Rules." Banks will likely decide not to lend to borrowers with loan amounts under $100,000.

I feel that this proposal is one more attempt to eliminate mortgage brokers from the mortgage financing business. You must know that the reason mortgage brokers became so prevalent in the 1990s is because originating a mortgages through a mortgage broker is the most cost effective way to originate. This means that mortgage brokers can offer loans at better prices than banks because they have low overhead.

There are already rules and laws in place that address fraud and deception. Rather than impose new rules we merely need to enforce the laws we already have.

Thank you for your time.

Sincerely,

Marc LaGasse
Expert Mortgage Associates, Inc.

TIgER FINANCIAL SERVICES, INC.

2025 S. Arlington Heights Rd., Suite 118
Arlington Heights, IL 60005
TEL: (847) 593- 3600 <=> FAX: (847) 593-1333
"AN ILLINOIS & WISCONSIN RESIDENTIAL MORTgAgE LICENSEE"

To: Bob Perry, President
IAMP

RE: Flat Fees will cause harm to Illinois consumers

Flat fee pricing would force us to overcharge borrowers with fixed pricing for small loan amounts. There would be no benefit to the borrower. It would limit or eliminate competition for the consumer therefore costing the borrower/consumer more money both in the long and short term.

Price fixing would be a curse to any capitalistic society. This kind of fixed pricing discriminates against small loans and large loans and the consumer by limiting competition.

Cordially,
Scott Berns
President

May 29, 2012

To Whom It May Concern;

We are writing to let you know that we strongly oppose a FLAT FEE compensation model for mortgage originations. This model will cause harm and provides absolutely no benefit to the consumer. With all the recent changes to the mortgage industry, especially the LO Compensation changes, any further changes will cost lenders more money to implement which will get passed onto the consumer. The biggest issue with a Flat Fee structure is that consumers that are seeking smaller loan amounts may not have the opportunity to obtain a loan due to the High Risk Home Loan Act (Illinois) that restricts the fees to 5% of the loan amount. A Flat Fee structure does not make sense, will harm the consumer and provides no benefit. We strongly urge you to oppose the Flat Fee.

Regards,

The Employees of Capital Financial Bancorp, Inc.

Headquarters
1699 E. Woodfield Road, Suite 500
Schaumburg, Illinois 60173
Toll Free: 866.FUND.789
Office: 847.240.2442

Downtown Chicago
2538 W. Chicago Ave.
Chicago, IL. 60622
Toll Free: 866.FUND.789
Fax: 847.240.1442

MORTGAGE
ENTERPRISES

800 Enterprise Drive • Suite 202 • Oak Brook, Illinois 60523

May 30, 2012

Illinois Association of Mortgage Professionals
Executive Director – Robert Perry
350 W. 22nd Street, Suite 104
Lombard, IL 60148

Re: CFCB Proposed Flat Rate

Dear Mr. Perry;

I'm sending this letter to you regarding the above pending proposal to move to Flat Rates This proposal will cause undo harm on the individuals who want to do loans under $100,000, since in Illinois we have a High Risk Home Loan Act. This will not allow these borrowers to have any competitive advantage in the marketplace since they will be forced to go to a FDIC Bank.

With all the new Loan Office Compensation regulations along with other Dodd-Frank Regulations I'm finding the cost of adhering to these rules along with normal operational costs of running the company could become unmanageable. It could reach a point where economically companies like mine won't be able to continue. This will impact my employee's employment, their families, and the communities they live in; along with the State of Illinois if they are unemployed. In addition our clients who since 1985 have looked to us for assistance with their lending requirements should this become a reality.

Please feel free to forward this letter to whomever you deem needs to be aware of what the consequences could be if this rule is passed without and due diligence

Respectively,

David A. Marquardt
President

HMS

HOME MORTGAGE SPECIALISTS, INC.

To Whom It May Concern,

Flat Fees will cause harm to Illinois Consumers. In Illinois we have the High Risk Home Loan Act that will also cause problems for low loan amounts and it will also prevent competition with FDIC insured banks.

As a down state broker, where the average loan amount is $125,000 a Flat Fee will prohibit consumer choice and eliminate consumers from obtaining certain home loans due to the High Risk Home Loan Act.

A Flat Fee would increase costs to the borrower by eliminating the consumers' choice to secure competitive mortgage financing that makes homes affordable

Respectably Submitted

Nathan W Durst

Illinois Residential Mortgage Licensee
MB. 6760824 - NMLS # 695728
EQUAL HOUSING LENDER
4700 N University St., Suite 65B • Peoria, IL 61614 • P: 309.222.8286 • F: 309.222.8287

CROSSCOUNTRY
MORTGAGE, INC.

Price fixing is a curse to any capitalistic society. Stop the insanity. Flat fee pricing - where all loans generate the same compensation regardless of loan amount - discriminates against the small loans. A Flat Fee (no matter the amount) results in the smaller loan paying a Higher percentage for the same product.

If the Fee is $2000.00 then a client with a $100,000.00 loan is paying a fee of 2%.

If the Fee is $2000.00 then a client with a $400,000.00 loan is paying a fee of .5%.

This results in an inflated Annual Percentage Rate for the smaller loans.

Once again we have figured out a way to hurt the LITTLE GUY.

Is there any way this makes any sense? Has anyone asked the consumers if they see this as good idea?

I THINK NOT

Sincerely

David M Ischkum

David M. Ischkum

NMLS #221466

IL license # 031.0000151

CROSSCOUNTRY
MORTGAGE, INC.

May 30, 2012

Petitioning

The Congress and the CFPB

Greetings,

I just signed the following petition addressed to: The Congress and the CFPB.

A petition for simple changes that will help millions of home owners and prospective home buyers

The Dodd Frank Act (DFA or the Act) was signed into law on July 21, 2010 by President Obama. Certain of the Act's provisions in Title XIV, Title X and Title IX when implemented as required in January 2013 will cause additional consumer harm rather than protect consumers as the law ostensibly was passed to do.

IMPACT Mortgage Management Advocacy and Advisory Group (IMMAAG) has drafted amendments to several provisions of this law. The amendments need to be passed NOW. If not acted on immediately there is no way to prevent the automatic effective date or regulatory required implementation date of January 2013. The amendments allow the primary regulator, the Bureau of Consumer Financial Protection (CFPB) an opportunity to prioritize the incredible regulatory challenge it was handed from this legislation. It allows them to focus on work that has a real chance to achieve the stated objectives of: simplification, clarity and consumer protection. Without the amendments, the regulations will force the agency to implement bad consumer law.

The amendments, while straightforward address more than just the Act. Regulation X which implements the Real Estate Settlement Procedures Act of 1974 and Regulation Z which implements the Truth in Lending Act of 1968 are both outdated and out of touch with efficient and effective business practices; and they harm consumers. They have been independently modified so many time since 2008 that consumers are harmed by the very changes that have been implemented. The continued changes prescribed in the Act, as in the case of required disclosure integration, are too little, too late and more importantly not on point, harmful and misguided in the first place. The amendments provide for a conditional, fundamental reassessment of both RESPA and TILA and their implementing regulations. Further the amendments provide the opportunity for the Bureau to act and the amendments allow RESPA and TILA to be reformed as necessary to incorporate fact based change.

NMLS ID #3029 • 5005 Newport Drive Suite 402 • Rolling Meadows, IL 60008

The IMMAAG draft DFA amendments require an independent evaluation of the mortgage and related provisions of the Dodd Frank Act. The evaluation is intended to determine if the "cure" actually addresses a problem that exists. In other words, will implementing Dodd Frank do anything positive or is it just more "action" without solving a problem. Even worse, is it laden with action and distraction which cause more problems, confusion and harm. My signature is placed on this petition because I believe an independent evaluation will prove that the causes and effects the Act's supporters cited to justify its passage simply do not exist. The amendments include the conditional provision to re-engineer both RESPA and TILA and their implementing regulations should the evaluation prove them to be the out of date, misguided laws they appear to be and to provide integrated changes that meet the market, consumer and industry realities of the 21st century.

By signing this petition I am asking my Congressional Representative and my Senators to take whatever action is necessary to either sponsor, co-sponsor or support IMMAAG's Dodd-Frank Act amendments. Further, by signing this petition I am asking the head of each of the affected regulatory agency(ies), especially the CFPB, to join in the effort to gain additional time to implement regulations which are responsive to the issues at hand and not just myth-based, misguided actions leading to more negative results than positive outcomes.

Failure to act NOW on this important evaluation of the problematic provisions of the Dodd Frank Act identified in the offered amendments will increase the harm caused by the inappropriate actions driven by existing law. A failure to act NOW will mandate additional overly prescriptive regulations which bear no relationship to implementing the good they claim to do. RESPA, TILA and the Act already harm consumers on a daily basis. By acting on the request to support the DFA amendments made by the thousands of us who have signed this petition consumers will be given a realistic chance realize the result of some properly focused congressional and regulatory initiatives. Failure to act in support of this initiative will guarantee your constituents suffer needlessly as a direct result of your inaction.

Sincerely,

James Yeung

Pacific ONE

MORTGAGE, INC.

Date: May 28, 2012

RE: Flat Fee Proposal

The above proposal will not only hurt lower loan amounts due to IL High Cost law but also eliminate our flexibility as a company in adjusting our compensation to help borrowers in need.

Thank you very much.

Sincerely,

Chris Zabat
President

EQUAL HOUSING LENDER

Recommended for Trust and Reliability!!!

AN IL RESIDENTIAL MORTGAGE LICENSEE

License Number: MB.6760348 * NMLS ID 207438

11516 W. 183rd Street, Suite NW, Orland Park, IL 60467

Tallahassee~Leon
Federal Credit Union

Dan Sokolov
Small Business Review Panel Chairman
Consumer Financial Protection Bureau
1801 L Street NW
Washington, DC, 20036

Let me first take the opportunity to thank the Bureau for the invitation to participate in the rulemaking process concerning residential mortgage loan origination standards. In a regulatory environment where good-intentioned, knee-jerk reactions result in unintended consequences, this invitation was refreshing. I found the process to be very enlightening and hope to continue to support the Bureau's efforts to improve communication with stakeholders in the future.

Based on your request, I am taking this opportunity to share my perspective on the proposed rules in writing. I will again encourage the Bureau to exercise their statutory authority to create an exemption on the following items:

- I understand that Dodd-Frank is currently written in a way that limits the payment of discount points and upfront origination fees.

  I believe that restricting the ability of a consumer to pay points to buy down the rate on a mortgage could create a situation whereby the lack of choice would have an opposite effect than what was intended. A consumer with plans to stay in a home for ten years that is seeking a smaller monthly payment might find that when the only option is a zero-point option the continued affordability of the mortgage payment would be challenged and the long-term expense would be greater.

  I believe that the solution to this lies in increased transparency and financial education. A better alternative to eliminating points would be to demonstrate that the consumer had been allowed the option to choose between various loan structure options, including a no-points option. In addition to demonstrating that a zero point option has been offered, providing the total cost to the consumer over various time periods (i.e. 1 year, 5 year, life of the loan) would allow the consumer to choose the best option for their particular situation.

1827 Capital Circle NE, Tallahassee, FL 32308
2020 W. Pensacola Street, Suite 180
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I believe that eliminating origination fees would increase overall the interest rate to the borrower. Converting to a flat fee is also not a good option because of the variable nature of upfront fees and the costs of processing a mortgage application.

Creating an exemption for "pass through" charges would help to eliminate some of the variable items. Pass through charges would be expenses that the creditor or brokerage firm pays to process the mortgage loan application and then turns around and "passes along" the charges directly to the consumer. An example would be a credit report fee. If the creditor or brokerage firm was charged $35 by the credit bureau, the creditor would pass that charge along to the borrower with no mark-up. Other examples of this would be appraisals and inspections.

- I understand that when interpreted "to the letter", Dodd-Frank restricts contributions to MLO retirement plans and/or profit sharing plans.

  I do not believe that an employee would be motivated to incent a member into a predatory mortgage based on compensation to a retirement plan. We urge the Bureau to allow financial institutions the flexibility to provide competitive benefits to all employees. Excluding MLOs from retirement plan benefits would inhibit the hiring and retention of qualified MLOs. Adding additional plans would simply create additional costs to the organization. Because of this, we would encourage the Bureau to adopt the proposal (1) on page 16 of the documentation provided to the panel on May 9, 2012.

- I would discourage any actions that would require the testing, required training, or licensing of an MLO in a federally insured financial institution. Federally insured institutions are heavily regulated and we are confident that predatory loan activity of any kind would be identified and terminated quickly.

  An institution has a vested interest in the long-term performance of their mortgage loan portfolio and many hours are already spent training loan officers. It is important to allow the institution the freedom to tailor training to fit the types of mortgage products being offered. If smaller financial institutions were burdened with extensive additional costs outside of federal requirements for registered MLOs under the SAFE Act, many would likely stop mortgage lending all together.

- One of the questions asked in the documentation but that wasn't discussed at the original meeting on May 23 was that of the impact of requiring the NMSLR numerical identifier to appear on all mortgage loan documents. Because of the increased cost, we would encourage the Bureau to use their authority to not require MLOs employed by smaller federally insured financial institutions to include their unique NMSLR identifier on all loan documents.

- We would encourage the Bureau to not "sunset" any potential/partial exemption that may be granted in relation to brokerage or creditor paid compensation concerning the limitation on the payment of points and fees.

In addition to the answers to the specific questions that were proposed to the group, I have a couple of additional comments to share.

- One of the core operating principles of a not-for-profit, financial cooperative (credit union), is financial literacy. Generally speaking, a solution that would incorporate this philosophy would be welcomed. We believe that solutions that make financial transactions simple while still allowing the consumer choices are in the best interest of our members.

- Understanding that as a result of the bad actions of others, credit unions have been hit with more than 130 new or amendments to existing regulations in the last four years. Because we must react to these rules made by more than 15 federal agencies, the Bureau is wholeheartedly encouraged to ensure that rule changes are coordinated as much as possible so as to avoid any conflicts between new rules and existing rules with other federal agencies.

Again, I would like to thank you for your invitation and look forward to any opportunities in the future to work together.

All My Best,

Lisa D. Brown
President/CEO
Tallahassee-Leon Federal Credit Union
1827 Capital Circle NE
Tallahassee, FL 32308
850-576-8134 x106
lisab@tlfcu.org

National Association of Independent Housing Professionals
N.J. Association of Professional Mortgage Originators
Illinois Association of Mortgage Professionals
Washington Association of Mortgage Professionals
New York Association of Mortgage Brokers

June 4, 2012

Hon. Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street N.W.
Washington, D.C. 20036

Re: SBREFA Review Panel Comments

Dear Director Cordray:

The National Association of Independent Housing Professionals (NAIHP), the New Jersey Association of Professional Mortgage Originators (NJPMO), the Illinois Association of Mortgage Professionals (IAMP), the Washington Association of Mortgage Professionals and the New York Association of Mortgage Brokers (NYAMB)... (collectively "Associations") appreciates the opportunity to comment on the proposals discussed during the May 23, 2012, SBREFA Review Panel.

The Associations understand and support the need for protecting consumers in the marketplace. However, in recent years, it appears a "trial and error" approach to regulating has replaced factual data, resulting in significant unintended consequences for both consumers and small business entities.

We acknowledge the CFPB only recently inherited an onslaught of certain rules and regulations from other federal agencies and have specific mandates under Dodd-Frank to finalize same. However, we strongly urge the CFPB to first carefully review the numerous independent studies, government data and expert testimony supplied by NAIHP and others, prior to proposing these regulations. This documentation, which has been in the possession of the CFPB for over a year, clearly establishes mortgage brokers, mortgage bankers and MLOs were NOT the cause of the housing crisis, nor was their compensation. These same documents were provided to the Federal Reserve Board (FRB) during the comment period for the MLO Compensation Rule. When that rule was finalized, we learned the FRB ignored these credible studies and instead chose flawed "surveys" to justify implementation of the rule. Industry warned the FRB the rule would create confusion for consumers and other substantial harm. Furthermore, because the FRB refused to submit a proper compliance guide and answer any questions in written form regarding compliance, industry still remains confused and in legal jeopardy.

Discount Points:

According to information provided by the CFPB, the agency is "considering its exemption authority to permit consumers to pay discount points to the creditor, provided: the discount points are bon fide..." and "the creditor also offers the option of a no-discount-point loan." While we applaud the CFPB for considering this exemption, the Associations believe another restructuring of originator compensation is an unnecessary burden and will create consumer confusion and further harm to small business. In addition, this is a disclosure issue and should be addressed under "Know before you Owe." The use of a simple line item on the new GFE/TIL, with a brief description of discount point(s) would provide clear and transparent disclosure. In addition, consumers already have options for obtaining lower interest rates. Under the current MLO Compensation Rule, borrowers are provided with several interest rate choices, which only differ by the amount of the borrower's credit. The lowest credit provides the lowest rate. These options have the same effect as paying discount points and are completely transparent.

Flat Fee:

The Associations are <u>opposed to a "flat fee" of any kind</u>, with respect to mortgage loan originator (MLO) compensation. Every level of the mortgage financing industry operates by basis points or percentage. Introducing a flat fee into the process is unworkable and will create substantial harm and confusion to consumers, especially low to moderate income borrowers. Small business will be harmed by a less competitive marketplace, dominated by larger players who aren't burdened by the same restrictions placed on non-creditors.

During the panel discussion, the SERS were unanimous in their opposition to a flat fee. The SERS represent a cross section of small business professionals with substantial expertise in originations, on both the broker and banker sides. Ignoring the recommendations of these industry experts will lead to a continuation of what have become "trial and error" regulations.

The Associations believe a level playing field can be achieved for the betterment of consumers, by requiring all originators, including both creditors and non-creditors, to disclose on the exact same forms and in the exact same manner. However, we doubt a level playing field is obtainable, unless regulators retreat from practices of the past, which hold creditors and non-creditors to different standards.

The Loan Originator Compensation Rule strictly prohibits brokers and their originators from being compensated by both the borrower and creditor (dual compensation). The Federal Reserve Board in proposing and finalizing this rule, considered this practice to be "unfair and deceptive." However, they continue to allow creditors to receive Service Release Premiums (SRP). While some have argued SRP is a function of the secondary market, the fact remains, SRP is built into a consumer's interest rate. Therefore, consumers who elect to use the services of a retail originator are in fact compensating the creditor twice. This double standard can be eliminated by allowing brokers to receive dual compensation. **As a point of clarification, dual compensation is NOT double compensation.**

Allowing brokers to receive dual compensation would help more consumers obtain mortgage financing. Many consumers, who are denied financing due to higher than acceptable ratios, would qualify if allowed to separate their origination costs between the rate and upfront fees.

In addition, during the legal challenge to the MLO Compensation Rule (National Association of Independent Housing Professionals v. The Board of Governors of the Federal Reserve System), the FRB in their answer to the complaint acknowledged there was no difference between wholesale and retail indirect compensation or yield spread premiums.

The Associations request the CFPB use their exemption authority to correct this double standard.

Incentives:

The MLO Compensation Rule and the Merkley amendment under Dodd-Frank were enacted to combat alleged unethical conducted, specific to mortgage brokers. Some regulators and Members of Congress, are still under the impression brokers have an incentive to steer borrowers into a loan with less-favorable terms. Brokers have been accused of this practice, as a way to receive additional compensation.

Most of the evidence provided by consumer groups and others were either anecdotal or depicted conduct by creditors, believed to be brokers. Countrywide Home Loans and Ameriquest are just two examples. If these two creditors were in business today, they would not be subject to the same rules and regulations as brokers or non-creditors. This misconception about brokers has created a bias toward them and has lead to an onslaught of rules and regulations, specific to brokers.

Another misconception is consumers lack the will and/or intelligence to understand the process and costs associated with their home loan, thereby rendering them "confused." Although, some consumers may be confused by the process, the majority of borrowers are not. The Associations believe it was unconscionable for the FRB to restructure the entire origination process to accommodate a small percentage of consumers, based on flawed testing.

The Associations further believe they have a less burdensome solution, which would establish a firewall to protect consumers from steering, while restoring consumer choices to the prime market. The Associations aver if the CFPB exercised its exemption authority under Dodd-Frank, by specifically exempting all prime/traditional and government loans from the MLO Compensation regulations, while retaining the restrictions for high cost and subprime mortgages, it would eliminate any incentive for placing a prime qualified borrower in a high

cost mortgage for the purpose of greater financial gain. We urge the CFPB to give serious consideration to this proposal.

MLO Qualification and Screening:

Most consumers believe there's no difference between banks and non-banks, with respect to mortgage financing. Therefore, consumers have the same expectations when it comes to consumer protections.

As you are aware, Dodd-Frank requires MLOs to be "qualified." When a consumer discloses their complete financial history and personal credit information to a MLO, they have certain basic expectations, specifically confidentiality, competency and trust. When a consumer works with any MLO, other than those employed by a federally chartered bank, they're working with an originator who has been vetted by government agencies and meets the standards established under the Safe Act. These same standards should be the definition for "qualified" under Dodd-Frank.

In the hope of bringing these MLOs up to the "qualified" standards, the CFPB is set to propose a rule that will allow MLOs employed by federally chartered banks to self certify on education and background investigations. During the SBREFA review panel held on 5/23/12, with the exception of one individual, all the panelists recommended all originators meet the same LICENSING standards. This includes federally chartered banks and non-profits.

Over the past several years, some federally chartered banks have proven to be less than trustworthy. In fact, they were responsible for the onerous mortgage products sold to consumers and for lax underwriting that approved unqualified borrowers. The consumer deserves to work with a qualified originator, who has been investigated and tested. Self certification is tantamount to having the fox guarding the henhouse.

During a recent call between the CFPB and major trade associations, the CFPB stated, they were proposing the self certification, because they didn't want to burden creditors. This comment has raised concerns with non-creditors and state chartered banks, as it clearly shows creditors continue to receive preferential treatment.

The Associations strongly suggest any individual, who originates a residential mortgage loan, regardless of where employed, should be subject to the Safe Act LICENSING standards.

Impact on the Cost of Business Credit:

At issue here, is NOT the impact on the Cost of Business Credit, but the cost of sustaining business operations. Every time regulators implement another rule or regulation, small business must re-educate personnel and re-tool software to accommodate the change(s). Lately, this has become a yearly occurrence.

Small business entities have the same expenses and overhead as larger industry participants. However, creditors lack the same restrictions imposed on brokers, which enables their institutions to easily meet operating expenses and grow their businesses. Furthermore, the Associations question the government's authority to not only limit or restrict a private company's compensation, but to selectively choose which entities must adhere to those restrictions.

Approximately 77% of small business mortgage professionals (brokers and their originators), have either gone out of business, and/or relocated to creditor institutions, as a direct result of rules and regulations that pick winners and losers.

The CFPB has long stated, competition and a level playing field will keep consumer costs down and promote fair lending. Following the recommendations of the undersigned Associations, will help accomplish these goals.

Should the topics under consideration by the CFPB become finalized rules, they will eliminate additional jobs and substantially reduce competition.

Although, the proposals discussed during the MLO SBREFA Review Panel, are well intentioned, industry considers same to be extreme measures for an already overregulated industry. Alternatives exist for accomplishing a less confusing origination process, without causing consumer harm and an additional burden on small business.

One of the most notable consumer advocates and creator of the CFPB recognizes the negative effects of "layering on one regulation after another." Statement by Elizabeth Warren:

"I believe that clearer, simpler regulation—regulation that is designed to work for small businesses and consumers—can help make markets work better. The financial crisis showed us what happens when regulations aren't enforced and giant Wall Street businesses have too little oversight. Deregulation certainly didn't help the small banks and credit unions that got swept up in that mess. But we also can't keep layering on one regulation after another, adding more and more complexity, without assessing the effects on families and small businesses.

We need a new approach that includes a serious assessment of the compliance cost of current regulations and whether adequate protection for consumers can be accomplished using cheaper, simpler approaches, or, in specific cases, if the regulations are so heavily layered on top of each other that some can be cut altogether." Elizabeth Warren

Again, the Associations appreciate the opportunity to comment on these important issues and look forward to working with the CFPB to resolve our differences.

Respectfully Submitted,

Marc S. Savitt, President
National Association of Independent Housing Professionals (NAIHP)

Brian Benjamin, President
N.J. Association of professional Mortgage Originators (NJPMO)

Carol Gardner, President
Illinois Association of Mortgage Professionals (IAMP)

Marty Lough, President
Washington Association of Mortgage Professionals (WAMP)

Maryann Pino, President
N.Y Association of Mortgage Brokers (NYAMB)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL ASSOCIATION OF INDEPENDENT HOUSING PROFESSIONALS, INC., Plaintiff, -v- BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, et. al. Defendants.	NO. 1:11 – cv – 00489 (BAH)
NATIONAL ASSOCIATION OF MORTGAGE BROKERS, Plaintiff, -v- BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, et.al. Defendants.	NO. 1:11 – cv – 00506 (BAH)

AFFIDAVIT OF SARAH BUTLER

I. Qualifications

1. I am a Senior Consultant at NERA Economic Consulting ("NERA") where I participate in the Intellectual Property, Antitrust, Product Liability, and Labor Practices. My business address is 1 Front Street, San Francisco, CA 94111. NERA is a firm providing expert economic, financial, statistical, and survey research analysis.

2. Among my responsibilities, I conduct survey research, market analysis and sampling analysis on a wide range of topics regarding business and consumer decision making, consumer choice, and consumer behavior. In the course of my career, I have conducted numerous studies for leading corporations and government agencies involving research on consumers, employees, and businesses. My work has been included in numerous lawsuits involving issues of trademark and trade dress, false advertising, secondary meaning, as well as antitrust and employment related litigation. I am a member of American Association of Public Opinion Research, the American Statistical Society, the Intellectual Property Section of the American Bar Association and the International Trademark Association (INTA).

3. I have also worked as a market researcher conducting focus groups, in-depth interviews and surveys of physicians and patients. I worked as an independent consultant conducting research for the Department of Environment and Rural Affairs in the United Kingdom. I have taught courses focused on or involving research methodologies in both the United States and Europe. I hold a Master's Degree from Trinity College, Dublin and another Master's Degree from Temple University.

4. I have substantial experience conducting and using surveys and focus groups to measure consumer opinions and behaviors regarding products and services including purchase processes, branding and positioning, market segmentation, product attributes, new product research, and communications strategies. During my career in academic and commercial research, I personally facilitated focus groups and conducted in-depth interviews. A copy of my current resume and testimony in the last five years is attached as Exhibit A.

5. NERA is being compensated for my services in this matter at my rate of $420 per hour. No part of NERA's compensation depends on the outcome of this litigation.

II. Documents Reviewed

6. As part of my work, I reviewed the Board of Governors Memorandum in Opposition to Plaintiffs' Applications for Temporary Restraining Order. I also reviewed the Macro International Report, "Consumer Testing of Mortgage Broker Disclosures," (hereafter "Macro Study") and the AARP PPI Data Digest entitled, "Experiences of Older Refinance Mortgage Loan Borrowers: Broker – and Lender – Originated Loans" (hereafter "AARP Study"). A list of the specific materials I relied upon can be found in Exhibit B.

III. Assignment and Summary of Conclusions

7. I was retained by counsel to determine whether the Board of Governors of the Federal Reserve System (hereafter "Board") can reasonably rely on the Macro Study and AARP Study to support its claim that disclosures are ineffective. Specifically the Board asserts,

> Based on experiences with consumer testing, and in particular the 2008 consumer testing conducted in connection with the proposed 2008 rule, the Board further concluded that disclosure alone is insufficient for most consumers to avoid the harm caused by these unfair practices.[1]

8. I understand that Macro International was commissioned by the Board to conduct a series of in-depth interviews with consumers.[2] I further understand that the results from the AARP Study the Board relied upon were survey findings from a larger study conducted by Market Facts for AARP's Public Policy Institute and the Federal Home Loan Mortgage Corporation.[3]

9. Based on my review of Macro Study and the AARP Study, I conclude that the Board should not rely on these results to determine the effectiveness of broker disclosures in the relevant consumer population.

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[1] *Board of Governors of the Federal Reserve System's Memorandum in Opposition to Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction* (hereafter "Board Memo") (p. 12).

[2] Macro International, Inc., *Consumer Testing of Mortgage Broker Disclosures,* dated July 10, 2008, (p. i).

[3] AARP PPI Digest, "Experiences of Older Refinance Mortgage Loan Borrowers: Broker- and Lender- Originated Loans," Number 83, January, 2003 (p. 2).

10. As discussed in detail below, the Board's use of these studies as evidence of the lack of disclosure efficacy in the total, relevant consumer population is unreliable for the following key reasons:

- The sample of 35 interviews in the Macro Study is not adequate to represent the relevant population of consumers;
- The Macro Study was not designed or intended to measure the effectiveness or impact of disclosures in the relevant population. Instead, this research was designed as a qualitative study for testing and revising model disclosure language;
- The selection process for the interviewees in the Macro Study likely created bias;
- The AARP study can only be used to represent the attitudes and opinions of borrowers 65 and older; and
- The AARP study does not specifically address the effectiveness of disclosures in any way.

IV. Background

11. I understand that after a series of hearings and reviews, the Board proposed a rule regarding broker compensation and disclosures in January 2008. This proposal included model language which would supposedly inform the consumer that he/she would pay the broker (even if creditor paid a portion of the compensation) and that the creditor's payment to the broker could influence what products a broker decided to offer.[4]

12. The Board tested this model language and cited to this testing in its March 18, 2011 memo. The remainder of this report explains my concerns with the Board's conclusions drawn from the Macro and AARP studies.

V. Macro Study Interviewees Do Not Represent the Total Population

13. The Macro Study included a total of 35 individuals in three cities, Washington D.C., Los Angeles, CA and Kansas City, KS. These interviewees were selected after an initial phone interview qualified them for participation. Participants qualified primarily because they

[4] Board Memo, p 14 – 15.

had obtained a mortgage or refinanced in the last two years. The Macro Study also, "...screened to include a range of ethnicities, ages, and education levels". [5]

14. The Board seems to suggest that these results can represent the entire population of U.S. consumers who have recently obtained or may obtain in the future a mortgage. This is not reasonable. It is not plausible to assert that the seven interviewees in Los Angeles can reliably represent the perceptions of all Californians or all mortgage holders on the west coast. Similarly, it is not meaningful to rely on the responses from nine individuals to represent the attitudes and opinions of all consumers who obtained a loan through a broker.

15. It is important to note that the Macro Study does not attempt to characterize or quantify any of the results by different demographic characteristics nor does the report assert that it selected its respondents to reflect the characteristics of the relevant population. Interviewees were selected to get a "mix" of people, but were not selected to be representative of the total relevant population in this matter.

16. The Macro Study was not designed to account for the variation across U.S. mortgage consumers nor was it designed to yield results which are projectable back to this population in any reliable or meaningful way.

VI. The Macro Study was Not Designed to Address Claims Made by the Board

17. The research methodology used in the Macro Study precludes the Board from using these results to make quantitative generalizations about the relevant population of consumers. The Macro Study is qualitative research and therefore, for a number of reasons, cannot reliably be used to support an assertion that disclosures are ineffective in explaining the role of a broker and broker compensation to all or a significant portion of consumers.

18. In the Executive Summary, the impetus for and purpose of the Macro Study is described as follows, "The Board contracted with Macro International to test this model language through a series of cognitive in-depth interviews with consumers. The goal of these interviews

[5] Macro Study, p. i.

was to assess how clearly the model language communicated the intended content, and to help the Board make any necessary revisions to make the language more effective".[6]

19. It is clear that the Macro Study was not intended to assess what percent of consumers would be informed by disclosures nor was the research conducted to determine the rate at which consumers in the relevant population were misled or deceived by any particular disclosure language or practice. Instead, the goal of this research was to gather in-depth feedback on multiple iterations of hypothetical broker documents so that revisions in the document language could be evaluated.

20. To achieve this research goal, Macro International conducted 35 in-depth interviews in three locations. The Macro Study is qualitative research intended to gather descriptive data, allowing for the research design and implementation to vary over time and across participants. This type of research is useful for determining the underlying meaning or processes behind particular thoughts or concepts, "Qualitative research thus refers to the meanings, concepts, definitions, characteristics, metaphors, symbols, and descriptions of things. In contrast, quantitative research refers to counts and measures of things". [7]

21. Quantitative research is intended to test a defined hypothesis with precision and some degree of statistical accuracy or numerical observation. Qualitative research can inform quantitative research (and vice versa) but these two broad methodological types typically address very different research needs. An appropriately designed quantitative study could have tested the Board's hypothesis that disclosures are not effective, but this was not the type of research conducted. Two specific ways in which qualitative research differs from quantitative research and how these differences undermine the Board's conclusions are discussed below.

A. Qualitative Studies Are Often Iterative

22. To support the Board's claims that a particular disclosure is ineffective in the consumer population, research would need to be designed that would allow for a comparison of the results across and between a representative sample of relevant consumers.

[6] Macro Study, p. i.

[7] Berg, Bruce L. *Qualitative Research Methods for the Social Sciences.* Allyn and Bacon: Boston. 2001.

23. As already discussed, the 35 total interviewees are not sufficient to represent the consumer population. Additionally, in the Macro Study, the nature of the questions asked and the materials shown varied between the different interviewees. In total, nine different disclosure texts were used. The numerous iterations and different versions of the materials mean that the results from one day and location of testing are not comparable to another.

B. Qualitative Studies Do Not Quantify the Results

24. To understand the extent to which disclosures were not effective, the research would also need to be able to show that a significant or substantial portion of the relevant consumer population did not understand substantial or significant portions of the disclosures.

25. The Macro Study provides no specific counts or tallies of findings and no way to quantify the extent to which even the small number of 35 interviewees thought or understood particular things. For example, in round one of testing the results indicate that…, "about half of participants understood that brokers would not necessarily provide a loan with a low interest rate".[8] Similarly, in round two the report indicates that, "A few were not surprised that the conflict existed…".[9] The report does not state anywhere what "about half" or a "few" actually means or provide any measure of the statistical significance of these findings.

26. Similarly, the "Summary of Overall Findings" in the Macro Report is nuanced and does not allow for generalizations. The summary indicates that while some language seemed effective for some consumers, other aspects were not helpful for some other consumers. This may be a useful finding in terms of determining possible changes to the hypothetical documents, but does not indicate in any way the extent to which any of the disclosures tested (or any other disclosures) would or would not be effective in the general population.

[8] Macro Study, p. 7.

[9] Macro Study, p. 12.

VII. The Macro Study Results May Be Affected by Selection Bias

27. Potential participants for the Macro Study were contacted by telephone for the initial screening interview. It is unclear how respondents were selected or located for this initial call.[10]

28. The screening instrument asked a series of questions to qualify potential respondents and began with the following introductory text:

> Hello, I am calling on behalf of the United States Federal Reserve Board. As you may know, recently many Americans have had problems with their mortgages. In response to the recent mortgage issues, the Federal Reserve Board is sponsoring a series of consumer interviews in your area so that we can learn more about how people make decisions regarding their mortgages. We will use what we learn from these interviews to help improve the information consumers receive when they get a mortgage loan.[11]

29. This script signaled to the respondent that the sponsor of the study was the Board, but also framed the research in terms of "problems with mortgages". It is likely that the individuals willing to participate had a specific interest in the topic and may have had difficulties with their mortgage or difficulties with some aspect of their mortgage experience.[12],[13]

VIII. The AARP Study Only Represents Attitudes of Consumers 65 or Older with Refinance Loans

30. The AARP Study reports on results from a larger, quantitative study. The reported results apply to only those consumers who were 65 or older and had refinanced a loan between 1999 and 2000.

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[10] Often firms conducting qualitative research rely on lists of individuals who have previously agreed to participate or who express an interest in future or ongoing research. These lists are not random lists of the relevant population and may themselves be biased. There is no further detail in the Macro Study as to how potential interviewees were contacted for the initial screening interview so I cannot determine at this point the extent to which this may have had an impact.

[11] Macro Study, Appendix A p. A-1.

[12] Questions about the individuals' experiences were asked, but the results for these questions were not described in the Macro Study report, nor were they described in any detail in the Board's comments.

[13] For the ways in which interview topic can affect the participation and results, see Groves, R., Stanley Presser and Sarah Dipko, "The Role of Topic Interest in Survey Participation Decisions," *Public Opinion Quarterly* Vol.68: Issue 1, p. 2 – 31.

31. The Board cites to the results of the AARP study to assert that consumers rely on brokers and that disclosures would be ineffective because of this reliance,

> The Board concluded, based on its experiences with consumer testing and other information, that disclosures were not a reasonable alternative because they could not sufficiently explain to even well-informed consumers the complexities of yield spread premiums and how they created an incentive for loan originators to increase consumers' costs. This information included both the 2008 Macro Study as well as the findings of a 2003 survey of older borrowers who had obtained prime or subprime refinancing, which indicated the degree of reliance that consumers had on their loan originators to find them the best rate.[14]

32. While the AARP study appears to be an appropriately designed quantitative study,[15] the reported results are limited to only those individuals who refinanced and were 65 or older between 1999 and 2000. These results cannot reliably inform the extent to which first time buyers or consumers refinancing under the age of 65 relied on brokers.

IX. The AARP Study Does Not Have Any Data on Disclosures

33. The AARP Study finds that 70 percent of the borrowers 65 or older surveyed relied on their broker "a lot" to find the best mortgage.[16] There is no indication as to how precisely this question was asked and how respondents interpreted "rely" and "a lot", therefore it is unclear precisely how this result can be used.

34. More importantly, this finding provides no information about the potential effectiveness of disclosures with this population. It does not appear that this study showed consumers any disclosure materials or asked questions about the potential effectiveness or attitudes towards disclosures.

[14] Board Memo, p. 14 – 15.

[15] I cannot evaluate the overall reliability of this study without additional documents, including the questionnaire.

[16] AARP Study, p. 3.

X. Conclusions

35. The Board cites to two studies as evidence informing its assertion that disclosures are not an effective means to explain broker compensation to consumers. The Macro Study is qualitative research consisting of 35 in-depth interviews. The AARP Study is a quantitative study of consumers 65 and older who refinanced a loan between 199 and 2000. Neither of the studies cited are sources which can reliably support the conclusion that disclosures are not effective with the relevant population of consumers.

36. The Macro Study was not intended to measure the effectiveness of disclosures in the total population. The research was designed to provide qualitative feedback on particular wordings in hypothetical disclosure documents. The way in which the research was structured; a limited number of in-depth, iterative interviews conducted with a non-representative group of individuals, means the results from this study cannot support conclusions about the total relevant population at issue.

37 The AARP Study, while a quantitative study, is limited to only a portion of the relevant consumer population. The results are limited to individuals who refinanced a loan between 1999 and 2000 and were 65 years or older at the time of the interview.

38. Additionally, the AARP Study does not provide any information about the effectiveness of disclosures and includes only one, somewhat ambiguous, result on the extent to which surveyed individuals "rely on" their brokers.

39. For the above reasons, the Board cannot reasonably rely on the results of these two studies to inform conclusions about the extent to which disclosure would or would not be effective sources of information for the relevant population. My opinions and conclusions as expressed in this report are to a reasonable degree of professional certainty. My work is ongoing and my opinions will continue to be informed by any additional material that becomes available to me.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2011.

Sarah Butler

Sarah Butler

Exhibit A

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Ms. Butler is an expert in survey research, market research, sampling, and statistical analysis. She has applied her expertise in a wide range of litigation and strategic business cases. Her litigation and project experience includes survey research, market research, the design of samples, and the statistical and demographic analysis of large data files in a number of areas including:

Intellectual Property

- Trademark and Trade Dress Infringement: Design, analysis, and critique of surveys used to measure consumer confusion, secondary meaning, and dilution in trademark and trade design infringement cases.
- False and Misleading Advertising: Design, analysis and critique of surveys used to measure consumer perceptions and the materiality of advertising claims.
- Patent Infringement: Sample designs and surveys to the value of patented feature of a larger product and to establish rates at which infringing material exist in populations of products.
- Copyright infringement: Sampling plans and analysis of the rates of infringing material in populations of shared information (such as through websites or other sharing medium).

Antitrust

- Design, analysis and critique of surveys and other market research used as evidence of consumer purchasing and switching behavior in the areas of CPG, entertainment, automobiles, public transportation, sports and consumer electronics.
- Design, analysis and critique of surveys used to demonstrate consumer price sensitivities and willingness to pay.

Mass Torts/Class Actions

- Conduct surveys and design samples providing evidence on issues of commonality and consumers' awareness of key documents or facts and reliance on representations.

- Analyze large databases of claims files to generate invoices, estimate future liabilities and calculate policy shares for insurer liabilities in asbestos, tobacco and pharmaceuticals.

- Design, analyze and critique surveys and sampling plans used to evaluate employment and promotion records. Review and design surveys for purposes of estimating key facts in labor class actions including time to complete activities, exempt/nonexempt activities, and meal and rest break issues.

Prior to joining NERA, Ms. Butler worked in market research, conducting survey research, focus groups and in-depth interviews. She has recently completed an article for the ABA Trial Practice Newsletter and has written on trademark infringement and the internet and surveys in litigation.

Education

Temple University
ABD Applied Sociology, coursework, exams and dissertation proposal complete (2005).

Temple University
M.A. Sociology, (2000).

Trinity College, Dublin Ireland
M.Phil. (1997).

Wellesley College
B.A. Sociology and History (with honors). (1995).

Professional Experience

July 2006	**Senior Consultant** NERA Economic Consulting San Francisco, California, USA
Oct 2005 – May 2006	**Special Consultant** NERA Economic Consulting London, England

Jan 2003 – Oct 2005 **Senior Analyst - Consultant**
NERA Economic Consulting
Philadelphia, Pennsylvania, USA

2002 - 2003 **Consultant**
Integrated Marketing Associates
Bryn Mawr, PA, USA

Oct 1998 - Jan 2002 **Research Associate – Analyst**
NERA Economic Consulting
Philadelphia, Pennsylvania, USA

Sept 1998 – May 2003 **Adjunct Professor**
Temple University
Philadelphia, Pennsylvania, USA

Jan 1997 – Feb 1998 **Manager of Member Research**
Society for Neuroscience
Washington DC, USA

Expert Analysis and Testimony

Sciele Pharma, Inc. vs. Brookstone Pharmaceuticals, L.L.C. a/k/a Acella Pharmaceuticals, United States District Court, Northern District of Georgia, Atlanta Division. Expert report on issues of false advertising and survey used as evidence of misleading and material claims. [Expert Report: September 22nd, 2010. Deposition: December 1st, 2010]

PamLab, L.L.C. and Metabolite Laboratories, Inc. vs. Brookstone Pharmaceuticals, L.L.C. a/k/a Acella Pharmaceuticals, United States District Court, Eastern District of Louisiana. Expert report on issues of false advertising and survey used as evidence of misleading and material claims. [Expert Report: September 14th, 2010. Deposition: September 29th, 2010]

Confidential client. Design and implement survey used to determine market shares and price elasticity for brands of hair relaxers [2010].

DirecTV, Inc. vs. Elephant Group, Saveology.com et al., United States District Court, Central District of California, Western Division. Consulting expert on likelihood of confusion in a trademark dispute over sale of trademarks as keywords. [2010]

Confidential client. Design and implement survey used to establish family of marks claim for not-for-profit agency [2010].

ConsumerInfo.com vs. J Willims and Edirect, United States District Court, Central District of California, Western Division. Design and implement survey testing confusion and misleading advertising in a trademark dispute [2010].

Rosetta Stone LTD vs. Google, Inc. United States District Court, Eastern District of Virginia, Alexandra Division. Assist in design of a likelihood of confusion survey with regard to trademark or branded keyword searches using the Google search engine. [2010]

Confidential client. Advise and consult on rebuttal strategies in internet keyword case [2009].

Confidential client. Design and implement research used in false advertising suit for pre-paid international telephone calling cards [2009].

Mary Kay, Inc. vs. Amy Weber, Scott Weber, and Touch of Pink Cosmetics, United States District Court, Nothern District of Texas, Dallas Division. Consulting expert on likelihood of confusion with regard to sale of branded products on a website [2008].

American Airlines, Inc. vs. Google, Inc. United States District Court, Northern District of Texas, Fort Worth Division. Consulting expert in likelihood of confusion with regard to trademark or branded keyword searches using Google [2008].

Rocky Brands, Inc. and Rocky Brands Wholesale, LLC. vs. Glen Bratcher, Westwood Footwear and Accessories, LLC and Nantong Hong Yi Wang Shoes Co., LTD., United States District Court, Southern District of Ohio, Eastern Division. Consulting expert on likelihood of confusion with regard to trade dress of footwear [2008].

Jack Branning et al. vs. Apple Computer, Inc. Expert analysis on issues of sampling records in a consumer class action. [Testimony before judge, April 2008].

Real Estate Disposition Corporation vs. National Home Auction Corporation, United States District Court, Central District of California. Consulting expert report on survey addressing materiality, confusion and misleading advertising [2008].

Faloney et al. vs. Wachovia Bank, United States District Court, Eastern District of Pennsylvania. Assist in reports on issues related to common representations allegedly made to consumers in a precertification class action lawsuit [2008].

Redwood Fire and Casualty Insurance Company vs. Personnel Plus et al. Superior Court of California, County of Los Angeles. Assist in expert report and sample design to estimate workman's compensation premiums from employee payroll records [2008].

BAA Scottish Airports Market Inquiry, U.K. Competition Commission. Expert review of sample design and survey commissioned by the U.K. Competition Commission to determine price sensitivities and potential switching to alternative airports for an inquiry into BAA ownership of airports in Glasgow and Edinburgh [2008].

Lulu Enterprises, Inc. vs. Hulu, LLC a/k/a N-F Newsite LLC et al. Eastern District of North Carolina, Western Division. Design qualitative research to evaluate consumer confusion between two website names in trademark infringement case [2007].

Federal Trade Commission vs. Whole Foods Market, Inc and Wild Oats Markets, Inc., United States District Court, District of Columbia. Assist in preparing rebuttal report on sampling and survey design issues in an antitrust proceeding related to a preliminary injunction to block a proposed merger of Whole Foods Markets Inc and Wild Oats [2007].

Zill et. al vs. Sprint Spectrum L.P. and Wireless Co. LP, Superior Court of California, County of Alameda. Review the sampling, survey design, survey implementation, and the use of contingent valuation survey to estimate damages in a wireless communications class action. Design focus group guides and telephone survey to understand consumer perception of handset locking [2007].

CRP Project 4c/d Water Framework Directive Benefits Study Department for Environment, Food and Rural Affairs – Expert member of multistage study involving consulting firms, corporate interests and academics. Survey expert asked to design cognitive interview guides, focus group guides and stated preference questionnaire to test consumer willingness to pay for environmental improvements to water bodies across the U.K. Results used to inform policy decisions on how to comply with EU regulations [2006 – 2007].

Hell's Kitchen Neighborhood Association, Martin Treat, Meta Brunzema, Dana Turner, Daniel Gutman, Rudolf Samandarov and Madison Square Garden, L.P., vs. New York City Department of City Planning, New York City Planning Commission, the City of New York, the City Council of the City of New York, and New York Metropolitan Transportation Authority Supreme Court of the State of New York County of New York. Evaluated a survey and submitted an affidavit regarding the construction of a stadium in the Hell's Kitchen section of New York City and the possible resultant traffic congestion [2005].

Energy Brands, Inc. United States Patent and Trademark Office, Trademark Examining Division. Assist in design and conduct of a survey to measure the extent to which consumers perceive Vitamin Water to be a brand name [2005].

Diamond Triumph Auto Glass, Inc. vs. Safelite Glass Corporation U.S. District Court, Middle District of Pennsylvania. Consulting expert for the design and implementation of a survey to measure the extent to which consumers are aware of and state a preference for a particular auto glass shop. Assist in sample design and analysis of telephone calls to estimate the extent to which stated glass shop preferences were honored [2004-2005].

AT&T Corp., vs. Microsoft Corporation U.S. District Court, Southern District of New York Consulting expert in two surveys conducted to examine consumer usage of various features on their personal computers' operating systems [2004].

V&V Vin and Sprit Aktiebolag, d/b/a the Absolut Company, Formansvagen 19, SE-117 97 Stockholm, Sweden vs. Cracovia Brands, Inc., 5632 N.N.W. Highway, Chicago, IL 60646, and Przedsiebiorstow Polmos Bialystock S.A., ul. Elewatorska 20, 15-950 Bialystock, Poland U.S. District Court, Northern District of Illinois. Reviewed and critiqued a survey of vodka purchasers that was meant to assess the likelihood of confusion between two brands of vodka [2004].

Real Networks vs. Microsoft Corporation. Assist in design and implementation of surveys in the European Union and the United States to understand home computer users' media player preferences [2004].

Metro-Goldwyn-Mayer Pictures, Inc. vs. Mark Brown, Beauty Shop LLC, Renegade Pictures, Inc. and C4 Pictures, Inc. U.S. District Court, Central District of California. Assist in design and implementation of a survey to determine movie-goers associations with the work Barbershop and whether or not they could name a movie or identify the plot of a movie with the work Barbershop in the title [2003-2004].

CSC Holdings, Inc. vs. Yankees Entertainment and Sports Network, LLC. American Arbitration Association. Assist in design and implementation of three surveys to estimate the sizes of the cable television viewing audiences of New York Yankees games [2003 - 2004].

Nitro Leisure Products, LLC, a Delaware Limited Liability Company, d/b/a Golfballsdirect.com and Second Change vs. Acushnet Company, a Delaware Corporation. U.S. District Court. Southern District of Florida. Reviewed and critiqued an internet survey conducted of golfers concerning possible confusion caused by the resale of refurbished golf balls [2003].

Broadway Theater Corp. vs. Buena Vista Pictures Distribution, Inc., Columbia Pictures Distribution, Inc. and Dreamworks SKG. et al. State of Connecticut Superior Court. Assist in design and implementation of a survey to examine movie attendance at seven theaters in the New Haven, Connecticut area [2003].

Papa John's Pizza. Assist in design and implementation of a survey to assess the likelihood of consumer confusion between various pizza products [2002].

United States of America vs. Broadcast Music Inc, et. ano. U.S. District Court, Southern District of New York. Designed and analyzed a sample of radio music plays to estimate royalty shares for publishing societies [2002].

Eolas Technologies, Inc. v. Microsoft Corporation, Inc. U.S. District Court, Illinois Eastern Division. Assist in design and implementation of a survey to measure the impact of altering Internet browser technology [2002].

AM General and General Motors Corporation vs. DaimlerChrysler Corporation U.S. District Court, Northern District of Indiana. Assist in design and implementation of a survey to estimate the secondary meaning of Jeep grilles [2002].

Federal Trade Commission v. Libbey, Inc. et al. U.S. District Court, District of Columbia. Designed and conducted a sample of glassware products to determine manufacturing country of origin and cost [2001].

Office of the Attorney General for the State of New Jersey. Sampled drivers on New Jersey highway to estimate their racial composition [1999].

Gillette Razors. Designed and conducted a survey regarding possible customer confusion over razor blade advertisements [1999].

R. Griggs Group Limited vs. Sketchers USA Inc. Designed and conducted a survey regarding customer confusion between sandal designs [1999].

Publications and Presentations

"Meeting the New Standards for Reasonable Royalties," (February, 2011) with Mario Lopez. *Law360.*

"Survey Evidence in False Advertising Cases," (Winter, 2010). *The Antritrust Trial Practice Newsletter.*

"The Use of Surveys in Litigation: Recent Trends," (April, 2010) with Kent Van Liere. National Economic Research Associates, Inc.

"Emerging Issues in the Use of Surveys in Trademark Infringement on the Web," with Kent Van Liere. Paper published in the *Advanced Trademark & Advertising Law Conference* proceedings, September 2007, Seattle, WA.

"An Analysis of the Hypothetical Situations in Willingness to Pay Studies." Paper presented at the July 2006 Thematic Seminar "Quality Criteria in Survey Research," hosted by World Association for Public Opinion Research, Lake Como, Italy.

"Use of Surveys in Intellectual Property Disputes," (2005) with Eugene P. Ericksen, in *Economic Approaches to Intellectual Property Policy, Litigation and Management Issues,* Gregory K. Leonard and Lauren J. Stiroh (eds.) National Economic Research Associates, Inc.

"Response Rate Standards: Lessons from the 2004 Presidential Polls." Paper presented at the 2005 Annual Meeting of American Association of Public Opinion Research, Miami Beach, FL.

"Using Surveys to Determine Damages in Patent Infringement Cases" presented at *Calculating and Proving Patent Damages* workshop, March 2004 Charlotte, NC.

"Using Surveys to Determine Damages in Patent Infringement Cases" presented at *Calculating and Proving Patent Damages* workshop, January 2004 San Diego, CA.

"Using Surveys to Determine Damages in Patent Infringement Cases" presented at *Calculating and Proving Patent Damages* workshop, June 2003, McLean, VA .

Professional Associations

Member, American Association of Public Opinion Research and World Association for Public Opinion Research, Member, American Statistical Association

Member, American Bar Association, Intellectual Property Section

Member, International Trademark Association (INTA), Reviewer for *Trademark Reporter*

Exhibit B

Documents Relied Upon

1. *Board of Governors of the Federal Reserve System's Memorandum in Opposition to Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction,* dated March 18, 2011.

2. Macro International, Inc., *Consumer Testing of Mortgage Broker Disclosures,* dated July 10, 2008.

3. AARP PPI Digest, "Experiences of Older Refinance Mortgage Loan Borrowers: Broker- and Lender- Originated Loans," Number 83, January, 2003.

4. Berg, Bruce L. *Qualitative Research Methods for the Social Sciences.* Allyn and Bacon: Boston. 2001.

5. Groves, R., Stanley Presser and Sarah Dipko, "The Role of Topic Interest in Survey Participation Decisions," *Public Opinion Quarterly* Vol.68: Issue 1, p. 2 – 31.

C. The Loan Originator Rule

1. The Role of Loan Originators and the Yield Spread Premium[1]

As the mortgage loan market currently operates, consumers seeking mortgage financing secured by a dwelling work with a loan originator. Loan originators fall into two categories, which correspond to the two ways in which creditors that fund loans deliver financing to consumers. In the so-called "retail channel," creditors deal directly with consumers through the creditors' own employees, known as loan officers, to arrange the desired financing. Many creditors also have agreements with independent loan originators to deal directly with a consumer to arrange the financing the consumer is seeking. These independent originators are known as mortgage brokers, as they are not the creditor's employees and generally have arrangements with multiple creditors from which they may obtain financing on consumers' behalf. In this category, creditors offer financing terms to brokers and the brokers choose which creditors' loan products and terms to deliver to a particular consumer. Thus, creditors refer to this type of lending as the "wholesale channel": creditors offer mortgage financing at wholesale to brokers, and brokers sell the loans at retail to consumers. Mortgage brokers may be individuals, just like creditors' loan officers, or they may be brokerage firms that in turn employ their own individual loan officers. (Such individual employees of a mortgage brokerage firm also may be referred to as mortgage brokers.)

Mortgage creditors typically offer to loan originators a range of interest rates at which they are willing to extend credit to a particular consumer, given the specific details of the proposed transaction (such as loan-to-value ratio and property type) and the consumer's credit

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[1] *See generally, Real Estate Settlement Procedures Act: Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers*, 67 Fed. Reg. 49134 (July 29, 2002), for a discussion of the roles of mortgage brokers and lenders and the compensation arrangements prevalent in the market.

risk profile. The range generally identifies the so-called "par rate" – the rate at which the creditor is able to offer credit and "break even" (including the creditor's desired profit margin), based on the creditor's current cost of funds. If a consumer wants a loan below the "par rate," the creditor will require the consumer to pay "discount points" up front to buy down the interest rate. Discount points are calculated as a percentage of the loan amount and represent the present value of the extent to which the future interest stream on a particular loan (the loan's "yield") falls below the current par rate.

When the interest rate offered exceeds the par rate, the opposite occurs. The loan will generate a "yield spread premium," also calculated as a percentage of the loan amount, which represents the present value of the extent to which the loan's yield *exceeds* the current par rate. Put another way, a yield spread premium is a form of "negative discount points." The lower the rate on the loan, the more points are required to compensate the lender for the lower yield; conversely, the higher the rate, the larger the yield spread premium generated by the loan.

In the retail channel, where the creditor deals directly with the consumer, the creditor generally controls yield spread premium funds, sometimes applying them toward the consumer's closing costs and sometimes keeping them as additional profit – and sometimes some of each. When the creditor retains some or all of the yield spread premium, it often pays a portion of it to its loan officer as compensation for originating the loan. In the wholesale channel, the mortgage broker usually controls any yield spread premium and may apply the funds generated in any or all of the same ways that a creditor may apply them in a retail transaction, including keeping the yield spread premium as compensation for originating the loan. When the yield spread premium is used to compensate the loan officer or mortgage broker's employee, that employee has a personal incentive to deliver a loan with a high interest rate in order to maximize his or her own

Fed admits NO difference between Banks & Brokers regarding YSP!

compensation. This is in direct conflict with the consumer's interest in paying the lowest interest rate possible for which the consumer qualifies.

Consumers generally are unaware of these loan-pricing mechanics, especially on the above-par end of the range of rates where yield spread premiums are generated. Loan originators typically do not disclose to consumers the ranges of rates offered by particular creditors or the yield spread premiums generated by particular rates. They simply provide a loan to a consumer at a selected rate (together with any discount points), and the consumer generally does not know where that rate falls in the currently available range. Although many consumers are familiar with paying discount points to buy down their interest rate, consumers are generally unaware of the existence of yield spread premiums, how those amounts are determined, and how the funds are used. In addition to any compensation a mortgage broker may receive from a creditor in the form of a yield spread premium, the broker often charges the consumer a separate fee for arranging the loan; because the consumer is generally unaware of the yield spread premium, the consumer often believes this direct fee is the broker's only compensation for its origination services.

2. The Board's Efforts to Address the Problem of Yield Spread Premiums

Prior to its issuance of the Loan Originator Rule, the Board had spent several years attempting to address concerns regarding the effect on consumers of loan originator compensation based on the yield spread. In the summer of 2006, the Board held public hearings on consumer protection issues in the mortgage market in four cities. During the hearings, consumer advocates urged the Board to ban yield spread premiums because of their potential to create a conflict of interest between loan originators and consumers. 75 Fed. Reg. 58509, 58510.

Bank Market Share 90%
Broker " " 10%

In light of the information gathered during the 2006 public hearings, and the rise in mortgage defaults that began sooner after, the Board held additional hearings in June 2007 to explore how the Board might use its UDAP authority to prevent abuses in the subprime lending market while still preserving responsible lending. 75 Fed. Reg. 58510. While the Board did not expressly solicit comment on mortgage broker compensation at this hearing, commenters continued to raise concerns about the fairness and transparency of creditors' practice of compensating brokers out of the yield spread premium. They stated that consumers are not aware of these payments from creditors to brokers, or that such payments increase consumers' interest rates. They also stated that consumers may mistakenly believe that a broker seeks to obtain the best interest rate available for them. Several creditors and creditor trade associations advocated requiring the broker to disclose whether the broker represented the consumer's interests, and how and by whom the broker was compensated. *Id.*

3. <u>The 2008 Proposed Rule and Testing of Consumer Disclosures In Connection with Mortgage Broker Compensation</u>

To address the heightened concerns regarding the conflict of interest presented by mortgage broker compensation, the Board proposed a rule in January 2008 (the "2008 proposed rule") that would have, among other things, prohibited a creditor from paying a mortgage broker any compensation greater than the amount that the consumer had previously agreed in writing that the broker would receive. 73 Fed. Reg. 1672, 1698-1700 (Jan. 9, 2008). The proposed rule provided model language for the planned written agreement, which would be entered into by the mortgage broker and the consumer before the broker accepted the consumer's loan application and paid any fee in connection with the transaction, that was intended to make the proposed disclosures in a manner that was clear and understandable to consumers. The model language proposed to disclose to the consumer both that he or she would ultimately bear the cost of the

COMMENTARY ON LO COMPENSATION

QUALIFICATION AND SCREENING STANDARDS

I have been in the mortgage industry since 1977. In my 35 years of industry experience working with hundreds of borrowers trying to achieve the "American *Dream of Homeownership" I* can tell you what their resounding questions have been and still are.

HOW MUCH OF A MORTGAGE CAN I QUALIFY FOR?

I ONLY HAVE SO MUCH MONEY SAVED, WHAT KIND OF PROGRAM CAN I QUALIFY FOR?

WHAT IS MY MONTHLY PAYMENT GOING TO BE?

WHAT WILL MY INTEREST RATE BE?

WHAT ARE MY CLOSING COSTS?

And the question that gives them the greatest concern ....

HOW MUCH MONEY WILL I NEED TO BRING TO CLOSING

In the past five years the mortgage industry has been required to assimilate an inordinate number of changes, many of which have not had time to even begin to demonstrate a net effect, good or bad. The common denominator driving most of what we are here to discuss today is the allegations that mortgage loan originators were somehow abusive, deceptive or unfair to consumers. It appears that the attempt to ***protect the consumer*** has done nothing but ***confuse the consumer.***

The ideal situation would be to gather studies and data and make meaningful revisions with the Dodd Frank Act. Realistically that is not going to happen. (see Section 1 Emperical study A-4) . The CFPB has the power to correct a confusing system that was designed to protect the consumer. This system to date has had a major effect on small business, creating added costs and liability to small mortgage brokers. It would appear that these rules have been instituted to replace the small "shops" that have effectively worked within their local communities in providing guidance and assistance throughout the mortgage process, steering the consumer to the "big banks". ***The very spirit of competition is being threatened.***

Consumer confusion, HVCC, and all the regulatory "trial and error" mandates have brought the entire housing industry to a screeching halt. The consumer has lost up to 60% of their home equity, housing values have decreased to the point that properties are totally upside down. Foreclosures and short sales continue to devalue the entire real estate industry. Knowing all of this, we continue to charge on making the mortgage process more costly to the consumer (See Examples A 1-3).

It is my opinion that the CFPB is trying to make a positive step in requiring interest rate reductions when consumers pay discount points, as well as requiring lenders to offer consumers a no-discount point loan option. I would propose a solution to both of the proposed rules based on the addition of a pricing grid disclosure that would be made part of the disclosure process encompassing the GFE. This proposal gives

total transparency when the MLO and consumer are discussing rate and program options. Once again the spirit of competition is evident when the MLO discloses the different price variations since the MLO would have already discussed the dollar amount of their fee plus processing and administrative costs lenders charge (Block 1 of the GFE). Example B1-3.

Small business and MLO's are being forced by Lenders to sign documentation that demands repayment of any fees that if there is a change in the fees originally quoted, (ie title charges) the LO is required to come to the closing with funds payable to the borrower or lender. ***Have the regulations imposed further restrictions on the small mortgage brokerage and the MLO?*** See Example C-1)

Lastly, the idea of a FLAT FEE for the MLO goes against the entire real estate industry standards. The mortgage process is the most significant component to a real estate transaction. Realtors charge a percentage of the sales price on their transactions. Title companies charge a sliding scale fee calculated on the purchase price/mortgage amount of the transaction.

It appears as though the mortgage broker's fee is being carved out of what has been standard procedure as a % of loan amount, just as the Realtors commission structure is a negotiated % of the actual sales price. In my 35 years, I have never had a consumer question my fee as equated to a percentage of their loan amount.

Let's equate a "flat fee" discussion to other industries that deal with the consumer. We the people own General Motors. We all know how exasperating it is to purchase an automobile including the "finance man" who sets up the financial portion of the purchase. Why don't we impose a flat fee on the sales force and pay them $150.00 on each transaction. I'm sure that would be a major upheaval in the marketplace. This country's economic system is based on capitalism which is designed for free enterprise to develop competition. By trying to institute a flat fee for the mortgage industry you are essentially shutting down a small business that effectively has served their local communities. A flat fee will create a loss of income for a small entrepreneurial business owner forcing them to shut down and work for "the big banks" . Now the consumer has no choice. How does the government have a right to set our income?

Moving the discussion on to revising current MLO qualification requirements Dodd-Frank requires that MLO's be "qualified".

Based on Appendix D of your presentation, there is still a great disparity between the Banks, Non-Banks and Non-Profits. My question is this. Why is 10% of the industry (mortgage companies and mortgage brokers) held to standards over the bar as compared to the 90% of the industry that has minimal or no requirements imposed on them. ***HOW DOES THIS PROTECT THE CONSUMER?***

I would suggest that greater oversight needs to be focused on the banks and non-profits. I'm sure the CFPB is well aware of the fact that the banks have registered all of their employees with the NMLS system. There is a major difference between REGISTERING AND LICENSING. What informational documents are supplied to the consumer explaining the differences between a registered MLO vs. a Licensed MLO. At the present time all bank personnel, including the tellers, tout their NMLS#. Does that procedure not deceive the consumer.

How does the CFPB quantify the standards that the banks and non-profits use for the education and continuing education of their MLO's? Why wouldn't they have to meet the same educational requirements and pre-licensing requirements that a Non-Bank is subject to. Has the bureau ever done a study based on the number of loan officers who migrated to a bank to work because they couldn't pass the required tests administered through the NMLS.

I believe that the way to correct the housing industry is a major overhaul in the actual delivery system of mortgage originations. We believe that any person who takes a loan application and quotes an interest rate should be licensed, that includes any bank or non-profit individual including the President of a Bank if he/she is taking a loan application. If we are going to be transparent and assist the consumer, they should be informed that all originators are not equal.

Possibly your agency should modify the loan products that are offered to be limited to 15, 30 or 40 year fixed rate product, 3,5,7 year ARM loans and Balloon loans allowing terms for modification when the notes become due and payable. We need to keep in mind the actual truth of the fact that the "bad" mortgage products, the sub-prime loans that brought us to the mortgage crisis we experienced in 2008 was due to the product design that was given to the American public and introduced to the mortgage markets by Countrywide Home Loans, (owned by a Bank), BOA, CHASE and let's not forget Washington Mutual. Carve out the sub=prime product that is beginning to surface in the market place.

Your agency has the broad power to correct a bad situation for the consumer allowing the spirit of competition to once again flow through the economy.

Thank you for the opportunity to serve on SBREFA panel in an effort to express my views as a small, female owned mortgage brokerage firm.

Respectfully,

Carol Gardner, CMC, CRMS NMLS# 148681

Lending Network, Inc. NMLS#148672

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Subject: Loan Impacted Negatively by LO Comp
From: "Dennis J. Papiernik, CMPS | 630.708.TEAM (8326)" <dpapiernik@addvalueinc.com>
Date: Mon, May 21, 2012 2:01 pm
To: Bob Perry <bperry@iamp.biz>, Carol Gardner <cgardner@lendingnetwork.net>

$74,000 purchase price, 20% down, Loan Amount $59,200

Due to the low loan amount interest rate bumped to 4.125%, a .250% rate hike due to branch minimums.

Dennis J. Papiernik
Certified Mortgage Planning Specialist
Senior Loan Officer
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ColeTaylor Mortgage
A Division of Cole Taylor Bank

My profiles:

My blog: Warren Buffett Says Buy A Home...NOW!

Latest tweet: Underwater on your house...like to get a better rate and reduce your payment...tried in the past with no luck?... http://t.co/8K61Tu1O

Follow @dpapiernik Reply Retweet 07:01 May-14

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Example A-1

IMPACT OF MORTGAGE INSURANCE INCREASES ON CONSUMERS' MONTHLY MORTGAGE PAYMENTS - FEBRUARY 2012

Purchase Price	$200,000.00
3.5% Down Payment	$7,000.00
96.5% Base Loan Amount	$193,000.00
Interest rate = 4% (30 yr Fixed)	

UFMIP : Up front mortgage insurance - payment made into FHA insurance fund at closing
This amount is financed - it is added to the loan amount
Annual Premium: This is the mortgage insurance paid monthly and added to the monthly payment
This amount is paid monthly until the loan balance reaches 78% of the original loan amount

	2008	March 2010	September 2010	January 2011	April 2011	Legislation Pending
	1.5% UFMIP	1.5% UFMIP	2.25% UFMIP	1% UFMIP	1% UFMIP	1% UFMIP
	.5 bps Annual MIP	.55 bps MIP	.55 bps MIP	.90 bps MIP	1.15 bps MIP	2.05 bps MIP
UFMIP	$2,895.00	$2,895.00	$4,342.00	$1,930.00	$1,930.00	$1,930.00
FHA Total Loan Amount	$195,895.00	$195,895.00	$197,342.00	$194,930.00	$194,930.00	$194,930.00
4% Prin. & Int. Payment (30 yr fix)	$935.00	$935.00	$935.00	$931.00	$931.00	$931.00
Annual/Monthly (MIP)	$82.00	$89.00	$90.00	$146.00	$187.00	$333.00
Monthly Payment(Prin.+ Int.+MIP)	$1,017.00	$1,024.00	$1,025.00	$1,077.00	$1,118.00	$1,264.00

Conclusions:
The annual mortgage insurance rate should be decreased to early 2010 level to minimize borrowers' payments.
As increases in the up front mortgage insurance have minimal impact on borrowers' payments, any required increases should be made to up front mortgage insurance premiums.
As increases in up front mortgage insurance premiums provide relatively large immediate payments into the fund, as annual premiums decrease, up front payments can increase if necessary .

FHA STIMULUS STREAMLINE REFINANCE PROGRAM
Same guidelines as current FHA Streamline Refinances *EXCEPT* :
1. Borrower's keep current Annual MIP Premium.
2. The UPFMIP Premium at 1%.
Rational:
1. This is a budget neutral program in monthly premiums paid to FHA and actually provides additional funds in UPFMIP premiums and increased number of months borrowers pay into fund.
2. Borrowers who qualify for the streamline refinance programs are low risk to the insurance program as they have to prove acceptable payment history.
3. Qualified borrowers will pay the same monthly amount into the FHA insurance fund - AND will pay another UPFMIP fee that will strengthen the fund.
4. Borrowers save money each month on their mortgage payment, putting additional funds in their pocket and into the economy monthly.
5. The only losses are to the banks who loose the profit from higher than market interest rate payments from good borrowers who qualify for market rates.

Prepared by Jeri Lynn Fox, MBA
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IL Association of Mortgage Professionals

Example A-2

SECTION 2

EXAMPLES OF CONSUMER HARM CAUSED BY IMPLEMENTATION OF THE LO COMP RULE

Example A-3

Section 2- Examples of Consumer Harm Provided By the Industry

Unable to amend fees in customer's favor

Seattle WA – SVP, Mortgage Company

"Can't tell you how frustrating it is when I have to tell a client that I can't cut my fee to help with things such as lock extensions or any other cash to close issues. To me it makes no sense that we can't do something like this to HELP our clients. I thought the new legislation was put in place to protect the client, but with no ability to reduce our fees we can't help them at all in these instances. Sure would be great if they would tweak things to compensation could change in favor of the client if necessary."

Indianapolis, Indiana; Originator and Principal Manager

Borrower purchasing a short sale (For sale by owner). Lender approving short sale closing documents took 2 weeks. Rate Lock expired and needed extended. Borrower didn't have the money for extension fee. Short sale lender refused to pay any additional fees. Deal died. Buyers homeless and sellers going into foreclosure. Mortgage originator would have paid to save transaction.

Santa Barbara, CA; Senior Residential Loan Specialist

". . . . here is a recent nightmare (and has happened several times since April, 2011): Extension fees. The client and/or lender caused delays which resulted in the need to pay extension fees. These fees range from .125 per day to .125 per week. On $417,000 loan (average for Santa Barbara Ca.) that adds up to $521.25.

In the past, I would eat the first extension (or force the funding lender to eat it). Now, not only do "they" require it be passed along to the client, but they also need to re-disclose, causing a few more days delay and a potential for more extensions.

The whole current system is difficult when volume is low and absolutely unworkable if/when volume increases. Consumers aren't robots. They change their minds. They delay in providing data. They get sick. They go on vacations.

The new system is anti consumer, inconvenient and should only be applied to SUB PRIME loans and lenders. That they have implemented these rules for PRIME deals is a farce, a disgrace and a sham!

Oh, by the way, I've been originating Prime loans for almost thirty years.. . . . "

Second Example - Lynchburg, Virginia; Registered Mortgage Advisor

"When mistakes are made in GFE calculations (even very minor calculation errors of less than $1.00), borrowers are harmed because the lenders refuse to cure the GFE defect, and I am not allowed to cure the defect, so the loan application is not accepted by the lender and cannot be resubmitted. The borrower is left either finding a new lender because of a minor calculation error or we're left to work with another lender that I can broker the borrower's loan to. In some cases, there are few options available for a borrower based on the loan parameters (loan type, property type, credit profile, property location, etc.) and the elimination of a viable lender choice over a very minor calculation error is extremely harmful."

California; Loan Officer and Realtor

"My client was waiting for a specific interest rate (3.75% and NO points) before continuing with the loan. Yesterday, the rate of 3.75% was there and the interest rate buydown cost was 1/8 of a point, which I stated to my client and he vehemently stated "I don't want to pay ANY points!!!". The total cost of the points was less than $300, which I would have eaten through my YSP had the new LO Comp rules not been in place."

Fort Myers, Florida; State-Licensed Originator

"I have a number of examples from past closings that I could share, I have one from yesterday that is fresh in my mind.

We locked in a loan for 30 days and due to some appraisal delays and just typical end of month log jamming, we had to extend my client's lock 3 days. That 3 days cost .15 or $480 in this case. I do not directly blame anyone for these delays, especially the borrower, so I would have typically just paid the $480 out of my commission and chalked it up to the cost of doing business and making a client happy. WELL, unfortunately I cannot do that and the client had no choice but to pay the $480. Do you think he is happy? Of course not, especially when it's hard to understand why 3 days could make such a financial impact. I cannot blame him for being upset, but for the very reasons why I am emailing you this example, I didn't create the problem, I have to just play by the silly rules given."

Sierra Vista, Arizona; Owner, Originator

"I have an approved loan that is ready for docs. It is a no cost refinance so obviously the lo comp is lender paid. My lock expires today and the lender will not grant a free extension. It will cost 20 BP to extend long enough to get this doc'd and closed. I can not absorb the .20 extension fee under these regulations and the borrower says she doesn't feel like she should have to pay it because the lender took so long to underwrite the file. I would be happy to absorb the 20 BP hit but I am prevented from doing so. Either the customer pays $399 in the additional fee or does not do the refinance which will save her $226.52 in her monthly payment."

Brea, California; State Licensed Originator

"Am just closing an FHA purchase where the LO comp plan cost my clients about $1,072. Here's the story:

Clients have been looking for a home to buy in our area for several months. In January 2012 they get an offer accepted. I locked the loan in for 30 days on a lender paid comp plan. Because of the pricing I was able to credit $3,000 towards the buyer's closing costs. Appraisal came in $32,000 low. Buyer and seller took over 10 days to renegotiate the sales price. Less than 7 days left on the lock when docs were ordered so we had to extend the lock for 15 days per the lender at a cost of .25% ($1,072). Before the new comp plans we would have absorbed most or all of the extension fee as this was clearly not the buyer's fault. Lender paid comp plan now prohibits us from absorbing the fee so the buyer lost $1,072 of the credit towards his closing costs."

Newport Beach, California; MBA and Loan Originator

"The Loan Officer Compensation Rule also hurts the consumer in a number of way. Here is a list of some of the ways consumers are hurt:

- Borrower has to pay for rate lock extensions even if borrower did nothing to delay the process
- Borrower has to pay for rate lock extension caused by 3 and 7 day re-disclosures – borrower should be able to sign a form allowing them to waive the wait period on initial disclosures and re-disclosures
- Borrower has to pay for an appraisal and other charges when a loan is declined because one of the disclosed fees was accidently over 10% more than initially disclosed.
- The borrower should be able to sign something stating that they are aware of the mistake and they accept the new fee. They always have the right to cancel the loan but they should also have the right to accept the new fees."

Bellevue, Washington; Compliance Vice President

"The following is an example of consumer harm caused by the LO Comp rule from 4/1/11:

Borrower's cash to close requirements exceed the estimated CTC. Prior to the 4/1/11 rule, the LO could make a concession by lowering his/her commission and issue a credit to the consumer to get the loan closed. Now the borrower is faced with the reality of the transaction not closing if the lender is unwilling to make a concession."

Denver, Colorado; Author's on personal example

In early 2010 I arranged a construction loan for a very strong customer. The loan was arranged through a local commercial bank and had a short, but flexible maturity which would be adjusted to accommodate possible building interruptions in the mountain areas of Colorado. I explained to my customer that my normal compensation is about 1.5% paid either directly by him, directly by the lender or some combination. In his situation a direct payment from him was elected. I also said that since this was a construction loan I would reduce the construction loan compensation to 1.0% and simply collect the balance of my compensation (0.5%) at the time I arranged his permanent financing. Since the construction loan and permanent loan were not related this provided my customer with the most flexibility while I hoped the structure motivated him to come back to me for the permanent financing.

My customer is now scheduled to receive his certificate of occupancy in the next two weeks. We are in the final stages of completing the application package for his permanent financing. Since April 2011 and the LO Comp Rule has been in effect my basic contract with the company for which I originate is a fixed 2.0% which allows me to net approximately 1.5% after the fees I am invoiced for as administrative support by the company. The company is a traditional broker so as an employee I am not allowed to use a borrower paid alternative to structure my compensation.

I have advised my customer that although he does not have to carry any amount in his loan balance nor does he have to cover the up front amount as part of closing costs, in spite of my offer to close his permanent loan for an origination fee of 0.5% I am contractually bound to receive 2.0% from my employer due to the LO Comp Rule and that the 2.0% will be paid by the lender. So, while it appears "free" to my borrower, the reality is that the borrower is forced to pay in his rate. In this case his loan is a $417,000. Based on recent pricing, if he were allowed to pay me 0.5% he would have access to 3.5% interest and would have received (based on 3/9/12 available pricing) $3,128 (more than my entire fee) credit toward closing costs which would have reduced the amount he will borrow in the form of a HELOC to pay off his larger construction loan. Instead because of the LO Comp Rule and my decision to work for a traditional mortgage brokerage company I am forced to earn a net of $7,450 on a transaction I would be perfectly happy to make the pre-agreed to $2,085 on and over the first seven years of the loan my customer will realize a negative cash flow of $8,283 while he will be further harmed by virtue of the higher interest rate in the context of his liability balance which in seven years will be $3,194 higher even though he has paid over $7,424 more in monthly P&I payments.

But for the inexplicable provisions of the FRB's interpretation of its own rule that mortgage broker companies may not pay their employees on each transaction if the borrower pays (by the way this has been objected to by Congressman Barney Frank [D-MA]) my customer would enjoy a lower rate and a lower total cost and I would have been compensated adequately for my services.

Can not modify compensation in favor of borrower

Jefferson City. Missouri; Originator/Recruiter

"I recently completed a VA refinance for a veteran that was wanting to buy down their rate to a below market interest rate. When originally structured I wanted to charge the borrower a little less than our "contracted" compensation rate with our preferred lender(best pricing & service for the customer) due to the fact that the loan amount was considerably larger than our normal average. So to do So I originally structured the loan as a "borrower paid" transaction. Only to later find out that VA never eliminated the 1% origination fee cap, Like FHA did when the 2010 GFE went into effect. To make a long story short, It was decided by the original lender that there was no way to reconcile the issue, and the loan had to be moved to another lender, with substantially worse pricing and much longer turn times. This caused significant additional delays, and it took a total of 73 days to close the loan from start to finish. That combined with a deteriorating market pricing between the time of the initial lock and the lock replacement with the new lender hit the customer in the wallet pretty hard.

The net harm to the borrower? = increased discount costs by $1394, and for a 0.125% worse rate than when originally locked, this on a Loan amount $149,500 = increased interest cost of 186.87/ yr for the life of the loan.

Total 10 yr Cost to the Veteran= $3254...

. . . . to a retired combat veteran who is still having to work to support his family after serving 22yrs in the armed forces; that money would go a long way to helping him actually be able to slow down and enjoy his sunset years."

Unidentified Location

"I had an FHA streamline refi of an $850,000 Duplex Loan. The borrowers are currently at 4.75%. I offered them 3.75%. The total yield spread premium was over $20,000. The total non-recurring closing costs were about $2,500.

I locked "lender paid" (the only way I could) and my comp level of 1.75% forced me to "make" almost $15,000. I would have been happy with $4,000, or less.

My borrowers had to bring in $10,000 to close (FHA; Impounds; etc.). They did NOT have the funds, and I was NOT allowed to credit my commission to them for prepaids.

The deal died. My borrowers are stuck with 4.75% for life now. And I lost $4,000.

I have 100 stories like this. . . . "

Third example - Indianapolis, Indiana; Originator and Principal Manager

"VA loan. Originator Compensation Rule abuses Veterans. VA limits total origination costs to Veteran of 1% which includes all Box 1 GFE fees. If loan amount is $80,000 lender underwriting fee is $725. Broker can make $75 on borrower compensation method. In the real world... borrower paid compensation is eliminated as a viable option for 99% of all VA transactions. This is especially damning in small rural communities where a mortgage broker may be ***one of 2 local options*** for a VA mortgage. The Originator Compensation rule prohibits the broker from ***lowering his lender paid fee*** to fairly compete. Even if the regulators don't give a damn about the Originator, they are stacking the deck against the veteran."

Johnston, Rhode Island; Certified Mortgage Coach and Certified Mortgage Planning Specialist (CMPS)

"This example comes up every day in my business as a loan originator for a mortgage broker.

Example

Client wants:

- 5% down
- Conventional Program
- They want 4% rate. It makes payment comfortable.
- No points
- close ASAP seller is willing to close as soon as buyer is ready

Lender paid compensation is not an option due to limited closing funds available to buyer. Seller is paying 3% in closing costs and cannot pay any more to help buyer with discounts points.

Specifics:

We have over 50 lenders , but the clients credit specifics (limited credit does not have 3 open trade lines) directs my 15 yrs experience to pick a lender that is local and will quickly handle problems if they arise.

They also allow no minimum trade lines with DU approve/eligible which we have in this situation and is paramount to gaining an approval for buyer.

This lender is easy to work with and will push the approval process along quickly since seller and buyer want to close ASAP.

Today's pricing

4% 30 yr fixed conventional at BEST lender FOR THE CLIENT is a national lender who has local office. Today it would cost buyer .345 % in points since our compensation is locked due to Frank/Dodd.

I would gladly take the .345% out of my compensation to get loan locked and client is happy to go forward. It is important that the buyer pays no points because their closing funds are limited.

If pricing is headed worse, I have no choice of taking LESS on the loan in compensation and giving the client what they want.

I must wait to SEE to if rates gets better and HOPE that they get the 4% rate with no points.

Remember client wants 4% rate because that makes payment comfortable for them.

If rates get worse I may be forced to offer a HIGHER rate to client since that would be their only option with no points.

How is this fair to client? I cannot help out client and take less compensation, get them locked, send them to the proper lender and allow to save money by paying no points and send them to the best lender for their situation.

I am forced to have client possibly take a higher rate, higher payments or risk using a lender that will not close on time or even deny them due to their limited trade lines issues."

Wenatchee, Washington; Loan Originator

"On the other end of the spectrum. One of my clients that has a $520,000 home loan, works at Microsoft in Redmond Washington asked me to refinance his home loan. I told him I couldn't do that. Why he asked me? I had to explain that I am on a 2% commission comp program.... and he has great income, great credit scores (pushing the 810 mark), great job and tons of cash in the bank and 401k. I would have to charge him $10,200.00 to do the job. I cannot reduce my fee to $3000, after all that is all my fee is worth with a great client like him. I could not over charge him by over $7000 and I could not legally give the funds back to him under the table. I would have to charge that amount as the federal law states I must as I have a contract. He looked at me like I was crazy, and walked away. I told him to write his congressperson, Patty Murray. I saw him a few weeks later. I said did you write her? He said "Yes". "She wrote me back....telling me all the great things she is doing for me in the congress." He said "She never mentioned my concern about my loan and about my refinance"..............go figure!"

Small Balance Borrowers Harmed in Spite of Min / Max Rule Provision

Fort Lauderdale, FL; Mortgage Banker

"I don't want to do loans under $75k as I lose money based on the flat fee I collect on the smaller loan balance. I have to make a business decision."

Yardley, Pennsylvania; Senior Loan Officer

"If I have two leads, one for a $100,000 mortgage and one for a $400,000 mortgage, I work on the $400,000 loan so my boss can make a profit on it and so I can keep my job.

This LO compensation rule will only serve to limit the financing choices of lower income/lower loan amount borrowers. I have many previous customers in my client database who might benefit from HARP 2, HAMP, lower rates, etc. But, if these customers owe $150,000 or less on their mortgages I probably won't call them. I can't afford to. I need to expend every effort to go after larger loans so I can feed my family."

Royal Oak, Michigan; Senior Loan Officer

"Prior to LO compensation I spent my marketing dollars and my time working with Realtors and clients in the lower end of purchasing range. I've been working this market since 1988 and they are the ones in the most need for an honest detailed loan officer. Since I was able to control my income depending on the loan size I was able to service this community along with me making a living and paying my bills.

Since the LO compensation came in to place and my income is fixed no matter what size loan amount I do I now spend my marketing dollars and my energy searching for higher price clients. What I mean here is that I still want to pay my bills and make a living.

I still help those clients who search me out and need my help (no matter the income) but I do not spend my time searching for these clients. These client now are not getting the experience of someone like myself and this opens up the market for hard money lenders or no lending at all.

Once again the little guy pays the price....It's always the little guy who pays the price."

Wenatchee, Washington; Loan Originator

"A Realtor friend of mine wanted me to meet up with a prospective client. Seems the client wanted to look at buying his first home. He is a low income Mexican American living in Wenatchee Washington. When I found out that he was looking at an $80,000 home and wanted to go FHA, I told my Realtor friend he should take his client to another lender. He asked why? I explained to him that I was on a 2% commission comp program with my office. That means that the most that I can charge the client is $1600. Out of that I have to pay processing fees, income taxes, ss, Medicare, state industrial ins, state unemployment ins and B and O insurance. When I get done paying out all this I would have to write a check to do this loan. The man asked me "Where can I go to get a loan?" I had to tell him look in the

Yellow Pages. I felt badly that I had to turn him away as I had done lots of loans like his a few years ago. But no longer an option. The underserved gets kicked in the teeth again. . . . .

. . . . . A couple of months later I ran into him. He said he ended up buying on a contract at 7% interest as he could not find anyone who would do his loan. . . . "

Confusion – Borrower and Rule / APR

Second example - Indianapolis, Indiana; Originator and Principal Manager

"This rule is Abusive and Deceptive to consumer from confusion due to APR. Borrower shopping for best deal on refinance gets multiple GFE's.

- Mortgage broker quotes borrower paid compensation (rather than lender paid) which increases APR to 4.391.
- Note rates for 30 year fixed are same at 4.125%
- Broker GFE Total estimated settlement charges ***is lower*** by $833 (GFE A +B is lower).
- Borrower chooses bank GFE because APR is lower 4.297 vs 4.391 for Broker.

Borrower deceived by Government rule and chooses higher cost loan thinking they are saving money."

Multiple Sources of Harm in One Transaction

Duncan, South Carolina; Mortgage Company President

"I have been in this industry for over 30 yrs. . . . .

In October of 2011 our previous clients who were a Church Pastor and a teacher with over 20 years in their chosen profession and scores in the high 700's and low 800's were presented a USDA streamline refinance opportunity that would reduce their interest rate save them over $100 a month and absorb any closing cost so as to avoid a large increase or increase in their mortgage balance. Due to the fact that they are at the top of the income parameter for household income the bank that already held the paper scrutinized this loan to the point where a delay caused the program to change from a 1% upfront fee to a 1.5% fee. [BORROWER PAID/LENDER PAID ISSUE] Since this loan can only be done as" lender paid" (unless the client wishes to come out of pocket) and because borrower paid option does not allow a broker to contribute to the fees we were forced because of the compensation rule to charge the client a 2.5% fee and to be quite honest a 2.5% on a $300,000 loan was not needed. Because of the delays the lender now had to re-do the paperwork and we had to re-disclose not once but three times. The costs of extensions were now added to the loan and we were unable to cure this. Now due to delays and the implementation of this unfair law the clients now had to pay 1.5% upfront rural guarantee fee and still absorb the unfair cost of extensions due to the lender's delays. [PROHIBITION FOR ORIGINATOR TO ASSIST WITH FEES] After we finally turned this around and had to have several meeting and conversations with these clients this had to be sent to the USDA for final approval. The bank once again told us to amend the paperwork so that we were in compliance. In doing so it was later discovered that this requirement posed by the lender and in fear of violating the Frank Dodd act and that of the broker compensation rule that this had to be sent to the bottom of the pile [MARKET FAILURE TO UNDERSTAND RULE] and start all over waiting for the rural USDA approval. Once again I am not permitted to help in absorbing these costs or contribute because this was a lender paid. When the lender finally got the approval they forwarded this package to the CHOSEN attorney who took another day in preparing this. NOTHING was allowed to be changed and the attorney only forwarded this to us less than ½ hour before the closing was to occur. The client was already in transit to our office and by the time we realized that the payoff was higher(and once again even if we had it was not permitted to be altered without sending this loan back to the USDA again), along with paying a third extension cost which would only result in the client parting with additional funds, **so the client would have to close by taking $3300.00 out of their pocket which we in no way expected them to do so we CANCELLED this closing**. We were unable to contribute to this because of the FRANK Dodd LAW and the broker Compensation Rules. We were unable to go back to the bank and ask for a different lender Compensation because of the implementation of this unfair FRANK DODD ACT and the broker compensation Rule. Our clients are trusting individuals for whom we have befriended over the years and this is just one of the many instances where our inability to be paid from both the YSP and or from a combination of the borrower and the YSP has hurt our industry, our client relationships and the client. . . .

Morristown, New Jersey; Originator

1. "The inability to do a no cost refinance for a Co-Operative Property due to the Lender Paid Compensation Rule.

2. When unexpected expenses arise in a loan refinance like a quarter of property taxes being due or a 1 year premium of home owners insurance policy being due, or a home under appraising and now the borrower is subject to the Fannie Mae/Freddie Mac Risk Adjusters which is an additional unexpected expense. The lender paid compensation does not allow the broker to credit a portion of the loan proceeds to the borrower to cover the cost.

   The cash strapped borrower who would benefit from the new loan with a lower monthly payment and/or lower interest rate now has the choice of : bringing additional funds to closing that they might not have budgeted for, or take a higher interest rate so the borrower can get a credit from the lender to pay the cost, or if the money is not available, cancel the loan and not reap the benefit of the lower payment and/or rate."

Miscellaneous Comments Offered in Response to Request

Banks, Oregon; Small Company Owner

"My wife and I own a small mortgage brokerage company in XXXX, Oregon. I have been in this business over 30 years and we have owned XXXXX XXXXXXX Corporation for the past 14 years. We have a good reputation and most of our business is customer referrals and Realtors.

Beyond the normal garbage that we have to go through recently, I had an issue that was totally outrageous.

I have been working with a borrower that has a second home near Portland where the loan was owned by FHLMC. I ran LP and received an approval back in November with a CLTV of 103%. The program max was 105%. The middle of I January submitted all the conditions into the lender (XXXXX XXXX Mortgage) and they reran LP with the updated information. It came back denied. After some checking the underwriter said that FHLMC changed their max CLTV guidelines on 2nd homes to 100% and now the loan did not qualify. Talk about an angry borrower and a more angry broker. The lender said that there was nothing that they or I could do. That is BS!

The borrower is a committee secretary for the Alaska legislature so this may not be the end of it.

This type of junk happens every day at some level. It does not usually kill the loan, but it does infuriate a bunch of people."

SECTION 1

EMPIRICAL INFORMATION DEMONSTRATING INCREASED CONSUMER INTEREST RATE COSTS SINCE THE IMPLEMENTATION OF THE LO COMP RULE

A-4

Section 1 -

General Cost Increase – Lenders

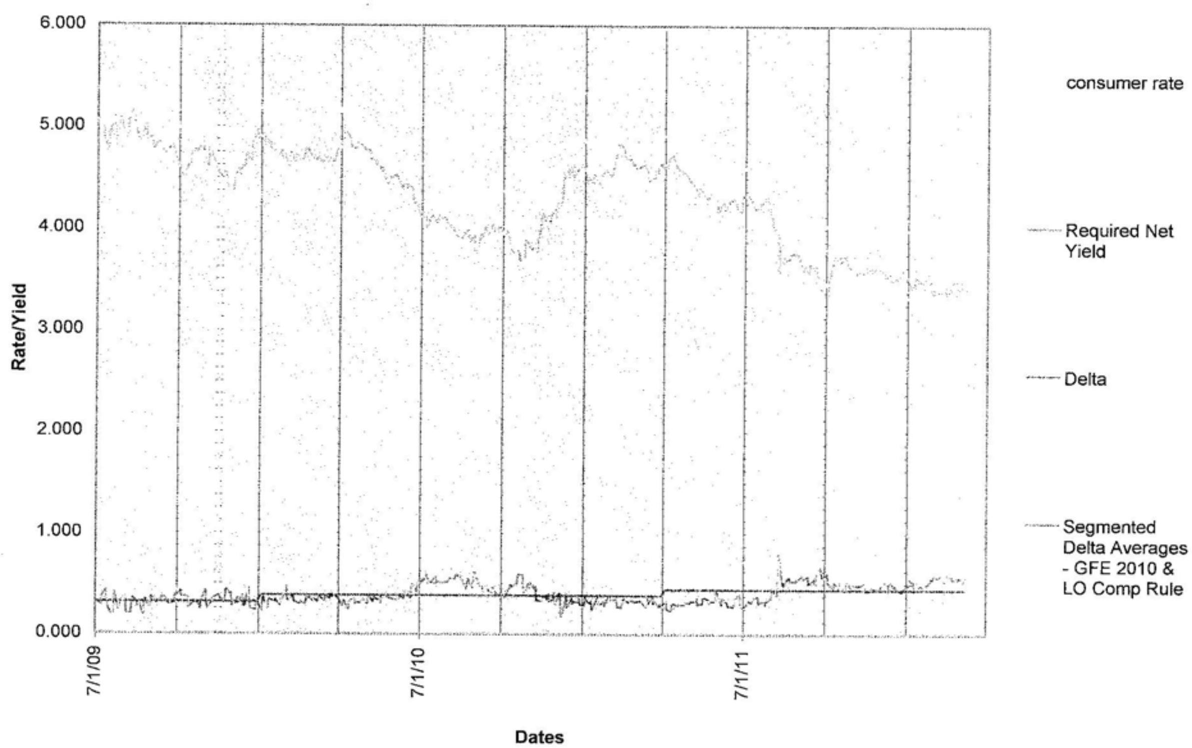
Lynchburg, Virginia; Registered Mortgage Advisor

"Lenders have increased their administrative and underwriting fees across the board to comply with both the FRB LO Comp Rule. Every one of my consumers has been harmed by the increased lender fees."

St. Charles, Illinois; Mortgage Company President

The following chart is undeniable proof that consumers are paying more than they otherwise have to pay. [redacted]

Conforming Mortgage Loan Origination Margin Difference & Impact to Consumer



The above chart demonstrates that since the introduction of the changes to the GFE and the LO Comp Rule, consumers in general are now paying an additional eighth percent (0.125%) with no other changes except increased consumer protection legislation and regulation.

Assuming a loan amount of $185,000 and a rate of 4.0% the borrower cost increase during the first seven years of the loan is over $1,100 and the mortgage liability balance is $461 higher, a combined cost to the borrower of over $1,500 in the average time a loan is held by a consumer. It is important to recognize that the LO Comp Rule as written by the Board anticipated this and even suggested that creditors could, for example, use an across the board increase of 0.25% in rate to accommodate the rule. The 1/4th% was just an example. (See 75 FR 58524, "*For example, a creditor could add a constant premium of ¼ of one percent to the interest rates on all transactions to recoup loan originator compensation. See comment 36(d)(1)–5.*")

I have highlighted for discussion purposes, a Lenders price sheet creating a block of interest rates from 3.5% to 4.25% along with lender pricing adjustments and their fees.

I would propose that under the CREDIT FOR SETTLEMENT COSTS FROM THE MORTGAGE LENDER IN EXCHANGE FOR YOUR SELECTED INTEREST RATE (This will be reflected as a credit to you on Block 2 of your Good Faith Estimate) The additional box could include the following:

(Hypothetical loan choice by the borrower: Requested loan amount of $200,000.00. Purchase transaction for a Condo at 80%LTV, Credit score: 722) Borrower does not want to pay more than $2000.00 out of pocket for closing .

4% rate yields a premium price of 103.492 or $6984.00

Less:	Condo Adjustment Fee:	.750%	(1500.00)
	Credit Score /LTV Adj.	.500%	(1000.00)

Net amount of credit given to borrower $4484.00

BLOCK #1: $5175.00 ($4000,00 origination fee, 675.00 lender admin fee, 500 broker's processing fee.)

BORROWER CREDIT: $4484.00

ADJUSTED BROKER FEE: $691.00

The Borrower is left with $1300.00 for additional closing costs, (title, recording fees, etc.)

THIS ADDITION TO A MORTGAGE BROKER FEE AGREEMENT IS TOTALLY TRANSPARENT. THE CONSUMER REFVIEWS THE PRICE SHEET, REVIEWS THE FEES NECESSARY **TO OBTAIN AN INTEREST RATE OF 4%. IF THE CONSUMER WANTS A LOWER RATE SAY, 3.5%, THE CONSUMER WOULD THEN HAVE TO PAY 2.462% TOWARDS A DISCOUNT TO GET THE RATE OF 3.5% OR $4924.00 TO BUY THE RATE DOWN. IN THE EVENT THE CONSUMER WANTS A NO POINT CLOSING COST LOAN TO INCLUDE ALL CLOSING COSTS THEY COULD SELECT A HIGHER PREMIUM SUCH AS A 4.5% RATE.**

I would suggest this type of disclosure be added as an alternative to the flat fee proposal. The consumer selects their own rate and terms and knows exactly how the credit for the rate is determined. This could be utilized for all MLO's including the banks.

It is a known fact that the premiums we see on our wholesale rate sheets is a fraction of what the lender/bank is really receiving on each transaction.

This allows for total transparency.

Example B-1

Mortgage Broker Fee Agreement and Disclosure

This Mortgage Broker Fee Agreement and Disclosure ("Agreement") is by and between ________________________________ ,a mortgage broker ("we," "us," "our") and the Borrower(s) who sign(s) below ("you," "your"). This Agreement discloses and governs the overall fees that will be paid to your mortgage broker for the origination of your loan.

1. OUR SERVICES: A mortgage broker charges fees to arrange a loan from a mortgage lender who will fund the loan. As your mortgage broker, we will assist you in obtaining a loan, but we do not offer the products of all mortgage lenders, and so we cannot guarantee you the lowest price or best loan terms available. Be sure that you understand and are satisfied with the mortgage loan product and terms we arrange for you. By signing below, you request us to arrange a mortgage loan from a mortgage lender and you agree to the fees listed below for our services.

2. YOUR MORTGAGE LOAN

You are currently applying for a mortgage loan in the amount of $ 200,000.00 may increase if the loan amount increases, or decrease if the loan amount decreases. The fees in this Agreement are for broker services only and do not include other closing costs or credits from us or other parties for non-broker related services.

3. BROKER FEES: Depending on the loan program you select and subject to applicable legal requirements, our fees may be paid by you directly or indirectly, or a combination of both. For the portion of our fees paid directly, you will pay our fees from your own funds at or prior to the loan closing. For the portion of our fees paid indirectly, you may elect to include our fees in your loan amount and pay us at closing out of your loan proceeds. In addition, you may pay our fees by electing to pay the mortgage lender a higher interest. When you elect to pay a higher interest rate, the mortgage lender will provide you with a credit which will be applied against and reduce your settlement charges, including our fees. Paying our fees directly versus indirectly may result in a lower interest rate. We have discussed these fee payment options with you. In addition to our fees, estimates of other fees you will pay in connection with your loan will be shown on your Good Faith Estimate. Once your interest rate is locked and your loan amount and terms are finalized, we will be able to tell you the exact amount of all fees.

NOTE: You may not be charged any fee, other than a reasonable credit report fee (if applicable), prior to (i) receiving your Good Faith Estimate from us, (ii) expressing your intent to proceed with the loan transaction and (iii) receiving the initial disclosures from the mortgage lender.

Amount

MAXIMUM BROKER FEE (1) - All fees that are paid to us for arranging your loan with a mortgage lender. This amount is included in the "Our origination charge" of Block 1 of your Good Faith Estimate. The "Our origination charge" amount represents the total sum of all origination charges and fees for your loan from the mortgage broker, mortgage lender and other third parties, as applicable. — 5175.00 ***(Must be completed)***

Interest Rate: 4.0% Premium: 30 day 3.492 $ 6984.00

Lender price adjustments:	Loan Amount Adj. %___	(0)
	Condo Adj.	% .750 (1500.00)
	FICO/LTV Adj.	% .500 (1000.00)
	NOO/LTV adj.	%___ (0)
	Escrow waiver adj. %___	(0)

Net adjusted credit due borrower: $ 4484.00

CREDIT FOR SETTLEMENT COSTS FROM THE MORTGAGE LENDER IN EXCHANGE FOR YOUR SELECTED INTEREST RATE – This will be reflected as a credit to you on Block 2 of your Good Faith Estimate: — 4484.00 ***(Must be completed)***

YOUR ADJUSTED BROKER FEE - The portion of our fees that will be paid by you to us directly after applying the above credit of the mortgage lender, if applicable. This amount is included in the "Your Adjusted Origination Charges" of Block A of your Good Faith Estimate. The "Your Adjusted Origination Charges" amount represents the total sum difference of Box 1 and Box 2 of your Good Faith Estimate.: — 691.00 ***(Must be completed)***

By signing below, you acknowledge that:
(i) You have received an initial Good Faith Estimate within three (3) business days of the mortgage loan application date and you intend to proceed with the loan transaction.
(ii) The Agreement has been explained to you and you understand it.
(iii) You have not been charged any fees, other than a reasonable credit fee (if applicable), prior to entering into this Agreement
(iv) You voluntarily enter into this Agreement and agree to the fees above.
(v) The fees above are based on current market rates and your current loan request.

☐ **If this box is checked, the form has been amended. All amendments must be initialed by borrower, or a new agreement must be completed.**

Borrower: ______________________ Co-Borrower: ______________________

Signature: ______________________ Signature: ______________________

Date: ______________________ Date: ______________________

Broker Name: ______________________ By: Signature: ______________________
(Printed Name)

Date: ______________________

ver. 2/11/10

B-2

MSI
Mortgage Services III, LLC

Mortgage Services III, L.L.C.

Current Wholesale Rate Sheet

Home Office Ph. #: 888-664-9108
Oakbrook Office Ph. #: 630-396-3553
Pricing E-Fax #: 309-807-4993
Web Site: www.msiloans.biz
Pricing E-Mail: msipricing@msiloans.biz

Daily Special!

Purchase Transactions:
30 Yr FHA/VA: +.125
30 Yr Conv: +.125
Program #'s: 300000 / 301500 / 301600

Market conditions are generally:
(compared to previous price sheet)
Unchanged to Slightly Worse!

May 18, 2012
Rate Sheet Updated as of: 9:20 AM

CONFORMING -- FIXED RATE PROGRAMS

#300000 - 30 Year Fixed

Rate	15-Day	30 Day	45 Day	60 Day
3.250%	99.446	99.236	99.026	98.796
3.375%	100.282	100.072	99.862	99.632
3.500%	101.240	101.030	100.820	100.590
3.625%	101.860	101.650	101.440	101.210
3.750%	102.314	102.104	101.894	101.664
3.875%	102.815	102.605	102.395	102.165
4.000%	103.702	103.492	103.282	103.052
4.125%	104.248	104.038	103.828	103.598
4.250%	104.636	104.426	104.216	103.986
4.375%	104.984	104.774	104.564	104.334
4.500%	105.290	105.080	104.870	104.640
4.625%	105.753	105.543	105.333	105.103
4.750%	106.082	105.872	105.662	105.432
4.875%	106.384	106.174	105.964	105.734
5.000%	106.195	105.985	105.775	105.545

#200000 - 20 Year Fixed

Rate	15-Day	30 Day	45 Day	60 Day
3.250%	100.632	100.422	100.212	99.982
3.375%	101.443	101.233	101.023	100.793
3.500%	102.229	102.019	101.809	101.579
3.625%	102.732	102.522	102.312	102.082
3.750%	103.106	102.896	102.686	102.456
3.875%	103.602	103.392	103.182	102.952
4.000%	104.240	104.030	103.820	103.590
4.125%	104.474	104.264	104.054	103.824
4.250%	104.806	104.596	104.386	104.156
4.375%	105.103	104.893	104.683	104.453
4.500%	105.322	105.112	104.902	104.672
4.625%	105.762	105.552	105.342	105.112
4.750%	106.121	105.911	105.701	105.471
4.875%	106.255	106.045	105.835	105.605

#150000 - 15 Year Fixed

Rate	15-Day	30 Day	45 Day	60 Day
2.750%	100.530	100.320	100.110	99.880
2.875%	101.233	101.023	100.813	100.583
3.000%	101.858	101.648	101.438	101.208
3.125%	102.208	101.998	101.788	101.558
3.250%	102.532	102.322	102.112	101.882
3.375%	102.968	102.758	102.548	102.318
3.500%	103.557	103.347	103.137	102.907
3.625%	103.909	103.699	103.489	103.259
3.750%	104.160	103.950	103.740	103.510
3.875%	104.433	104.223	104.013	103.783
4.000%	104.563	104.353	104.143	103.913
4.125%	104.847	104.637	104.427	104.197
4.250%	105.115	104.905	104.695	104.465
4.375%	105.363	105.153	104.943	104.713

#100000 - 10 Year Fixed

Rate	15-Day	30 Day	45 Day	60 Day
2.750%	101.269	101.099	100.949	100.769
2.875%	101.984	101.814	101.664	101.484
3.000%	102.684	102.514	102.364	102.184
3.125%	103.044	102.874	102.724	102.544
3.250%	103.358	103.188	103.038	102.858
3.375%	103.339	103.169	103.019	102.839
3.500%	103.842	103.672	103.522	103.342
3.625%	103.842	103.672	103.522	103.342
3.750%	103.951	103.781	103.631	103.451
3.875%	103.842	103.672	103.522	103.342
4.000%	103.842	103.672	103.522	103.342

LPMI Program #'s

30 Yr LPMI - #300100
25 Yr LPMI - #250100
20 Yr LPMI - #200100
15 Yr LPMI - #150100
10 Yr LPMI - #100100

LTV	LPMI 740+	720-739	680-719	640-679
90.01 - 95.00%	-2.15	-2.35	-3.29	-4.20
85.01 - 90.00%	-1.37	-1.72	-2.17	-2.66
80.01 - 85.00%	-0.99	-1.12	-1.33	-1.54
LPMI Adjustments (in addition to above if applicable)				
25 Yr Term or Less	0.18	0.18	0.28	0.39
Rate/Term Refinance	No Adj	No Adj	-0.53	-1.05
Second Home	-0.25	-0.49	-0.70	-1.23

Split MIProgram #'s

30 Yr Split MI - #305700
25 Yr Split MI - #255700
20 Yr Split MI - #205700
15 Yr Split MI - #155700
10 Yr Split MI - #105700

Split MI with FICO 720+				
LTV	Upfront .50%	Upfront .75%	Upfront 1.00%	Upfront 1.25%
90.01 - 95.00%	.53	.47	.40	.33
85.01 - 90.00%	.31	.24	.18	.12
80.01 - 85.00%	.18	.14	.05	.04

(Factors listed above indicate monthly MI payment factor in addition to the upfront borrower paid premium)

For pricing, use the regular pricing above and apply the LPMI adjustments.
All LPMI adjustments are in addition to the standard agency (FICO/LTV) adjustments below.

CONFORMING -- ARM PROGRAMS

#319100 (DU) / #319200 (LP) - 3/1 Arm
Caps: 2/6 Margin: 2.250 Index: Libor

Rate	15-Day	30 Day	45 Day	60 Day
2.625%	100.921	100.681	100.561	100.441
2.750%	101.166	100.926	100.806	100.686
2.875%	101.389	101.149	101.029	100.909
3.000%	101.610	101.370	101.250	101.130
3.125%	101.774	101.534	101.414	101.294

Arm Features/Adjustments

Agency adjustments do apply (see below
Max all-in price on all Arm's is 102.250

LTV 90.01 - 95.00% (non-Condo)	-.250
LTV 90.01 - 95.00% Condo's	-.750

#519100 (DU) / #519200 (LP) - 5/1 Arm
Caps: 5/2/5 Margin: 2.250 Index: Libor

Rate	15-Day	30 Day	45 Day	60 Day
2.500%	100.701	100.461	100.341	100.221
2.625%	100.998	100.758	100.638	100.518
2.750%	101.294	101.054	100.934	100.814
2.875%	101.590	101.350	101.230	101.110
3.000%	101.886	101.646	101.526	101.406
3.125%	102.029	101.789	101.669	101.549
3.250%	102.269	102.029	101.909	101.789
3.375%	102.365	102.125	102.005	101.885
3.500%	102.365	102.125	102.005	101.885

#719100 (DU) / #719200 (LP) - 7/1 Arm
Caps: 5/2/5 Margin: 2.250 Index: Libor

Rate	15-Day	30 Day	45 Day	60 Day
2.875%	101.460	101.220	101.100	100.980
3.000%	101.914	101.674	101.554	101.434
3.125%	102.129	101.889	101.769	101.649
3.250%	102.391	102.151	102.031	101.911
3.375%	102.465	102.225	102.105	101.985
3.500%	102.624	102.384	102.264	102.144
3.625%	102.831	102.591	102.471	102.351
3.750%	103.027	102.787	102.667	102.547
3.875%	103.223	102.983	102.863	102.743

#919100 (DU) / #919200 (LP) - 10/1 Arm
Caps: 5/2/5 Margin: 2.250 Index: Libor

Rate	15-Day	30 Day	45 Day	60 Day
3.000%	100.656	100.416	100.296	100.176
3.125%	101.165	100.925	100.805	100.685
3.250%	101.674	101.434	101.314	101.194
3.375%	102.183	101.943	101.823	101.703
3.500%	102.465	102.225	102.105	101.985
3.625%	102.465	102.225	102.105	101.985

CONFORMING -- PRICE ADJUSTMENTS

Loan Amount

$20,000 - $39,999	-1.000
$40,000 - $69,999	-.500
$70,000 - $99,999	-.175
$100,000 - $349,999	No Adj.
$350,000 to limit	+.125

Fixed Rate - State Adjusters

CO, MD, NV, RI, UT	-.125
AZ, MA, ME, NM, WY	-.050
AL, CA, CT, DC, DE, IA, ID, IL, IN, KS, KY, MI, MN, MO, MT, NH, NJ, NY, SD, TN, VA, WA, WI, WV	No Adj
AR, GA, LA, MS, NC, ND, NE, OH, OR, SC, VT	+.100
OK, PA	+.150
TX	+.250

Temporary buydowns are no longer available.
All adjustments are cumulative.
Min FICO of 640 required on all loans.
Lower of two median credit scores used for all programs.
Price cap = 104.000, unless otherwise noted.

Misc. Adjustments

Escrow Waiver (CA: < 90% allowed)	-.250
Escrow Waiver (Ins Only)	-.125
(Escrow waiver fee n/a for NY properties)	
2-4 Unit	-1.000
Condo - LTV>75.00% (> 15 yr terms)	-.750
N/O/O: LTV <= 75.00%	-2.000
N/O/O: LTV 75.01% - 80.00%	-3.250
N/O/O: * Max LTV for r/t refi is 75.00%	

Current Index

1-Year CMT 0.18
12 Month LIBOR 1.06895

Extended Locks

Available for Conv. 30 yr, 20 yr, 15 yr
90 Days: .500 Upfront Fee
120 Days: .875 Upfront Fee
150 Days: 1.250 Upfront Fee
180 Days: 1.500 Upfront Fee
(Upfront fee is non-refundable/not credited)
60 day pricing is used.

Agency FICO/LTV Adjustments (Updated 1/14/11)								
FICO	<=60.00%	60.01 - 70.00%	70.01 - 75.00%	75.01 - 80.00%	80.01 - 85.00%	85.01 - 90.00%	90.01 - 95.00%	95.01 - 97.00%
>= 740	+.250	No Adj.	No Adj.	-.250	-.250	-.250	-.250	-.250
720 - 739	+.250	No Adj.	-.250	-.500	-.500	-.500	-.500	-.500
700 - 719	+.250	-.500	-.750	-1.000	-1.000	-1.000	-1.000	-1.000
680 - 699	No Adj.	-.500	-1.250	-1.750	-1.500	-1.250	-1.250	-1.125
660 - 679	No Adj.	-1.000	-2.250	-2.750	-2.750	-2.250	-2.250	-2.000
640 - 659	-.500	-1.250	-2.750	-3.000	-3.250	-2.750	-2.750	N/A

Applicable to all loan terms greater than 15 years.

Secondary Financing			
LTV	CLTV	FICO < 720	FICO >= 720
<= 65	>80 <=95	-.500	-.250
>65 <=75	>80 <=95	-.750	-.500
>75 <=80	>75 <=90	-1.000	-.750
>75 <=80	>90 <=95	-1.000	-.750
>80 <=90	>80 <=95	-1.000	-.750

Applicable to all loan terms.

Cash-Out - Agency FICO/LTV Adj. (Updated 3/1/12)					
FICO	<=60.00%	60.01 - 70.00%	70.01 - 75.00%	75.01 - 80.00%	80.01 - 85.00%
>= 740	-.250	-.250	-.250	-.500	-.625
720 - 739	-.250	-1.125	-1.125	-1.250	-2.000
700 - 719	-.250	-1.125	-1.125	-1.250	-2.000
680 - 699	-.250	-1.250	-1.250	-1.875	-3.000
660 - 679	-1.500	-1.750	-1.750	-2.500	-3.500
640 - 659	-2.000	-2.250	-2.250	-3.250	-4.000

Cash out adjustments are applicable to all loan terms.

Expiration Dates

15 Day	6/4/12
30 Day	6/18/12
45 Day	7/2/12
60 Day	7/17/12
90 Day	8/16/12

NEWS & NOTES

UW Turn Times
[illegible]
[illegible]

Conv: | **FHA/VA:**
Purchase: 5/14 | Purchase: 5/16
Refi: 5/3 | Refi: 5/3
USDA: 5/15

In accordance with the final Federal Reserve Board ruling, this published pricing structure may be used in connection with your "Borrower Paid Compensation structures. Please refer to your individual company's executed compensation agreement with MSI, to determine your prescribed premium/commission structure if opting for the "Lender Paid Compensation" structure.

B-3

Mortgage Services III, L.L.C.

MSI
Mortgage Services III, LLC

Current Wholesale Rate Sheet

Home Office Ph. #: 888-664-9108
Oakbrook Office Ph. #: 630-396-3553
Pricing E-Fax #: 309-807-4993
Web Site: www.msiloans.biz
Pricing E-Mail: msipricing@msiloans.biz

Conforming FNMA HomePath Program

FNMA HomePath Program
30 Year Fixed HomePath - #308900

Rate	15-Day	30 Day	45 Day	60 Day
3.625%	101.860	101.650	101.440	101.210
3.750%	102.314	102.104	101.894	101.664
3.875%	102.815	102.605	102.395	102.165
4.000%	103.702	103.492	103.282	103.052
4.125%	104.248	104.038	103.828	103.598
4.250%	104.636	104.426	104.216	103.986
4.375%	104.984	104.774	104.564	104.334
4.500%	105.290	105.080	104.870	104.640
4.625%	105.753	105.543	105.333	105.103
4.750%	106.082	105.872	105.662	105.432
4.875%	106.384	106.174	105.964	105.734
5.000%	106.195	105.985	105.775	105.545
5.125%	106.636	106.426	106.216	105.986

FNMA HomePath Adjustments

No MI LTV 95.01 - 97%	-3.750
No MI LTV 90.01 - 95%	-2.500
No MI LTV 85.01 - 90%	-1.750
No MI LTV 80.01 - 85%	-1.000
Condo	-.750
N/O/O LTV <= 75.00%	-1.750
N/O/O LTV 75.01 - 80.00%	-2.000
N/O/O LTV 80.01 - 90.00%	-2.500

Secondary Financing

LTV	CLTV	Adj
90.01 - 95.00%	90.01 - 95.00%	-1.000
<= 95.00%	95.01 - 97.00%	-1.500

Agency FICO/LTV adjusters from page 1 do apply.

State & loan amount adj from page 1 apply.

Important Information About MSI:

MSI Sales Managers:

Name	E-mail	Phone
Don Starks - National Sales Manager	donstarks@starband.net	Ph. 815-378-8551
Andy Pettola - Regional Sales Manager CT, DE, ME, MA, NH, NJ, NY, PA, RI, VT	apettola@msiloans.biz	Ph. 860-372-2569
Dennis Patchett - Regional Sales Manager IL, IN, MD, MN, NC, OH, PA, SC, VA, WI, WV	dpatchett@msiloans.biz	Ph. 614-581-9276
Jim Manley - Regional Sales Manager CA, ID, MI, MT, NV, OR, WA	jmanley@msiloans.biz	Ph. 248-887-6262
Keith Kitterman - Regional Sales Manager AL, AZ, AR, GA, KY, LA, MS, NM, TN, TX	kkitterman@msiloans.biz	Ph. 480-580-6700
Pete Jackson - Regional Sales Manager CO, IA, KS, MO, NE, ND, OK, SD, UT, WY	pjackson@msiloans.biz	Ph. 913-221-6466

Extension Policy

2 Days (Only if 2 is all that is needed)	Free!
1-30 Days (Max = 30 days)	-.020/day

Re-Lock Policy
15 Day Relock: Worse Case Pricing
30 Day Relock: Worse Case Pricing
(Max of 2 relocks allowed)

Current Fees

Standard Conv. Admin. Fee	$675
~~Standard Non-Conv Admin. Fee~~	~~$775~~
Non-MERS Fee	$75
UW File Return Fee	$175
Doc Redraw Fee	$75

Doc prep for purchases requires 48 hrs notice.
Doc prep for refi's requires 72 hrs notice.
MSI MERS Org ID # 1005883

** Rate lock requests accepted until 8:00 pm central time. Overnight price protection is not available.
** Rates/Prices are subject to change without prior notice. This rate sheet should not be used to determine eligibility.
** All loans must disburse by expiration date and be delivered to MSI within 4 days of disbursement.
** Lower of two median credit scores used for all programs.
** All extension/relock requests must be requested prior to 5 pm ct.

MSI offers Reverse Mortgages and wants to be your resource for Reverse Mortgages.
Call your AE or 855-901-3100 and ask how you can qualify for our incentive program.

Corporate Office:
502 N. Hershey Rd.
Bloomington, IL 61704
Ph. 888-664-9108

Oakbrook Terrace Office:
17W662 Butterfield Rd., Suite 203
Oakbrook Terrace, IL 60181
Ph. 630-396-3553

Mortgage Services III, L.L.C. is a majority owned subsidary of First State Bank
This rate sheet is intended for Mortgage Professionals only.
Max price paid is 104.000 unless otherwise noted.

B-4

Sierra Pacific
MORTGAGE

50 Iron Point Circle, Suite 200 / Folsom, CA 95630
P 916.932.1700 / F 916.932.0528

Date: ____________________ Loan Number: ______________________________

Borrower Name: ______________________________

____

Property Address: ______________________________

____

The undersigned is the Loan Originator (LO) on the above captioned transaction. LO hereby certifies that s/he conducted a thorough analysis of the fees charged by the LO, lender, escrow company, title company, closing attorney and all third parties and has accurately accounted for those fees when completing the Good Faith Estimate. LO acknowledges and accepts that failure to accurately collect and disclose all required fees may result in LO being required to come to closing with funds payable to borrower and/or lender for fees that may have been under disclosed, omitted or that LO failed to disclose properly. The closing instructions or additional instructions from Sierra Pacific Mortgage (Sierra) will indicate when this is required. LO acknowledges that fees cannot be changed unless there is a qualified "Changed circumstance", as defined under RESPA, and some fees are subject to a 10% variance only.

LO further acknowledges that the s/he has not issued any GFE's other than those which s/he is submitting to Sierra. That LO is providing to Sierra the initial and any/all subsequently issued GFE's provided to the customer due to any changed circumstances. LO has provided Sierra with a history of any changed circumstances for each GFE has / may have been issued, what the changed circumstance was and a breakdown of any / all fees that were modified as a result of the changed circumstance. LO certifies that the initial and any subsequent GFE's issued to the customer were issued within 3 business days of receipt of the loan application or knowledge of a changed circumstance as defined under RESPA.

LO is submitting ______________ (insert the #of GFE's issued to the customer prior to submission to Sierra).

______________________________ ______________________
Signature of Loan Originator *Date*

______________________________ ______________________
Printed Name of Loan Originator *LO's NMLS Code*

EXAMPLE C-1

June 9, 2012

Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street N.W.
Washington, DC 20036

RE: SBREFA Review Panel Comments Residential Mortgage Loan Originations Standards

Dear Director Cordray,

I appreciated the privilege of serving on the SBREFA review panel meeting on May 23, 2012 in Washington DC as a small business entity.

There is no doubt that the financial crisis in 2008 was the greatest financial crisis in US history and we as a country must implement regulations that will prevent such a disaster from ever happening again. With that being said, we must first examine what caused the crisis in the first place. Clearly the obvious cause was **LOAN TYPE,** subprime, pay-option ARMS, stated income and no doc loans. Credits scores were ignored and debt to income ratios were also ignored by Fannie Mae and Freddie Mac. There were millions of 100% loans approved and made by the GSE's where debt to income ratios were as high as 68%, credit scores were as low as 585, and in some cases even lower. These loans that caused this crisis had nothing to do with Loan Originator compensation except in the case of sub-prime mortgages. Loan Originators did not create these products; they were created on Wall Street.

I like to use the example of Vioxx, a drug that treated people with arthritis; the drug was causing many people in America to die of heart attacks and strokes. What did the Food and Drug administration do? They pulled the product off of the shelf; they did not impose new rules and regulations on the Doctors and pharmacies' or adjust and control their compensation. I've attached a chart from the Federal Reserve Board illustrating loan defaults by loan type and it clearly shows that non subprime fixed rate mortgages DID NOT cause the mortgage crisis. Like that of the food and drug administration, they went after the manufacture of the drug and NOT after the Doctors who wrote the prescription or the Pharmacies that filled the order. Proposing further regulations and control over loan originators compensation is no different than going after the Doctors and pharmacies for dangerous drugs.

I truly believe that the Wall Street reform act (Dodd/Frank) did not address the underlying problem of the manufacture of the products that caused such great harm to our country. Instead, Congress and the Federal Reserve Board imposed new rules and regulations on the distributors of the products. Where are the new rules and regulations on the compensation of those on Wall Street that profited handsomely on the sale of these products?

I have the following comments and suggestions to the proposals discussed in the review panel.

DISCOUNT POINTS:

The agency is considering allowing a consumer to pay discount points that are bona fide resulting in a lower rate of interest and the creditor offers a no discount-point option. This practice has been going on for decades and I applaud the CFPB for considering this exemption. It is unnecessary and will only cause more confusion to the consumer. As I mentioned in the meeting **FIX THE CURRENT GFE** to make it simple, transparent and clear for the consumer to understand and this issue will be solved.

FLAT FEE:

Like all who attended the meeting, I am ***strongly opposed to a flat fee of any kind whatsoever***. The industry has traded, sold and priced mortgages around the world in basis points and a flat fee will only disrupt the way mortgages are priced to the consumer. The real result will mean higher costs to the minority and lower income home buyers while affording the higher income earners a lower cost structure. **NO WHERE IN DODD/FRANK DOES IT STATE BASED ON LOAN AMOUNT.** The restrictions are based on terms and loan type. In the spirit of transparency and a level playing field **<u>ALL origination channels should disclose in the same manner</u>**.

I like your consideration of allowing the mortgage broker to pay its employee originators a commission on a consumer paid transaction. For the record dual compensation IS NOT double compensation and treating the mortgage brokerage firm as the same definition as a loan originator is not and should not be the same. The mortgage brokerage firm has expenses like any other origination channel like rent, insurance, benefits and other expenses.

It is my recommendation that the CFPB exempt prime and government fixed rate mortgages from LO compensation rules while retaining restrictions on subprime and high cost mortgages. As an affiliated business, I am very concerned and very much opposed to any flat fee proposal for an affiliated transaction. These affiliated companies are under separate structures and should not be considered under any restrictions on compensation. Many of these affiliated companies are like Wal-Mart, offering a whole host of services creating a one stop shopping experience for the consumer. Would you restrict Wal-Mart's compensation because they sell numerous services?

MLO QUALIFICATIONS AND SCREENING:

There should be NO EXEMPTIONS for any origination channel from licensing requirements set forth from the SAFE act. **<u>All originators from all channels should abide by the same rules</u>** and regulations. We all know there are many loan originators who have failed the Federal and State tests or have failed in the criminal background check and now work for an exempt financial institution.

PRICING CONCESSIONS AND POINT BANKS:

There are many instances where a MLO or company should be allowed to LOWER its compensation in order to help a consumer close on a real estate transaction or in the case of a competitive bidding situation. As it stands now, a creditor may lower its origination fees and a brokerage firm MAY NOT because the firm is treated as a MLO under the definition. As a small business mortgage broker, we are not on a level playing field while competing with a creditor when it comes to pricing. There are many times when we are the same price as a creditor and because the creditor can drop their price to secure the transaction we lose out of any opportunity whatsoever to compete on a level playing field.

I am in favor of ***voluntary*** price concessions in order to compete or to cover unanticipated third party fees when requested by the consumer.

I do not believe in point banks for these would result in higher cost to consumers in order to fulfill the point bank.

IMPACT ON THE COST OF BUSINESS CREDIT:

Since the implementation of Dodd/Frank and LO Comp along with the ever so tight underwriting criteria, the cost of sustaining business operations has skyrocketed. We have been forced to hire on more personnel and employee productivity has decreased due to the tremendous amount of paperwork and regulatory burden placed upon the small business entity. Over 75% of small business mortgage professionals have either gone out of business or have gone to work for a creditor. Implementing even more regulations will result in more small mortgage professionals to exit or close their business operations altogether. I would like to quote Elizabeth Warren **"I believe that clearer, simpler regulation-regulation that is designed to work for small businesses and consumers-can help make markets work better. The financial crisis showed us what happens when regulations aren't enforced and giant Wall Street businesses have too little oversight. Deregulation certainly didn't help the small banks and credit unions that got swept up in that mess. But we also can't keep layering on one regulation after another, adding more and more complexity, without assessing the effects on families and small business. We need a new approach that includes a serious assessment of the compliance cost of current regulations and whether adequate protection for consumers can be accomplished using cheaper, simpler approaches, or. In specific cases, if the regulations are so heavily layered on top of each other that some can be cut altogether"**

SUGGESTION:

One suggestion I have for the CFPB in lieu of any change to LO compensation is to establish a board like the food and drug administration that would review any new product other than a prime/government fixed rate mortgage for approval before being introduced or sold to the public. Like that of a new drug. Have the board consist of industry leaders who can evaluate the product and decide whether or not it could create any potential harm to consumers or the economy. I would be happy to be the first volunteer for such a board.

In closing, I once again thank you for holding this review panel and considering the input of all those who attended. I would like to reiterate that the CFPB needs to finish job one and that is the "know before you owe" first and test the new combined GFE/TIL for one year before any new regulations are proposed or implemented.

Sincerely,

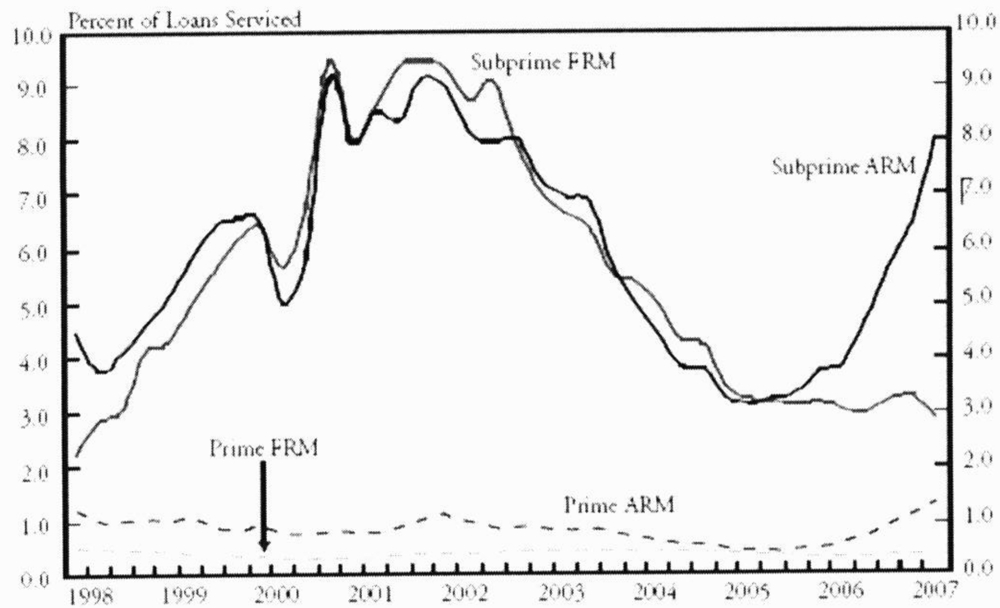
Mike Anderson, CRMS, NMLS # 91292
President
Essential Mortgage Company
A Latter & Blum Realtors Inc. Company

Defaults by loan type

126 *FEDERAL RESERVE BANK OF KANSAS CITY*

Chart 4

FORECLOSURE RATES BY LOAN TYPE, 1998-2007



Source: *Mortgage Bankers Association*

Tri Emerald Financial Group, Inc.

June 11, 2012

Dan Sokolov
Small Business Review Panel Chairman
Consumer Financial Protection Bureau
1801 L Street NW
Washington, DC 20036

Dear Mr. Sokolov,

Thank you for inviting me to participate in the mortgage loan originator compensation and qualifications small business review panel the Bureau of Consumer Financial Protection (CFPB) convened on May 23, 2012. I appreciated the opportunity to offer my views on how these rules could affect my business. As a smaller mortgage lender, my company faces unique challenges in recruiting and retaining qualified mortgage loan originators (MLO's) to assure the provision of superior service and sustainable credit to consumers. This letter reiterates some of the points I touched on in the meeting as well as the subsequent conference calls and also offers additional comments on the CFPB's outline of proposals under consideration.

Origination Charges

First, while I appreciate the fact that the CFPB recognizes that the restrictions against upfront points and fees under Dodd-Frank may unduly constrain the mortgage market and harm consumers; I do not agree that any exemption provided by the CFPB should require that lenders and brokers charge only flat origination fees.

I understand the CFPB has broad exemption authority in this area to assist consumers and aid the still recovering market and it ought to use that power to ensure the continued viability of small mortgage lenders and consumer choice. Below, I offer some alternatives that will accomplish both those goals in a far more effective fashion than the current flat fee proposal.

After our meeting and subsequent conference calls, I am sure the CFPB appreciates that there are real costs of originating loans including, but not limited to the costs of loan officers, underwriters and secondary market staff as well as building, equipment and other overhead costs. Currently, our company charges for these costs through origination fees that vary based on the amounts of borrowers' loans. Switching to a business model where we only charge a flat fee for origination would force us to arrive at an average origination fee for all loans. This would result in lower-income borrowers with smaller loan amounts subsidizing the loans of wealthier borrowers with higher loan amounts.

For example, in our corporate headquarters located in Southern California the average loan size is $300,000. However, our branch office in Allentown, Pennsylvania has an average loan size of $150,000. We would have to use the California average to determine our flat fee. Also, as a smaller lender, we would not be able to lower this average fee across the board and make up the difference through loan volume as larger lenders might.

Following our discussions on the conference calls, it appears that you may allow for origination fees to vary based on currently unspecified categories, possibly including geographic categories with a separate flat fee allowed for each category. I would need further guidance on what would be acceptable differentiation between loan products to comment fully, but in general terms this strikes me as a recipe for greater industry and borrower confusion and possibly even raises steering concerns as the fees vary between loan products. While you asked for input on what categories should be used to determine the categories of flat fees, this approach would also make pricing extremely difficult and require a very considerable investment in infrastructure to keep track of the various "flat fees" that would be associated with different localities or loan products.

My understanding is that the basis for the flat fee proposal is that the CFPB is concerned that borrowers may confuse origination charges that vary based on loan amount with discount points, which also do so. I do not believe that requiring a flat fee is the right way to address this concern. There is a far easier solution that will allow the CFPB to protect consumers and avoid what I regard is an unnecessary burden on small businesses and consumers.

The right place to address this concern is in the development of new combined Real Estate Settlement Procedures Act and Truth in Lending Act (RESPA-TILA) forms which the CFPB has been developing under the "Know Before You Owe" effort. If the forms are configured correctly, they should ensure that borrowers understand that any charges for loan origination are different from discount points that lower a borrower's interest rate and monthly payments.

Ensuring that origination charges and discount points are displayed in an easy to understand manner would avoid increasing the compliance burden on smaller lenders and the cost of lower-income borrowers' loans. Improved disclosure also would foster a more competitive mortgage marketplace.

Cost of Credit to Small Entities

Notably, we fund all of our loans using warehouse lines of credit. Most warehouse banks will advance 90 to 98 percent of the loan amount at funding with my company making up the balance to complete the funding of the loan.

Currently our points and fees are used as part of the proceeds we use to fund the loan. For example if we have a $300,000 loan and our warehouse bank advances 98% or $294,000 we are required to advance $6,000. If the loan has $4,500 in points and fees we only have to advance $1,500 from our liquid cash to complete the transaction.

The impact of not being able to charge points and fees on a loan would have a significant impact on the amount liquid cash required for a company our size. The increase in additional cash needed to maintain our business as it exists today would exceed a quarter of a million dollars in the first 30 days.

While I strongly oppose any restriction on upfront fees varying with loan terms, if the CFPB insists on moving forward with this proposal, it should consider exempting qualified mortgages, prime and government loans from any such restrictions. The fees on these loans have not been problematic to my knowledge and are driven by market forces or government requirements.

Discount Points

I am also grateful for the CFPB's willingness to discuss how it might define a "bona fide" discount point. As discussed at the meeting, any definition must be carefully crafted for a variety of reasons. These include that the exact amount of rate reduction for a point or a portion of a point on a particular loan can vary considerably depending on such circumstances as the rate and the present value of the dollar at the time of origination. Also, the actual reduction resulting from a discount point may differ depending on the particular pool to which the loan is assigned. While I agree that a discount point should result in a real reduction in rate for the consumer, requiring a specific amount of reduction in all cases would not be appropriate.

Additionally, I understand that the CFPB is also considering requirements regarding discount points under its Ability to Repay/Qualified Mortgage (QM) and Home Ownership and Equity Protection Act (HOEPA) rulemakings. It is important that the discount point definition is consistent across these various rules to avoid unnecessary and costly compliance burdens on small businesses.

Finally, once a well thought out plan is established in this or other areas of the rule, it would be counterproductive to add a "sunset provision(s)" to the rule. The costs of educating and training personnel as well as programming computer and operating systems will be very expensive for a company our size. It would be unreasonable to require the expenditure of these sums and then require even more expenditures to comply with yet another set of requirements.

Price Concessions

The discussion at the meeting on price concessions is another area where I believe the dialogue was constructive and I appreciate the CFPB's willingness to explore clarifications to the existing rules rather than merely retain a blanket prohibition against pricing concessions by loan originators. Pricing concessions benefit consumers, and in certain cases the loan originators by allowing them to close a deal. Thus, MLO's and not just small businesses should be able to assume these costs.

For example, mortgage loan originators should be allowed to make price concessions when they make calculation errors or other mistakes in good faith estimates. Under the current rules, a small business must simply absorb any resultant costs of the MLO's error, without charges to the MLO, and face the choice of whether or not to retain the MLO going forward. The inability to allow concessions by MLO's for sloppy work may force a draconian remedy and result in higher costs to a small business for the error and/or hiring and training a replacement MLO.

MLOs also should be able to offer price concessions to consumers with a reduction in their compensation for any unforeseen circumstances, including increases in third party costs as well as unforeseen changes in loan terms resulting from such matters as appraisals or home inspections. In these cases a consumer might be short of funds to close a loan so the MLO wants to give a credit to close the transaction. As it now stands, it is left to the MLO's employer to decide if it wants to absorb the costs of the entire concession or deny the consumer the loan. Allowing MLOs to offer concessions would allow them to close more loans at lower prices to the benefit of consumers.

Point Banks and Other Matters

We also spent time discussing point banks. While there may be a rationale for some companies to utilize point banks, I am concerned that these arrangements allow too much discretion to the loan officer to make pricing decisions that might benefit one borrower to the detriment of another — and that they might also present fair lending concerns. It seems to me that it would be better for the CFPB to focus its energy on clear rules regarding pricing concessions so that all consumers can benefit from lower prices in specific circumstances.

In a similar vein, some of the discussions on our follow-up calls suggested that brokers may be able to receive additional compensation on a loan transaction that may not be available to a MLO working directly for a lender. This would create further issues for smaller lender to retain and recruit MLOs and would be very damaging to small business.

Payments with Profits Derived from Mortgages

As a small mortgage banker whose entire profits are derived from mortgage lending, I am glad to see that the CFPB is considering proposals that would allow me to use these profits to help provide important benefits to my employees to ensure their future well-being. Specifically, I wholeheartedly support the CFPB's proposal that would allow a small business employer to use its profits to fund a qualified 401(k) plan for its MLO employees. Saving for retirement is an important priority and employer assistance in that regard should not be denied to MLOs while available to others in the mortgage industry.

As for the two alternative proposals in the outline that might also allow employer contributions to "non-qualified" plans, I urge the CFPB to ensure that any rule does not unfairly disadvantage smaller mortgage lenders by setting mortgage-related revenue limits for bonus programs. Unlike some of our competitors, smaller mortgage lenders are likely to be either exclusively or mostly reliant on profits from their mortgage business.

I think properly structured bonus plans based on or triggered by particular profit levels can reward productive employees in all parts of the mortgage loan origination business who serve consumers. Such plans do not tie compensation to any one particular loan or loan terms. Moreover, any remaining concerns about steering can be addressed in your forthcoming steering rules.

Proxies

I am grateful for the CFPB's comment that it is considering providing clear guidance on what is and is not a "proxy" for a loan term or condition. The guidance provided by the Federal Reserve barring "proxies" after the current rule was issued too broadly prevents differential compensation to an originator for particular loan types. There are several areas where compensation should be allowed to differ and where the potential for steering is nonexistent — for example refinances versus purchase loans. Compensation differences should also be allowed for loans which are funded versus table funded and which are provided under state agency programs, to name a few. Clear guidance in this area would better enable small businesses to tailor compensation to the actual revenue the company realizes for particular transactions.

I also appreciate that the CFPB is considering developing a workable definition for what would be considered a proxy going forward. I urge that any final rule include as simple a test as possible along with clear examples so that small businesses can efficiently comply.

MLO Qualifications

As an employer of state licensed MLOs that are subject to SAFE Act registration and licensing requirements, I applaud your efforts to level the playing field and ensure that all MLOs are well-qualified to serve consumers. Consumers are best served when they are dealing with well-trained and knowledgeable MLOs, no matter the regulatory status of the MLO's employer.

One concern I continue to have is the inability of a smaller company like mine to hire a well-qualified loan originator from a federally regulated depository without having him or her wait to satisfy state licensing requirements before going to work. For this reason, I strongly support the transitional licensing of originators from depositories pending their completion of any state requirements.

Tri Emerald Financial Group, Inc.

As I understand it, the CFPB has indicated that under its SAFE Mortgage Licensing Act rules states may permit transitional licensing and reciprocity for out-of-state licensed loan originators but that the current rules do not permit transitional licensing for depository MLOs. The lack of a viable transitional licensing regime disadvantages me versus depository lenders. Depositories may hire state licensed originators from companies like mine as well as originators working for other depositories and put them to work right away. As the CFPB moves forward with its qualification efforts and considers the effects of its current rules on small businesses, I hope it will treat transitional licensing for well-qualified depository employees as a high priority.

Thank you again for inviting me to participate in the small business review panel and for considering my comments both at the meeting and in this letter. If you need any additional information, I would be glad to help in any way I can. I can be reached at 949-297-1234 or via email mmcquiggan@triemerald.com

Sincerely,

Tri-Emerald Financial Group

Michael McQuiggan
Managing Partner

National Association of Independent Housing Professionals
N.J. Association of Professional Mortgage Originators
Illinois Association of Mortgage Professionals
Washington Association of Mortgage Professionals
New York Association of Mortgage Brokers

June 4, 2012

Hon. Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street N.W.
Washington, D.C. 20036

Re: SBREFA Review Panel Comments

Dear Director Cordray:

The National Association of Independent Housing Professionals (NAIHP), the New Jersey Association of Professional Mortgage Originators (NJPMO), the Illinois Association of Mortgage Professionals (IAMP), the Washington Association of Mortgage Professionals and the New York Association of Mortgage Brokers (NYAMB)... (collectively "Associations") appreciates the opportunity to comment on the proposals discussed during the May 23, 2012, SBREFA Review Panel.

The Associations understand and support the need for protecting consumers in the marketplace. However, in recent years, it appears a "trial and error" approach to regulating has replaced factual data, resulting in significant unintended consequences for both consumers and small business entities.

We acknowledge the CFPB only recently inherited an onslaught of certain rules and regulations from other federal agencies and have specific mandates under Dodd-Frank to finalize same. However, we strongly urge the CFPB to first carefully review the numerous independent studies, government data and expert testimony supplied by NAIHP and others, prior to proposing these regulations. This documentation, which has been in the possession of the CFPB for over a year, clearly establishes mortgage brokers, mortgage bankers and MLOs were NOT the cause of the housing crisis, nor was their compensation. These same documents were provided to the Federal Reserve Board (FRB) during the comment period for the MLO Compensation Rule. When that rule was finalized, we learned the FRB ignored these credible studies and instead chose flawed "surveys" to justify implementation of the rule. Industry warned the FRB the rule would create confusion for consumers and other substantial harm. Furthermore, because the FRB refused to submit a proper compliance guide and answer any questions in written form regarding compliance, industry still remains confused and in legal jeopardy.

Discount Points:

According to information provided by the CFPB, the agency is "considering its exemption authority to permit consumers to pay discount points to the creditor, provided: the discount points are bon fide..." and "the creditor also offers the option of a no-discount-point loan." While we applaud the CFPB for considering this exemption, the Associations believe another restructuring of originator compensation is an unnecessary burden and will create consumer confusion and further harm to small business. In addition, this is a disclosure issue and should be addressed under "Know before you Owe." The use of a simple line item on the new GFE/TIL, with a brief description of discount point(s) would provide clear and transparent disclosure. In addition, consumers already have options for obtaining lower interest rates. Under the current MLO Compensation Rule, borrowers are provided with several interest rate choices, which only differ by the amount of the borrower's credit. The lowest credit provides the lowest rate. These options have the same effect as paying discount points and are completely transparent.

Flat Fee:

The Associations are <u>opposed to a "flat fee" of any kind</u>, with respect to mortgage loan originator (MLO) compensation. Every level of the mortgage financing industry operates by basis points or percentage. Introducing a flat fee into the process is unworkable and will create substantial harm and confusion to consumers, especially low to moderate income borrowers. Small business will be harmed by a less competitive marketplace, dominated by larger players who aren't burdened by the same restrictions placed on non-creditors.

During the panel discussion, the SERS were unanimous in their opposition to a flat fee. The SERS represent a cross section of small business professionals with substantial expertise in originations, on both the broker and banker sides. Ignoring the recommendations of these industry experts will lead to a continuation of what have become "trial and error" regulations.

The Associations believe a level playing field can be achieved for the betterment of consumers, by requiring all originators, including both creditors and non-creditors, to disclose on the exact same forms and in the exact same manner. However, we doubt a level playing field is obtainable, unless regulators retreat from practices of the past, which hold creditors and non-creditors to different standards.

The Loan Originator Compensation Rule strictly prohibits brokers and their originators from being compensated by both the borrower and creditor (dual compensation). The Federal Reserve Board in proposing and finalizing this rule, considered this practice to be "unfair and deceptive." However, they continue to allow creditors to receive Service Release Premiums (SRP). While some have argued SRP is a function of the secondary market, the fact remains, SRP is built into a consumer's interest rate. Therefore, consumers who elect to use the services of a retail originator are in fact compensating the creditor twice. This double standard can be eliminated by allowing brokers to receive dual compensation. **As a point of clarification, dual compensation is NOT double compensation.**

Allowing brokers to receive dual compensation would help more consumers obtain mortgage financing. Many consumers, who are denied financing due to higher than acceptable ratios, would qualify if allowed to separate their origination costs between the rate and upfront fees.

In addition, during the legal challenge to the MLO Compensation Rule (National Association of Independent Housing Professionals v. The Board of Governors of the Federal Reserve System), the FRB in their answer to the complaint acknowledged there was no difference between wholesale and retail indirect compensation or yield spread premiums.

The Associations request the CFPB use their exemption authority to correct this double standard.

Incentives:

The MLO Compensation Rule and the Merkley amendment under Dodd-Frank were enacted to combat alleged unethical conducted, specific to mortgage brokers. Some regulators and Members of Congress, are still under the impression brokers have an incentive to steer borrowers into a loan with less-favorable terms. Brokers have been accused of this practice, as a way to receive additional compensation.

Most of the evidence provided by consumer groups and others were either anecdotal or depicted conduct by creditors, believed to be brokers. Countrywide Home Loans and Ameriquest are just two examples. If these two creditors were in business today, they would not be subject to the same rules and regulations as brokers or non-creditors. This misconception about brokers has created a bias toward them and has lead to an onslaught of rules and regulations, specific to brokers.

Another misconception is consumers lack the will and/or intelligence to understand the process and costs associated with their home loan, thereby rendering them "confused." Although, some consumers may be confused by the process, the majority of borrowers are not. The Associations believe it was unconscionable for the FRB to restructure the entire origination process to accommodate a small percentage of consumers, based on flawed testing.

The Associations further believe they have a less burdensome solution, which would establish a firewall to protect consumers from steering, while restoring consumer choices to the prime market. The Associations aver if the CFPB exercised its exemption authority under Dodd-Frank, by specifically exempting all prime/traditional and government loans from the MLO Compensation regulations, while retaining the restrictions for high cost and subprime mortgages, it would eliminate any incentive for placing a prime qualified borrower in a high

cost mortgage for the purpose of greater financial gain. We urge the CFPB to give serious consideration to this proposal.

MLO Qualification and Screening:

Most consumers believe there's no difference between banks and non-banks, with respect to mortgage financing. Therefore, consumers have the same expectations when it comes to consumer protections.

As you are aware, Dodd-Frank requires MLOs to be "qualified." When a consumer discloses their complete financial history and personal credit information to a MLO, they have certain basic expectations, specifically confidentiality, competency and trust. When a consumer works with any MLO, other than those employed by a federally chartered bank, they're working with an originator who has been vetted by government agencies and meets the standards established under the Safe Act. These same standards should be the definition for "qualified" under Dodd-Frank.

In the hope of bringing these MLOs up to the "qualified" standards, the CFPB is set to propose a rule that will allow MLOs employed by federally chartered banks to self certify on education and background investigations. During the SBREFA review panel held on 5/23/12, with the exception of one individual, all the panelists recommended all originators meet the same LICENSING standards. This includes federally chartered banks and non-profits.

Over the past several years, some federally chartered banks have proven to be less than trustworthy. In fact, they were responsible for the onerous mortgage products sold to consumers and for lax underwriting that approved unqualified borrowers. The consumer deserves to work with a qualified originator, who has been investigated and tested. Self certification is tantamount to having the fox guarding the henhouse.

During a recent call between the CFPB and major trade associations, the CFPB stated, they were proposing the self certification, because they didn't want to burden creditors. This comment has raised concerns with non-creditors and state chartered banks, as it clearly shows creditors continue to receive preferential treatment.

The Associations strongly suggest any individual, who originates a residential mortgage loan, regardless of where employed, should be subject to the Safe Act LICENSING standards.

Impact on the Cost of Business Credit:

At issue here, is NOT the impact on the Cost of Business Credit, but the cost of sustaining business operations. Every time regulators implement another rule or regulation, small business must re-educate personnel and re-tool software to accommodate the change(s). Lately, this has become a yearly occurrence.

Small business entities have the same expenses and overhead as larger industry participants. However, creditors lack the same restrictions imposed on brokers, which enables their institutions to easily meet operating expenses and grow their businesses. Furthermore, the Associations question the government's authority to not only limit or restrict a private company's compensation, but to selectively choose which entities must adhere to those restrictions.

Approximately 77% of small business mortgage professionals (brokers and their originators), have either gone out of business, and/or relocated to creditor institutions, as a direct result of rules and regulations that pick winners and losers.

The CFPB has long stated, competition and a level playing field will keep consumer costs down and promote fair lending. Following the recommendations of the undersigned Associations, will help accomplish these goals.

Should the topics under consideration by the CFPB become finalized rules, they will eliminate additional jobs and substantially reduce competition.

Although, the proposals discussed during the MLO SBREFA Review Panel, are well intentioned, industry considers same to be extreme measures for an already overregulated industry. Alternatives exist for accomplishing a less confusing origination process, without causing consumer harm and an additional burden on small business.

One of the most notable consumer advocates and creator of the CFPB recognizes the negative effects of "layering on one regulation after another." Statement by Elizabeth Warren:

"I believe that clearer, simpler regulation—regulation that is designed to work for small businesses and consumers—can help make markets work better. The financial crisis showed us what happens when regulations aren't enforced and giant Wall Street businesses have too little oversight. Deregulation certainly didn't help the small banks and credit unions that got swept up in that mess. <u>But we also can't keep layering on one regulation after another, adding more and more complexity, without assessing the effects on families and small businesses.</u>

We need a new approach that includes a serious assessment of the compliance cost of current regulations and whether adequate protection for consumers can be accomplished using cheaper, simpler approaches, or, in specific cases, if the regulations are so heavily layered on top of each other that some can be cut altogether." Elizabeth Warren

Again, the Associations appreciate the opportunity to comment on these important issues and look forward to working with the CFPB to resolve our differences.

Respectfully Submitted,

Marc S. Savitt, President
National Association of Independent Housing Professionals (NAIHP)

Brian Benjamin, President
N.J. Association of professional Mortgage Originators (NJPMO)

Carol Gardner, President
Illinois Association of Mortgage Professionals (IAMP)

Marty Lough, President
Washington Association of Mortgage Professionals (WAMP)

Maryann Pino, President
N.Y Association of Mortgage Brokers (NYAMB)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL ASSOCIATION OF INDEPENDENT HOUSING PROFESSIONALS, INC., Plaintiff, -v- BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, et. al. Defendants.	NO. 1:11 – cv – 00489 (BAH)
NATIONAL ASSOCIATION OF MORTGAGE BROKERS, Plaintiff, -v- BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, et.al. Defendants.	NO. 1:11 – cv – 00506 (BAH)

AFFIDAVIT OF SARAH BUTLER

I. Qualifications

1. I am a Senior Consultant at NERA Economic Consulting ("NERA") where I participate in the Intellectual Property, Antitrust, Product Liability, and Labor Practices. My business address is 1 Front Street, San Francisco, CA 94111. NERA is a firm providing expert economic, financial, statistical, and survey research analysis.

2. Among my responsibilities, I conduct survey research, market analysis and sampling analysis on a wide range of topics regarding business and consumer decision making, consumer choice, and consumer behavior. In the course of my career, I have conducted numerous studies for leading corporations and government agencies involving research on consumers, employees, and businesses. My work has been included in numerous lawsuits involving issues of trademark and trade dress, false advertising, secondary meaning, as well as antitrust and employment related litigation. I am a member of American Association of Public Opinion Research, the American Statistical Society, the Intellectual Property Section of the American Bar Association and the International Trademark Association (INTA).

3. I have also worked as a market researcher conducting focus groups, in-depth interviews and surveys of physicians and patients. I worked as an independent consultant conducting research for the Department of Environment and Rural Affairs in the United Kingdom. I have taught courses focused on or involving research methodologies in both the United States and Europe. I hold a Master's Degree from Trinity College, Dublin and another Master's Degree from Temple University.

4. I have substantial experience conducting and using surveys and focus groups to measure consumer opinions and behaviors regarding products and services including purchase processes, branding and positioning, market segmentation, product attributes, new product research, and communications strategies. During my career in academic and commercial research, I personally facilitated focus groups and conducted in-depth interviews. A copy of my current resume and testimony in the last five years is attached as Exhibit A.

5. NERA is being compensated for my services in this matter at my rate of $420 per hour. No part of NERA's compensation depends on the outcome of this litigation.

II. Documents Reviewed

6. As part of my work, I reviewed the Board of Governors Memorandum in Opposition to Plaintiffs' Applications for Temporary Restraining Order. I also reviewed the Macro International Report, "Consumer Testing of Mortgage Broker Disclosures," (hereafter "Macro Study") and the AARP PPI Data Digest entitled, "Experiences of Older Refinance Mortgage Loan Borrowers: Broker – and Lender – Originated Loans" (hereafter "AARP Study"). A list of the specific materials I relied upon can be found in Exhibit B.

III. Assignment and Summary of Conclusions

7. I was retained by counsel to determine whether the Board of Governors of the Federal Reserve System (hereafter "Board") can reasonably rely on the Macro Study and AARP Study to support its claim that disclosures are ineffective. Specifically the Board asserts,

> Based on experiences with consumer testing, and in particular the 2008 consumer testing conducted in connection with the proposed 2008 rule, the Board further concluded that disclosure alone is insufficient for most consumers to avoid the harm caused by these unfair practices.[1]

8. I understand that Macro International was commissioned by the Board to conduct a series of in-depth interviews with consumers.[2] I further understand that the results from the AARP Study the Board relied upon were survey findings from a larger study conducted by Market Facts for AARP's Public Policy Institute and the Federal Home Loan Mortgage Corporation.[3]

9. Based on my review of Macro Study and the AARP Study, I conclude that the Board should not rely on these results to determine the effectiveness of broker disclosures in the relevant consumer population.

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[1] *Board of Governors of the Federal Reserve System's Memorandum in Opposition to Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction* (hereafter "Board Memo") (p. 12).

[2] Macro International, Inc., *Consumer Testing of Mortgage Broker Disclosures,* dated July 10, 2008, (p. i).

[3] AARP PPI Digest, "Experiences of Older Refinance Mortgage Loan Borrowers: Broker- and Lender- Originated Loans," Number 83, January, 2003 (p. 2).

10. As discussed in detail below, the Board's use of these studies as evidence of the lack of disclosure efficacy in the total, relevant consumer population is unreliable for the following key reasons:

- The sample of 35 interviews in the Macro Study is not adequate to represent the relevant population of consumers;
- The Macro Study was not designed or intended to measure the effectiveness or impact of disclosures in the relevant population. Instead, this research was designed as a qualitative study for testing and revising model disclosure language;
- The selection process for the interviewees in the Macro Study likely created bias;
- The AARP study can only be used to represent the attitudes and opinions of borrowers 65 and older; and
- The AARP study does not specifically address the effectiveness of disclosures in any way.

IV. Background

11. I understand that after a series of hearings and reviews, the Board proposed a rule regarding broker compensation and disclosures in January 2008. This proposal included model language which would supposedly inform the consumer that he/she would pay the broker (even if creditor paid a portion of the compensation) and that the creditor's payment to the broker could influence what products a broker decided to offer.[4]

12. The Board tested this model language and cited to this testing in its March 18, 2011 memo. The remainder of this report explains my concerns with the Board's conclusions drawn from the Macro and AARP studies.

V. Macro Study Interviewees Do Not Represent the Total Population

13. The Macro Study included a total of 35 individuals in three cities, Washington D.C., Los Angeles, CA and Kansas City, KS. These interviewees were selected after an initial phone interview qualified them for participation. Participants qualified primarily because they

[4] Board Memo, p 14 – 15.

had obtained a mortgage or refinanced in the last two years. The Macro Study also, "...screened to include a range of ethnicities, ages, and education levels". [5]

14. The Board seems to suggest that these results can represent the entire population of U.S. consumers who have recently obtained or may obtain in the future a mortgage. This is not reasonable. It is not plausible to assert that the seven interviewees in Los Angeles can reliably represent the perceptions of all Californians or all mortgage holders on the west coast. Similarly, it is not meaningful to rely on the responses from nine individuals to represent the attitudes and opinions of all consumers who obtained a loan through a broker.

15. It is important to note that the Macro Study does not attempt to characterize or quantify any of the results by different demographic characteristics nor does the report assert that it selected its respondents to reflect the characteristics of the relevant population. Interviewees were selected to get a "mix" of people, but were not selected to be representative of the total relevant population in this matter.

16. The Macro Study was not designed to account for the variation across U.S. mortgage consumers nor was it designed to yield results which are projectable back to this population in any reliable or meaningful way.

VI. The Macro Study was Not Designed to Address Claims Made by the Board

17. The research methodology used in the Macro Study precludes the Board from using these results to make quantitative generalizations about the relevant population of consumers. The Macro Study is qualitative research and therefore, for a number of reasons, cannot reliably be used to support an assertion that disclosures are ineffective in explaining the role of a broker and broker compensation to all or a significant portion of consumers.

18. In the Executive Summary, the impetus for and purpose of the Macro Study is described as follows, "The Board contracted with Macro International to test this model language through a series of cognitive in-depth interviews with consumers. The goal of these interviews

[5] Macro Study, p. i.

was to assess how clearly the model language communicated the intended content, and to help the Board make any necessary revisions to make the language more effective".[6]

19. It is clear that the Macro Study was not intended to assess what percent of consumers would be informed by disclosures nor was the research conducted to determine the rate at which consumers in the relevant population were misled or deceived by any particular disclosure language or practice. Instead, the goal of this research was to gather in-depth feedback on multiple iterations of hypothetical broker documents so that revisions in the document language could be evaluated.

20. To achieve this research goal, Macro International conducted 35 in-depth interviews in three locations. The Macro Study is qualitative research intended to gather descriptive data, allowing for the research design and implementation to vary over time and across participants. This type of research is useful for determining the underlying meaning or processes behind particular thoughts or concepts, "Qualitative research thus refers to the meanings, concepts, definitions, characteristics, metaphors, symbols, and descriptions of things. In contrast, quantitative research refers to counts and measures of things". [7]

21. Quantitative research is intended to test a defined hypothesis with precision and some degree of statistical accuracy or numerical observation. Qualitative research can inform quantitative research (and vice versa) but these two broad methodological types typically address very different research needs. An appropriately designed quantitative study could have tested the Board's hypothesis that disclosures are not effective, but this was not the type of research conducted. Two specific ways in which qualitative research differs from quantitative research and how these differences undermine the Board's conclusions are discussed below.

A. Qualitative Studies Are Often Iterative

22. To support the Board's claims that a particular disclosure is ineffective in the consumer population, research would need to be designed that would allow for a comparison of the results across and between a representative sample of relevant consumers.

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[6] Macro Study, p. i.

[7] Berg, Bruce L. *Qualitative Research Methods for the Social Sciences.* Allyn and Bacon: Boston. 2001.

23. As already discussed, the 35 total interviewees are not sufficient to represent the consumer population. Additionally, in the Macro Study, the nature of the questions asked and the materials shown varied between the different interviewees. In total, nine different disclosure texts were used. The numerous iterations and different versions of the materials mean that the results from one day and location of testing are not comparable to another.

B. Qualitative Studies Do Not Quantify the Results

24. To understand the extent to which disclosures were not effective, the research would also need to be able to show that a significant or substantial portion of the relevant consumer population did not understand substantial or significant portions of the disclosures.

25. The Macro Study provides no specific counts or tallies of findings and no way to quantify the extent to which even the small number of 35 interviewees thought or understood particular things. For example, in round one of testing the results indicate that..., "about half of participants understood that brokers would not necessarily provide a loan with a low interest rate".[8] Similarly, in round two the report indicates that, "A few were not surprised that the conflict existed...".[9] The report does not state anywhere what "about half" or a "few" actually means or provide any measure of the statistical significance of these findings.

26. Similarly, the "Summary of Overall Findings" in the Macro Report is nuanced and does not allow for generalizations. The summary indicates that while some language seemed effective for some consumers, other aspects were not helpful for some other consumers. This may be a useful finding in terms of determining possible changes to the hypothetical documents, but does not indicate in any way the extent to which any of the disclosures tested (or any other disclosures) would or would not be effective in the general population.

[8] Macro Study, p. 7.

[9] Macro Study, p. 12.

VII. The Macro Study Results May Be Affected by Selection Bias

27. Potential participants for the Macro Study were contacted by telephone for the initial screening interview. It is unclear how respondents were selected or located for this initial call.[10]

28. The screening instrument asked a series of questions to qualify potential respondents and began with the following introductory text:

> Hello, I am calling on behalf of the United States Federal Reserve Board. As you may know, recently many Americans have had problems with their mortgages. In response to the recent mortgage issues, the Federal Reserve Board is sponsoring a series of consumer interviews in your area so that we can learn more about how people make decisions regarding their mortgages. We will use what we learn from these interviews to help improve the information consumers receive when they get a mortgage loan.[11]

29. This script signaled to the respondent that the sponsor of the study was the Board, but also framed the research in terms of "problems with mortgages". It is likely that the individuals willing to participate had a specific interest in the topic and may have had difficulties with their mortgage or difficulties with some aspect of their mortgage experience.[12],[13]

VIII. The AARP Study Only Represents Attitudes of Consumers 65 or Older with Refinance Loans

30. The AARP Study reports on results from a larger, quantitative study. The reported results apply to only those consumers who were 65 or older and had refinanced a loan between 1999 and 2000.

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[10] Often firms conducting qualitative research rely on lists of individuals who have previously agreed to participate or who express an interest in future or ongoing research. These lists are not random lists of the relevant population and may themselves be biased. There is no further detail in the Macro Study as to how potential interviewees were contacted for the initial screening interview so I cannot determine at this point the extent to which this may have had an impact.

[11] Macro Study, Appendix A p. A-1.

[12] Questions about the individuals' experiences were asked, but the results for these questions were not described in the Macro Study report, nor were they described in any detail in the Board's comments.

[13] For the ways in which interview topic can affect the participation and results, see Groves, R., Stanley Presser and Sarah Dipko, "The Role of Topic Interest in Survey Participation Decisions," *Public Opinion Quarterly* Vol.68: Issue 1, p. 2 – 31.

31. The Board cites to the results of the AARP study to assert that consumers rely on brokers and that disclosures would be ineffective because of this reliance,

> The Board concluded, based on its experiences with consumer testing and other information, that disclosures were not a reasonable alternative because they could not sufficiently explain to even well-informed consumers the complexities of yield spread premiums and how they created an incentive for loan originators to increase consumers' costs. This information included both the 2008 Macro Study as well as the findings of a 2003 survey of older borrowers who had obtained prime or subprime refinancing, which indicated the degree of reliance that consumers had on their loan originators to find them the best rate.[14]

32. While the AARP study appears to be an appropriately designed quantitative study,[15] the reported results are limited to only those individuals who refinanced and were 65 or older between 1999 and 2000. These results cannot reliably inform the extent to which first time buyers or consumers refinancing under the age of 65 relied on brokers.

IX. The AARP Study Does Not Have Any Data on Disclosures

33. The AARP Study finds that 70 percent of the borrowers 65 or older surveyed relied on their broker "a lot" to find the best mortgage.[16] There is no indication as to how precisely this question was asked and how respondents interpreted "rely" and "a lot", therefore it is unclear precisely how this result can be used.

34. More importantly, this finding provides no information about the potential effectiveness of disclosures with this population. It does not appear that this study showed consumers any disclosure materials or asked questions about the potential effectiveness or attitudes towards disclosures.

[14] Board Memo, p. 14 – 15.

[15] I cannot evaluate the overall reliability of this study without additional documents, including the questionnaire.

[16] AARP Study, p. 3.

X. Conclusions

35. The Board cites to two studies as evidence informing its assertion that disclosures are not an effective means to explain broker compensation to consumers. The Macro Study is qualitative research consisting of 35 in-depth interviews. The AARP Study is a quantitative study of consumers 65 and older who refinanced a loan between 199 and 2000. Neither of the studies cited are sources which can reliably support the conclusion that disclosures are not effective with the relevant population of consumers.

36. The Macro Study was not intended to measure the effectiveness of disclosures in the total population. The research was designed to provide qualitative feedback on particular wordings in hypothetical disclosure documents. The way in which the research was structured; a limited number of in-depth, iterative interviews conducted with a non-representative group of individuals, means the results from this study cannot support conclusions about the total relevant population at issue.

37 The AARP Study, while a quantitative study, is limited to only a portion of the relevant consumer population. The results are limited to individuals who refinanced a loan between 1999 and 2000 and were 65 years or older at the time of the interview.

38. Additionally, the AARP Study does not provide any information about the effectiveness of disclosures and includes only one, somewhat ambiguous, result on the extent to which surveyed individuals "rely on" their brokers.

39. For the above reasons, the Board cannot reasonably rely on the results of these two studies to inform conclusions about the extent to which disclosure would or would not be effective sources of information for the relevant population. My opinions and conclusions as expressed in this report are to a reasonable degree of professional certainty. My work is ongoing and my opinions will continue to be informed by any additional material that becomes available to me.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 24, 2011.

Sarah Butler

Exhibit A

NERA
Economic Consulting

Sarah Butler
Senior Consultant

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SARAH BUTLER, M.A.
SENIOR CONSULTANT

Ms. Butler is an expert in survey research, market research, sampling, and statistical analysis. She has applied her expertise in a wide range of litigation and strategic business cases. Her litigation and project experience includes survey research, market research, the design of samples, and the statistical and demographic analysis of large data files in a number of areas including:

Intellectual Property

- Trademark and Trade Dress Infringement: Design, analysis, and critique of surveys used to measure consumer confusion, secondary meaning, and dilution in trademark and trade design infringement cases.

- False and Misleading Advertising: Design, analysis and critique of surveys used to measure consumer perceptions and the materiality of advertising claims.

- Patent Infringement: Sample designs and surveys to the value of patented feature of a larger product and to establish rates at which infringing material exist in populations of products.

- Copyright infringement: Sampling plans and analysis of the rates of infringing material in populations of shared information (such as through websites or other sharing medium).

Antitrust

- Design, analysis and critique of surveys and other market research used as evidence of consumer purchasing and switching behavior in the areas of CPG, entertainment, automobiles, public transportation, sports and consumer electronics.

- Design, analysis and critique of surveys used to demonstrate consumer price sensitivities and willingness to pay.

Mass Torts/Class Actions

- Conduct surveys and design samples providing evidence on issues of commonality and consumers' awareness of key documents or facts and reliance on representations.

- Analyze large databases of claims files to generate invoices, estimate future liabilities and calculate policy shares for insurer liabilities in asbestos, tobacco and pharmaceuticals.

- Design, analyze and critique surveys and sampling plans used to evaluate employment and promotion records. Review and design surveys for purposes of estimating key facts in labor class actions including time to complete activities, exempt/nonexempt activities, and meal and rest break issues.

Prior to joining NERA, Ms. Butler worked in market research, conducting survey research, focus groups and in-depth interviews. She has recently completed an article for the ABA Trial Practice Newsletter and has written on trademark infringement and the internet and surveys in litigation.

Education

Temple University
ABD Applied Sociology, coursework, exams and dissertation proposal complete (2005).

Temple University
M.A. Sociology, (2000).

Trinity College, Dublin Ireland
M.Phil. (1997).

Wellesley College
B.A. Sociology and History (with honors). (1995).

Professional Experience

July 2006	**Senior Consultant** NERA Economic Consulting San Francisco, California, USA
Oct 2005 – May 2006	**Special Consultant** NERA Economic Consulting London, England

Jan 2003 – Oct 2005	**Senior Analyst - Consultant** NERA Economic Consulting Philadelphia, Pennsylvania, USA
2002 - 2003	**Consultant** Integrated Marketing Associates Bryn Mawr, PA, USA
Oct 1998 - Jan 2002	**Research Associate – Analyst** NERA Economic Consulting Philadelphia, Pennsylvania, USA
Sept 1998 – May 2003	**Adjunct Professor** Temple University Philadelphia, Pennsylvania, USA
Jan 1997 – Feb 1998	**Manager of Member Research** Society for Neuroscience Washington DC, USA

Expert Analysis and Testimony

Sciele Pharma, Inc. vs. Brookstone Pharmaceuticals, L.L.C. a/k/a Acella Pharmaceuticals, United States District Court, Northern District of Georgia, Atlanta Division. Expert report on issues of false advertising and survey used as evidence of misleading and material claims. [Expert Report: September 22nd, 2010. Deposition: December 1st, 2010]

PamLab, L.L.C. and Metabolite Laboratories, Inc. vs. Brookstone Pharmaceuticals, L.L.C. a/k/a Acella Pharmaceuticals, United States District Court, Eastern District of Louisiana. Expert report on issues of false advertising and survey used as evidence of misleading and material claims. [Expert Report: September 14th, 2010. Deposition: September 29th, 2010]

Confidential client. Design and implement survey used to determine market shares and price elasticity for brands of hair relaxers [2010].

DirecTV, Inc. vs. Elephant Group, Saveology.com et al., United States District Court, Central District of California, Western Division. Consulting expert on likelihood of confusion in a trademark dispute over sale of trademarks as keywords. [2010]

Confidential client. Design and implement survey used to establish family of marks claim for not-for-profit agency [2010].

ConsumerInfo.com vs. J Willims and Edirect, United States District Court, Central District of California, Western Division. Design and implement survey testing confusion and misleading advertising in a trademark dispute [2010].

Rosetta Stone LTD vs. Google, Inc. United States District Court, Eastern District of Virginia, Alexandra Division. Assist in design of a likelihood of confusion survey with regard to trademark or branded keyword searches using the Google search engine. [2010]

Confidential client. Advise and consult on rebuttal strategies in internet keyword case [2009].

Confidential client. Design and implement research used in false advertising suit for pre-paid international telephone calling cards [2009].

Mary Kay, Inc. vs. Amy Weber, Scott Weber, and Touch of Pink Cosmetics, United States District Court, Nothern District of Texas, Dallas Division. Consulting expert on likelihood of confusion with regard to sale of branded products on a website [2008].

American Airlines, Inc. vs. Google, Inc. United States District Court, Northern District of Texas, Fort Worth Division. Consulting expert in likelihood of confusion with regard to trademark or branded keyword searches using Google [2008].

Rocky Brands, Inc. and Rocky Brands Wholesale, LLC. vs. Glen Bratcher, Westwood Footwear and Accessories, LLC and Nantong Hong Yi Wang Shoes Co., LTD., United States District Court, Southern District of Ohio, Eastern Division. Consulting expert on likelihood of confusion with regard to trade dress of footwear [2008].

Jack Branning et al. vs. Apple Computer, Inc. Expert analysis on issues of sampling records in a consumer class action. [Testimony before judge, April 2008].

Real Estate Disposition Corporation vs. National Home Auction Corporation, United States District Court, Central District of California. Consulting expert report on survey addressing materiality, confusion and misleading advertising [2008].

Faloney et al. vs. Wachovia Bank, United States District Court, Eastern District of Pennsylvania. Assist in reports on issues related to common representations allegedly made to consumers in a precertification class action lawsuit [2008].

Redwood Fire and Casualty Insurance Company vs. Personnel Plus et al. Superior Court of California, County of Los Angeles. Assist in expert report and sample design to estimate workman's compensation premiums from employee payroll records [2008].

BAA Scottish Airports Market Inquiry, U.K. Competition Commission. Expert review of sample design and survey commissioned by the U.K. Competition Commission to determine price sensitivities and potential switching to alternative airports for an inquiry into BAA ownership of airports in Glasgow and Edinburgh [2008].

Lulu Enterprises, Inc. vs. Hulu, LLC a/k/a N-F Newsite LLC et al. Eastern District of North Carolina, Western Division. Design qualitative research to evaluate consumer confusion between two website names in trademark infringement case [2007].

Federal Trade Commission vs. Whole Foods Market, Inc and Wild Oats Markets, Inc., United States District Court, District of Columbia. Assist in preparing rebuttal report on sampling and survey design issues in an antitrust proceeding related to a preliminary injunction to block a proposed merger of Whole Foods Markets Inc and Wild Oats [2007].

Zill et. al vs. Sprint Spectrum L.P. and Wireless Co. LP, Superior Court of California, County of Alameda. Review the sampling, survey design, survey implementation, and the use of contingent valuation survey to estimate damages in a wireless communications class action. Design focus group guides and telephone survey to understand consumer perception of handset locking [2007].

CRP Project 4c/d Water Framework Directive Benefits Study Department for Environment, Food and Rural Affairs – Expert member of multistage study involving consulting firms, corporate interests and academics. Survey expert asked to design cognitive interview guides, focus group guides and stated preference questionnaire to test consumer willingness to pay for environmental improvements to water bodies across the U.K. Results used to inform policy decisions on how to comply with EU regulations [2006 – 2007].

Hell's Kitchen Neighborhood Association, Martin Treat, Meta Brunzema, Dana Turner, Daniel Gutman, Rudolf Samandarov and Madison Square Garden, L.P., vs. New York City Department of City Planning, New York City Planning Commission, the City of New York, the City Council of the City of New York, and New York Metropolitan Transportation Authority Supreme Court of the State of New York County of New York. Evaluated a survey and submitted an affidavit regarding the construction of a stadium in the Hell's Kitchen section of New York City and the possible resultant traffic congestion [2005].

Energy Brands, Inc. United States Patent and Trademark Office, Trademark Examining Division. Assist in design and conduct of a survey to measure the extent to which consumers perceive Vitamin Water to be a brand name [2005].

Diamond Triumph Auto Glass, Inc. vs. Safelite Glass Corporation U.S. District Court, Middle District of Pennsylvania. Consulting expert for the design and implementation of a survey to measure the extent to which consumers are aware of and state a preference for a particular auto glass shop. Assist in sample design and analysis of telephone calls to estimate the extent to which stated glass shop preferences were honored [2004-2005].

AT&T Corp., vs. Microsoft Corporation U.S. District Court, Southern District of New York Consulting expert in two surveys conducted to examine consumer usage of various features on their personal computers' operating systems [2004].

V&V Vin and Sprit Aktiebolag, d/b/a the Absolut Company, Formansvagen 19, SE-117 97 Stockholm, Sweden vs. Cracovia Brands, Inc., 5632 N.N.W. Highway, Chicago, IL 60646, and Przedsiebiorstow Polmos Bialystock S.A., ul. Elewatorska 20, 15-950 Bialystock, Poland U.S. District Court, Northern District of Illinois. Reviewed and critiqued a survey of vodka purchasers that was meant to assess the likelihood of confusion between two brands of vodka [2004].

Real Networks vs. Microsoft Corporation. Assist in design and implementation of surveys in the European Union and the United States to understand home computer users' media player preferences [2004].

Metro-Goldwyn-Mayer Pictures, Inc. vs. Mark Brown, Beauty Shop LLC, Renegade Pictures, Inc. and C4 Pictures, Inc. U.S. District Court, Central District of California. Assist in design and implementation of a survey to determine movie-goers associations with the work Barbershop and whether or not they could name a movie or identify the plot of a movie with the work Barbershop in the title [2003-2004].

CSC Holdings, Inc. vs. Yankees Entertainment and Sports Network, LLC. American Arbitration Association. Assist in design and implementation of three surveys to estimate the sizes of the cable television viewing audiences of New York Yankees games [2003 - 2004].

Nitro Leisure Products, LLC, a Delaware Limited Liability Company, d/b/a Golfballsdirect.com and Second Change vs. Acushnet Company, a Delaware Corporation. U.S. District Court. Southern District of Florida. Reviewed and critiqued an internet survey conducted of golfers concerning possible confusion caused by the resale of refurbished golf balls [2003].

Broadway Theater Corp. vs. Buena Vista Pictures Distribution, Inc., Columbia Pictures Distribution, Inc. and Dreamworks SKG. et al. State of Connecticut Superior Court. Assist in design and implementation of a survey to examine movie attendance at seven theaters in the New Haven, Connecticut area [2003].

Papa John's Pizza. Assist in design and implementation of a survey to assess the likelihood of consumer confusion between various pizza products [2002].

United States of America vs. Broadcast Music Inc, et. ano. U.S. District Court, Southern District of New York. Designed and analyzed a sample of radio music plays to estimate royalty shares for publishing societies [2002].

Eolas Technologies, Inc. v. Microsoft Corporation, Inc. U.S. District Court, Illinois Eastern Division. Assist in design and implementation of a survey to measure the impact of altering Internet browser technology [2002].

AM General and General Motors Corporation vs. DaimlerChrysler Corporation U.S. District Court, Northern District of Indiana. Assist in design and implementation of a survey to estimate the secondary meaning of Jeep grilles [2002].

Federal Trade Commission v. Libbey, Inc. et al. U.S. District Court, District of Columbia. Designed and conducted a sample of glassware products to determine manufacturing country of origin and cost [2001].

Office of the Attorney General for the State of New Jersey. Sampled drivers on New Jersey highway to estimate their racial composition [1999].

Gillette Razors. Designed and conducted a survey regarding possible customer confusion over razor blade advertisements [1999].

R. Griggs Group Limited vs. Sketchers USA Inc. Designed and conducted a survey regarding customer confusion between sandal designs [1999].

Publications and Presentations

"Meeting the New Standards for Reasonable Royalties," (February, 2011) with Mario Lopez. *Law360.*

"Survey Evidence in False Advertising Cases," (Winter, 2010). *The Antritrust Trial Practice Newsletter.*

"The Use of Surveys in Litigation: Recent Trends," (April, 2010) with Kent Van Liere. National Economic Research Associates, Inc.

"Emerging Issues in the Use of Surveys in Trademark Infringement on the Web," with Kent Van Liere. Paper published in the *Advanced Trademark & Advertising Law Conference* proceedings, September 2007, Seattle, WA.

"An Analysis of the Hypothetical Situations in Willingness to Pay Studies." Paper presented at the July 2006 Thematic Seminar "Quality Criteria in Survey Research," hosted by World Association for Public Opinion Research, Lake Como, Italy.

"Use of Surveys in Intellectual Property Disputes," (2005) with Eugene P. Ericksen, in *Economic Approaches to Intellectual Property Policy, Litigation and Management Issues,* Gregory K. Leonard and Lauren J. Stiroh (eds.) National Economic Research Associates, Inc.

"Response Rate Standards: Lessons from the 2004 Presidential Polls." Paper presented at the 2005 Annual Meeting of American Association of Public Opinion Research, Miami Beach, FL.

"Using Surveys to Determine Damages in Patent Infringement Cases" presented at *Calculating and Proving Patent Damages* workshop, March 2004 Charlotte, NC.

"Using Surveys to Determine Damages in Patent Infringement Cases" presented at *Calculating and Proving Patent Damages* workshop, January 2004 San Diego, CA.

"Using Surveys to Determine Damages in Patent Infringement Cases" presented at *Calculating and Proving Patent Damages* workshop, June 2003, McLean, VA .

Professional Associations

Member, American Association of Public Opinion Research and World Association for Public Opinion Research, Member, American Statistical Association

Member, American Bar Association, Intellectual Property Section

Member, International Trademark Association (INTA), Reviewer for *Trademark Reporter*

Exhibit B

Documents Relied Upon

1. *Board of Governors of the Federal Reserve System's Memorandum in Opposition to Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction,* dated March 18, 2011.

2. Macro International, Inc., *Consumer Testing of Mortgage Broker Disclosures,* dated July 10, 2008.

3. AARP PPI Digest, "Experiences of Older Refinance Mortgage Loan Borrowers: Broker- and Lender- Originated Loans," Number 83, January, 2003.

4. Berg, Bruce L. *Qualitative Research Methods for the Social Sciences.* Allyn and Bacon: Boston. 2001.

5. Groves, R., Stanley Presser and Sarah Dipko, "The Role of Topic Interest in Survey Participation Decisions," *Public Opinion Quarterly* Vol.68: Issue 1, p. 2 – 31.

C. The Loan Originator Rule

1. The Role of Loan Originators and the Yield Spread Premium[1]

As the mortgage loan market currently operates, consumers seeking mortgage financing secured by a dwelling work with a loan originator. Loan originators fall into two categories, which correspond to the two ways in which creditors that fund loans deliver financing to consumers. In the so-called "retail channel," creditors deal directly with consumers through the creditors' own employees, known as loan officers, to arrange the desired financing. Many creditors also have agreements with independent loan originators to deal directly with a consumer to arrange the financing the consumer is seeking. These independent originators are known as mortgage brokers, as they are not the creditor's employees and generally have arrangements with multiple creditors from which they may obtain financing on consumers' behalf. In this category, creditors offer financing terms to brokers and the brokers choose which creditors' loan products and terms to deliver to a particular consumer. Thus, creditors refer to this type of lending as the "wholesale channel": creditors offer mortgage financing at wholesale to brokers, and brokers sell the loans at retail to consumers. Mortgage brokers may be individuals, just like creditors' loan officers, or they may be brokerage firms that in turn employ their own individual loan officers. (Such individual employees of a mortgage brokerage firm also may be referred to as mortgage brokers.)

Mortgage creditors typically offer to loan originators a range of interest rates at which they are willing to extend credit to a particular consumer, given the specific details of the proposed transaction (such as loan-to-value ratio and property type) and the consumer's credit

[1] *See generally, Real Estate Settlement Procedures Act: Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers*, 67 Fed. Reg. 49134 (July 29, 2002), for a discussion of the roles of mortgage brokers and lenders and the compensation arrangements prevalent in the market.

risk profile. The range generally identifies the so-called "par rate" – the rate at which the creditor is able to offer credit and "break even" (including the creditor's desired profit margin), based on the creditor's current cost of funds. If a consumer wants a loan below the "par rate," the creditor will require the consumer to pay "discount points" up front to buy down the interest rate. Discount points are calculated as a percentage of the loan amount and represent the present value of the extent to which the future interest stream on a particular loan (the loan's "yield") falls below the current par rate.

When the interest rate offered exceeds the par rate, the opposite occurs. The loan will generate a "yield spread premium," also calculated as a percentage of the loan amount, which represents the present value of the extent to which the loan's yield *exceeds* the current par rate. Put another way, a yield spread premium is a form of "negative discount points." The lower the rate on the loan, the more points are required to compensate the lender for the lower yield; conversely, the higher the rate, the larger the yield spread premium generated by the loan.

In the retail channel, where the creditor deals directly with the consumer, the creditor generally controls yield spread premium funds, sometimes applying them toward the consumer's closing costs and sometimes keeping them as additional profit – and sometimes some of each. When the creditor retains some or all of the yield spread premium, it often pays a portion of it to its loan officer as compensation for originating the loan. In the wholesale channel, the mortgage broker usually controls any yield spread premium and may apply the funds generated in any or all of the same ways that a creditor may apply them in a retail transaction, including keeping the yield spread premium as compensation for originating the loan. When the yield spread premium is used to compensate the loan officer or mortgage broker's employee, that employee has a personal incentive to deliver a loan with a high interest rate in order to maximize his or her own

Fed admits NO difference between Banks & Brokers regarding YSP!

compensation. This is in direct conflict with the consumer's interest in paying the lowest interest rate possible for which the consumer qualifies.

Consumers generally are unaware of these loan-pricing mechanics, especially on the above-par end of the range of rates where yield spread premiums are generated. Loan originators typically do not disclose to consumers the ranges of rates offered by particular creditors or the yield spread premiums generated by particular rates. They simply provide a loan to a consumer at a selected rate (together with any discount points), and the consumer generally does not know where that rate falls in the currently available range. Although many consumers are familiar with paying discount points to buy down their interest rate, consumers are generally unaware of the existence of yield spread premiums, how those amounts are determined, and how the funds are used. In addition to any compensation a mortgage broker may receive from a creditor in the form of a yield spread premium, the broker often charges the consumer a separate fee for arranging the loan; because the consumer is generally unaware of the yield spread premium, the consumer often believes this direct fee is the broker's only compensation for its origination services.

2. <u>The Board's Efforts to Address the Problem of Yield Spread Premiums</u>

Prior to its issuance of the Loan Originator Rule, the Board had spent several years attempting to address concerns regarding the effect on consumers of loan originator compensation based on the yield spread. In the summer of 2006, the Board held public hearings on consumer protection issues in the mortgage market in four cities. During the hearings, consumer advocates urged the Board to ban yield spread premiums because of their potential to create a conflict of interest between loan originators and consumers. 75 Fed. Reg. 58509, 58510.

Bank Market Share 90%
Broker " " 10%

In light of the information gathered during the 2006 public hearings, and the rise in mortgage defaults that began sooner after, the Board held additional hearings in June 2007 to explore how the Board might use its UDAP authority to prevent abuses in the subprime lending market while still preserving responsible lending. 75 Fed. Reg. 58510. While the Board did not expressly solicit comment on mortgage broker compensation at this hearing, commenters continued to raise concerns about the fairness and transparency of creditors' practice of compensating brokers out of the yield spread premium. They stated that consumers are not aware of these payments from creditors to brokers, or that such payments increase consumers' interest rates. They also stated that consumers may mistakenly believe that a broker seeks to obtain the best interest rate available for them. Several creditors and creditor trade associations advocated requiring the broker to disclose whether the broker represented the consumer's interests, and how and by whom the broker was compensated. *Id.*

3. <u>The 2008 Proposed Rule and Testing of Consumer Disclosures In Connection with Mortgage Broker Compensation</u>

To address the heightened concerns regarding the conflict of interest presented by mortgage broker compensation, the Board proposed a rule in January 2008 (the "2008 proposed rule") that would have, among other things, prohibited a creditor from paying a mortgage broker any compensation greater than the amount that the consumer had previously agreed in writing that the broker would receive. 73 Fed. Reg. 1672, 1698-1700 (Jan. 9, 2008). The proposed rule provided model language for the planned written agreement, which would be entered into by the mortgage broker and the consumer before the broker accepted the consumer's loan application and paid any fee in connection with the transaction, that was intended to make the proposed disclosures in a manner that was clear and understandable to consumers. The model language proposed to disclose to the consumer both that he or she would ultimately bear the cost of the

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June 11, 2012

Honorable Richard F. Cordray
Director
Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, D.C. 20552

Re: SBREFA Panel for Residential Mortgage Loan Origination Standards Rulemaking

Dear Mr. Cordray:

I would like to thank you for the opportunity to participate on the SBREFA panel for Residential Mortgage Loan Origination Standards Rulemaking which was recently held. My bank, Security Bank, SB is a 106 year old savings bank, located in Springfield Illinois. Being a traditional savings bank (formerly a savings and loan association); we have always been a residential mortgage lender. Being over 100 years old, also means that my institution has weathered many financial crisis's, by doing sound mortgage lending, and taking care of our customers. We are a mutual institution, which as you, means that we are owned by our depositors and not public shareholders. As such we can operate the bank focused on what's good for our customers over the long term rather than strive for short term gains that may put higher quarterly earnings over doing the right thing for our customers.

As I stated above, we are and always have been a residential mortgage lender. We make mortgage loans and hold them in portfolio, and we also sell loans to Freddie Mac. We service all mortgages we originate. We strive to provide our customers high quality service while offering competitively priced affordable mortgage loans. Our mortgage loan officers are just that, salaried officers of the bank and not solely commissioned salesman who live and die by how many loans they close each month. Our mortgage officers wear multiple hats in the bank, and are motivated and compensated to do what's in the best interest of our customers and not what drives up fees and charges. In fact, we work to keep our fees low, so our loans can remain affordable for our customers. Good common sense underwriting, high quality customer service, low fees, have allowed Security Bank, SB to remain a key player in our local market over the years. However, I am concerned that additional rules which require system upgrades, or additional specialized training and compliance costs will make it more difficult for us to continue to operate. We will have to raise the cost of credit which will affect the availability of credit, especially in our market where smaller loan amount customers could end up paying considerably more for a mortgage loan, making it more difficult for them to qualify for a home loan.

As requested, the following are comments on some of the proposals discussed during the SBREFA panel on May 23rd. I offer these comments along with my invitation to you or your staff to visit my bank and see first-hand how we make mortgage loans and serve our customers.

Limitations on upfront payments of discount points, origination points or fees

As a matter of practice we always offer the borrower a "no discount point "interest rate option, and generally our customers prefer no-point loans to paying discount points. However, there are some borrowers that do wish to pay discount points to reduce their interest rate. Also, sometimes we have to charge discount points when terms of the loan change; such as a higher Loan-to-Value ratio as a result of a lower appraised value. The GSE's charge loan level price adjustments (LLPAs) based on LTV, and/or credit score. In this case, the discount point would be charged to cover the cost of LLPA and not necessarily to reduce the interest rate on the loan. Also, the customer is always offered the option for a higher interest rate with no points in this scenario. Additionally, the relationship of interest rate change to the amount of discount points paid is very fluid and is driven by changes in the bond and MBS markets. These changes can occur frequently and they are out of the control of the lender. So mandating the lender reduce the interest rate by a certain amount for every discount point paid would be unworkable. For mortgage loans that we hold in portfolio we may charge a discount point to cover our prepayment exposure depending on the type of loan. Discount points are clearly indicated on the Good Faith Estimate, as well as the HUD-1 settlement statement. We explain all these items to the customer, as well as any changes that occur during the processing of the loan. Our mortgage officers are in constant communication with the borrower to make sure they are comfortable with the mortgage loan they are applying for and can afford it.

Security Savings currently only charges a flat $450 origination fee on all mortgage loans we originate for confirming conventional purchase or refinance. Most lenders in our market charge about the same and it seems to work fine. However, this may not work well in all markets and may lead to higher costs for smaller loan balance customers, than the 1% origination fee. Our fee is based on our costs, but my banks cost structure may be very different than that of mortgage banking company or a larger bank. Similar to discount points, we explain our origination fee and all other fees thoroughly to our customers, and we encourage them to compare us to other lenders in town.

MLO Compensation that Varies Based on Loan Terms (other than Principal)- Compensation based on Profits derived from the Mortgage Business.

We were very pleased with the recent guidance released by the CFPB permitting MLOs to participate in qualified profit sharing plans and 401K plans. These are key employee benefits for a small institution like mine and help us attract and retain high quality employees. This guidance also impacted my ability to participate in these plans as well. In small institutions it is very common for the CEO, COO or other senior bank officers to originate all types of loans including mortgage loans. We have all been registered as required under the S.A.F.E. act and have a NMLS number. This situation is especially true in Thrift institutions like mine where we are primarily a home lender. And while the majority of my banks revenue comes from mortgage lending, it's not all from the origination of new mortgages, but also from the servicing of those mortgages over time. As such no one mortgage officer or mortgage loan will dramatically affect the revenue of the bonus pool, but rather their efforts will contribute to the long term success of the bank and they as well as all bank employees should be able to share in that success. I urge the CFPB to make the guidance for qualified plans permanent and to extend that approval to non-qualified plans for small, federally insured, financial institutions regardless of the contribution of mortgage revenue to the plan. Our regulator reviews all of our compensation plans on a regular basis and we maintain detailed records of all compensation paid to all employees.

Pricing Concessions

While this situation does not occur often, it would be very helpful to be able to cover any unexpected last minute settlement charges out of the banks origination fee. This would prevent having to re-disclose and possibly delay settlement which could end up costing the borrower more money because of expiring interest rate locks or monetary penalties for failure to close on time. Plus, it's just good customer service!

MLO Qualification and Screening Requirements

This topic created a lot of discussion from the panel. And there is a clear difference of opinion between the insured depositories and the non-banks. And while I can understand their concerns about the cost and ongoing education requirements of NMLS licensing for mortgage originators, I am strongly against requiring my mortgage officers, to take the exact same training and testing that non-bank MLOs are required to do.
As a regulated depository institution, we are required to perform background checks on **all employees**, not just mortgage officers. We are also required to provide ongoing training to all bank employees, including mortgage officers, in compliance, BSA, AML, ECOA, RESPA, TILA, FCRA, etc. All of this training requires the employee to pass a test on the subject, and our compliance officer tracks completion, pass/fail by employees and provides those records to our regulator when we are examined. If a mortgage officer can't pass these tests, they are let go. This training costs my bank $20,000 per year/per employee and is over 50 hours. Over and above this expense, my bank has a full time trainer and compliance officer to keep up with the changes and to ensure compliance, at a cost of over $100,000 per year. My mortgage officers are very well trained, and since they wear multiple hats at the bank, it would be costly in terms of time and money to separate out their training from other bank employees.
While the non-bank lenders are saying the current system is unfair, it wasn't the community bank loan officers that were deceiving borrowers, changing settlement charges at the last minute or up-charging them to make bigger monthly commissions. Unfortunately though my bank and other community banks now have to pay the price with additional regulations to prevent the abuses that we didn't cause. I strongly urge the CFPB to not impose additional training or screening/qualification requirements on community banks. It's not needed, it's costly, and will not improve service to consumers.

Thank you again for the opportunity to participate in this panel. I hope the CFPB will find my comments useful and will consider them as you move forward with the rulemaking process. If you have any questions, or would like to discuss these issues further, please contact me.

Sincerely,

Robin Loftus
Executive Vice President, COO
Security Bank, S.B.

CFPB answers

I. Dual Compensation

1. % MLO compensation from following:
   a. Consumer—0%
   b. Brokerage---0%
   c. Creditor—100%
   Sidebar—consumer always pays no matter how you regulate things.
2. % purchased points to lower rate
   a. Out of 152 Fannie loans processed, only a few people wanted to buy the rate down (2-3). The buy down dropped the rate 1/8th of a point per 1% fee. Only 1 member has requested to do this in 2012 out of 69 loans processed.
3. We do not market to the member to buy down the rate. They are low enough that it really doesn't pay for the member to buy it down. There is not enough of a savings to the member to make it worth their while. If the rates start to climb back up into the 6%-7% range, this option may be feasible again to inform the member of the possible savings.
4. We do not charge origination points on our loans BUT we have to charge loan level pricing points that Fannie Mae requires that is listed as origination points. If the exemption isn't implemented, it forces the majority of Fannie/Freddie mortgages being processed to either increase the interest rate on the loan to offset the lose from fees/points not getting paid upfront or not compensating an employee that is doing their job.
5. Prohibited upfront pmts. for credit paid compensation problems.
   a. Losing the upfront fees would cause the credit union to increase the loan interest rate in order to offset the immediate lose it would have from having to pay out to other vendors for their services to complete the mortgage.
6. Fees that vary by loan amount: Title insurance, realtor costs (% of sale amount), interest due, Fannie Mae loan level pricing fees, PMI insurance if needed……Fees that don't vary: flood, processing, recording, appraisal, credit report, property tax service, property taxes, homeowner's insurance It doesn't matter how large the loan amount is for processing and servicing the loan, those expenses are the same.
7. Extra requirements for upfront fees:
   a. The burden on this regulation is the consumer is confused enough concerning their mortgage and this will further confuse them. The majority of the American public is financially illiterate and puts a lot of trust into their financial institution. They do not want to take the time to learn or look at different options, their biggest concern is what is my monthly payment and then the rate. If they can afford the payment in their mind, they really do not care what the rate is or what it costs….They want what they want NOW…Giving the consumer more options to pick from will only

slow the process down because they have no clue on how to even pick an option……

8. Affiliate payments: We have none, does not apply to us.
9. See answer #5…..If the exemption went away….

II. Compensation based on term

1. We compensate our officers with a salary. Employees are exempt and receive a wage based on position, not workload. They get paid regardless of how many loans they process and close….
2. Qualified retirement plan:
    a. We provide a 401(k) plan for our all of our employees.
    b. The credit union matches the employee's contribution UP TO 5% regardless of position. If these regulations go into effect, they would violate the ERISA rules by discriminating our mortgage officers from the remainder of the staff. We will follow the ERISA regulation before we follow these.
    c. We feel, if we understand the proposal correctly, the proposed restriction on total mortgage revenue would lower our option to help our employee's retirement by lowering the amount we can match up to. With the mortgage rate drop the past few years and our success in marketing our mortgage services, the total revenue from processing mortgages has fluctuated the last 3 years from 28% to as high as 36% of total revenue. We are also looking for our future and expanding our mortgage department expertise to other, smaller credit unions to help their membership have access to a fixed rate mortgage without having to go to a mortgage broker. Our total revenue could also increase with further restrictions on our checking accounts and overdraft program that helps the consumer. If these fees are eliminated, our total mortgage revenue will exceed the 50% mark.
3. Bonus plans: We offer our entire staff a bonus each year but not non-qualified plans.
    a. NA
    b. NA
    c. In the past, we have determined the bonus pay outs by positional structure. i.e. depending on position, the employee received a portion of their monthly wages. It never was given to them by how much they contributed to the bottom line as some positions cost money but are needed to keep the business running and they should be rewarded as well. In 2012, we have gone to an incentive program. i.e. the more business the person, be it a teller or loan officer, brings into the credit union they receive a monetary pay-out for the product they bring in from another institution.
    d. The restrictions would prevent us from giving the mortgage staff the same type of bonus as our other employees since the proposal uses the mortgage

revenue that is generated to possibly lower their bonus pool. We feel it is discriminating our mortgage staff from performing their duties in an efficient manner.

4. % cap to determine bonus.
    a. We feel the cap should be at a minimum of 50% so it doesn't restrict our institution from growing this department. If it is lowered, it restricts the market and the credit union from trying to become better for the consumer.
    b. If the restriction is set at 20%, we would have to turn consumers away from processing and giving them a mortgage which we feel will also restrict the market and make it harder for people to obtain a mortgage. The only people that would get a mortgage would be the no-brainer consumer where getting them qualified is easy. The lower scored, lower-income consumer creates a little more work and the loan officers would spend less time trying to get them qualified since it wouldn't pay. The higher % will allow some growth and give the committee time to evaluate the restriction's purpose.
5. Cost of restriction:
    a. Our actions to comply would cause us to need a monitoring system to be sure we are below the restricted %. Monthly monitoring would take time away from our staff on their other duties assigned to them. In the future, it may cause the credit union to need to hire an individual to monitor the entire mortgage program to be sure we are in compliance with these new proposals that really won't help the consumer anyway. More regulations create higher costs which ALWAYS get put onto the consumers back to pay for them.
    b. As of right now, I don't feel we'll have an immediate out of pocket expense but as the program continues to grow, who knows what the costs may add up to.

Pricing concessions: We don't offer to our officers.

1. With the previous regulations created, the good faith estimates are priced very high to offset the possibility of a problem with the loan where the officer needs to get another vendor involved for an inspection, title work increases, a problem occurs when the title work comes back and something needs to be fixed which may add another fee onto the loan, etc. The % of this occurring is small BUT they do happen. We feel the GFE would be more accurate to the consumer if it wasn't restricted as it is now. Instead of having to price some of the items on the GFE as a worst-case scenario, we feel it would be better to be more accurate than not. If the pricing concession was implemented, we feel the GFE's would reflect a closer end figure than the worst-case scenario figures that are used now. Consumers are confused when they see the high costs initially compared to the closing figures.

Point Banks: NA

Proxies: NA

Record Retention:

1. Our employees are salaried and are on the payroll software. Their records are saved on the software server and a hard copy in a fire file if needed.
2. We don't feel that we would need to change the way we retain our records unless the proposal for the total revenue changes. If that restriction occurs, it would cause us to purchase monitoring software to be sure we were in compliance with the new restriction. No current expense will we incur if the restriction is not implemented.

III. Qualifications/screening:

1. We are required to follow the SAFE Act and are currently registered.
2. Costs associated with complying is the fees to register, background checks, finger printing, compliance monitoring. Currently the total cost for all of our registered officers is approximately $1,000 to complete the first time registration and is $100 annually.
3. We don't feel being "qualified" or registered helps anyone. The majority of the officers in the industry in the past and currently "qualify" and it didn't stop the market collapse.
4. Currently the only document required to have the numbers is the 1003 application.
5. If the numbers had to be placed on additional documents, the cost would be a one-time fee charged from the software company and it is unknown what they may charge to implement it. *Why would using these numbers help the consumer?*

IV. Potential Effect:

1. Yes. The impact of having to pay upfront costs for the consumer and needing to wait to receive the income back from interest paid each month, waiting on yield spreads to be paid, and loss of opportunity costs of funds being tied up paying for services the consumer should pay for doing a mortgage.
2. With more regulations, it requires more compliance monitoring to make sure the program doesn't violate any of the new regulations. This in turn will cause the small entities to need to hire an employee or hire an outside monitoring firm to keep them out of trouble. Regulations cost society and the consumer more money the majority of the time than it saves.
3. We feel these proposals and the Dodd-Frank Act should be revisited and have EXPERTS in the financial industry sit down with the Congressional Committees

to perform a common sense approach to fix some of the problems that occurred in the past. The biggest factor that is needed in this Country is to REQUIRE financial literacy instead of a foreign language or calculus or chemistry. Every consumer uses some form of financial product in their lifetime and it is not taught to them in the school systems. I feel a lot of these issues would not have happened if the consumer was informed on how much house they really could afford and why. If the consumer was better educated, the con artists that gave them the mortgage to purchase their now foreclosed house couldn't have conned them. Education is very important and is a great tool to keep the consumer from being harmed by ignorance.

V. Feedback:

Reading through the proposal and past regulations, the best way to not need to implement these proposals is to eliminate commission-based earnings and have all of the different types of compensation become wage-based either hourly or salary and not base it on sales, loan pricing, etc. If a person gets paid regardless of how they process the mortgage and do not get paid extra to dupe the consumer, it won't happen. Honesty goes a long way. Educate the consumer with a school program. Consumers not in school should be required to take a class on how to get financing before they get a mortgage, not after they get their home foreclosed upon and then need a modification. The system is currently backwards and needs to be straightened up with more common sense, education, and less government regulation.

These regulations should NOT include the prime mortgage market since the SUB-prime mortgage market is what caused all of the disaster. A previous White House administration stated they wanted every American to own a home thus creating numerous mortgage brokerage firms coming to life, decreasing the requirements to qualify for a home and giving the American citizen a new home through the SUB-Prime market something they could not afford. Since the housing crash, these unscrupulous brokerage firms have gone out of business and the legitimate ones still exist. The market took care of these firms and now these regulations are going to make things worse for the consumer by not giving them the necessary options to obtain a mortgage. More regulations harm the consumer in more ways than one. They take away a consumer's options of a free market, limits their choices, and in some cases, prevents good, qualified citizens from obtaining a mortgage. If these are implemented, it will decrease the consumer's choices to shop for a mortgage since only the big institutions will be the only ones that can afford to provide them thus giving them the option to increase closing costs and interest rates.

Maine
Association of
Mortgage
Professionals

June 11, 2012

Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street N. W.
Washington, D.C. 20036

Re: Follow-up Comments on SBREFA Review Panel Sessions on Mortgage Loan Origination Standards

Dear Director Cordray:

On behalf of the Maine Association of Mortgage Professionals, I appreciate this opportunity to submit information to supplement the comments I made at the May 23, 2012 at the SBREFA review panel session held by the Consumer Financial Protection Bureau (CFPB) regarding proposed Mortgage Loan Origination Standards.

The SBREFA process, as outlined in the CFPB Fact Sheet, indicates that CFPB is seeking 1) "input from small business on anticipated compliance requirements and costs of the proposed rule," 2) "advice concerning regulatory alternatives that would minimize any significant impacts of the proposed rule on small businesses while accomplishing the objectives of the applicable statutes" and 3) "feedback from small businesses on how the proposed rule may impact the costs of credit for small entitles and ways to minimize any such impact." (See "CFPB Fact Sheet: Small Business Review Panel Process")

This outline would appear to be more limiting than language at the web site for the Office of Advocacy in the SBA, which states that the 1980 Regulatory Flexibility Act, "requires agencies to take steps to collect input from small entities on regulations and determine whether a rule is expected to have a significant economic impact on a substantial number of small entities."

Given this language, our response here will first address a broader set of concerns for small residential mortgage lenders. This includes whether or not the proposed rule creates a significant, adverse economic impact on small residential mortgage lenders by creating an unlevel playing field favoring large residential mortgage lenders, when , in fact, the same regulatory results can be achieved in a more unbiased fashion.

The outline presented to Small Business Review Panel participants by CFPB also requests response regarding practices and experiences of mortgage lenders with respect to consumers (page 16 and 17). This information is included below, at the end of this written statement.

The Flat Fee

Among the list of regulatory changes being proposed by CFPB, we oppose the flat fee concept because it appears to be the most discriminatory proposal to small mortgage lenders versus larger mortgage lenders when there are alternatives that can address consumer protection concerns. This is particularly true given all of the new consumer protection measures being employed under federal law and state laws over the past four years. Given all of the consumer protection measures available, and the improvements that could be made to these existing regulatory measures, the mandatory flat fee option hardly seems to be a necessary, effective or well reasoned priority.

Given that the biggest concern for consumer protection is in the category of sub-prime and negative amortization loans, we believe one solution would be for the flat rate alternative to apply only to these types of loans and not prime conventional loans or government loans. Regulations covering loan officer and lender compensation already have also limited most incentives to place borrowers into subprime loans, so the flat would be available but only would be used only when absolutely necessary and appropriate in conjunction with the very limited number of subprime laons that are on the market.

One concern we have is that it is not clear where the idea for the flat fee proposal comes from. Did it come from some research work done at CFPB, the Federal Reserve Bank, or HUD or some consumer protection advocacy groups? It simply is not clear. There appears to be no empirical evidence of the advantages of the flat rate. CFPB cites no studies and no consumer surveys demonstrating the advantages of a flat fee requirement. There are no detailed analysis of how the flat fee does work in the marketplace or how this approach will really work when marketed to consumers. We also have not seen how it will work on the current or proposed GFE/TIL/HUD-1 disclosure forms. Again, the flat fee does not seemed to be thoroughly vetted at this stage.

This lack of documentation also seems somewhat in contrast with CFPB's broad scale effort to field test and research the consumer impact of a proposed new GFE/TIL/ and HUD-1 forms. It would seem a ruling of the significance of the flat feewho require a similar type of field testing.

At the outset of the SBREFA meeting it appeared that the flat fee might be proposed as an exclusive method of compensation for mortgage brokers and MLO's. CFPB has, however, clarified that this is not the case, in subsequent telephone conference calls. CFPB seems to be saying the flat fee will merely be an option for compensation, albeit a required alternative option. CFPB is also seems to be saying that the current allowed method of "creditor-paid compensation" from lenders will not be precluded.

Small mortgage lenders will be disadvantaged by the flat for at least two reasons. First large lenders who service loans will use their customer lists to directly "cross sell" flat fee refinancing. They will also use their regular bank account and home equity loan account lists to cross sell flat fee mortgage. In our experience, however, the rates proposed by the servicers and other "captive customer" bankers are often well above rates available in the market place. We see the flat fee proposal as a means by which these large lenders will take advantage of their captive customers. The option will appear to be simpler and more transparent, but in the end the borrowers will be charged a higher rate and higher APR regardless of the level of the flat fee.

I recently received an offer from theservicers of my mortgage to refinance my loan for a shorter term and at a lower rate that I have now with no points. The problem is the note rate and the APR being offered were a full one quarter point higher than my brokerage company and other lenders were offering in the market place on that day. What is to prevent the "captive customer" lender from offering a low flat fee in combination a higher rate. How is the consumer protected?

CFPB staff have said that the flat fee proposal adds simplicity and transparency. But what could be simpler than doing what is done now. Mortgage brokers show a list of closing costs and display what the lender is paying the broker on the back end for a given product and rate. The note rate and the APR are also disclosed along with a requirement to show three different rate and fee options. The system seems to be working.

In our experience, what has made it confusing for consumers is the actual way in which the current (recently revised) GFE requires us to display this data. This form is widely recognized to be not in the best interests of consumers and that is why it is a top priority of CFPB to revise the form. Our contention is that once this revision has been made, there will be much less concern about the need for transparency and clarity.
As an alternative to the flat fee, we believe that if the disclosure system were changed so that all lender costs, both bank and non-bank, were on similar forms and displyed in a similar manner, with understandable terms, much of the consumer confusion could be eliminated.

We further believe that the flat fee is discriminatory against low and moderate income families, and lower income areas of the United States. It establishes a system where a borrower for $400,000 could pay a fee similar to a borrower for $100,000 loan. Borrowers in Washington, D.C, would possibly be paying the same fees as borrowers in Washington County, Maine. In effect, borrowers in a poor rural Maine county would be subsidizing borrowers in an area where homebuyers can afford considerably larger sums. CFPB seems to be suggesting that a borrower is paying for a "loan" (ie a "transaction") when in fact the borower is paying for "a sum of money" which can very in size. Government regulators, the public and the mortgage industry seems to have thought, over the years, the "percentage of a sum of money " approach is a fair system. CFPB seems to be largely alone in its current thinking.

It should be emphasized that, at present, the most of the mortgage industry runs off of percentage calculations. This closing costs items include real estate fees, mortgage discount points, service release premiums (SRP's), yield spread premiums (YSP's), mortgage insurance fees, FHA fees, VA commitment eyes, rural development fees, state housing finance agency program fees, title insurance fees, and Fannie Mae and Freddie Mac risk based premiums and other up-charges for investment properties, condos and the like.

The flat fee will also require new software, new staff training and consumer disclosures within about 18 months of the most recent changes in the federal rules covering this area. This imposes proportionately higher costs on small lenders in contrast to large lenders who can spread these costs over a larger customer base and take advantage of efficiencies of scale. These lenders have also not had to absorb the cost of new software for new disclosures, dealing with the HVCC appraisal system, and NMLS related training and testing.

This proposal is being made at a time when large mortgage lenders have already been given other advantages over small lenders in the market place. At present mortgage brokers and table funded lenders are required to disclose at the time of application and at the closing the amount of the overall closing costs, the APR, and how much the broker will be compensated by the lender for making the loan at the given rate and other terms. In contrast, large lenders who close with their own funds are not required to disclose the service release premium or how how much they are making when the loan is sold. This important imbalance in disclosures to consumers will not be remedied by the flat fee proposal.

We believe there are other measures which would add to consumer protections while helping level the playing field between large and small mortgage lenders. The first would be to require lenders to disclose how much they are making on loan. This amount could be generated by reference to a daily "market value" of the loan which could be made available on private market or government sponsored website based on a daily survey of the secondary market for service release premiums and the values of specific types of loans at specific rates.

Discount Points

CFPB is "considering exemption authority to permit consumers to pay discount points to the creditor, provided the discount points are bona fide".and.. "the creditor also offers the option of a no-discount-point loan."

We applaud the CFPB for making this proposal and fully support it.

We do think that CFPB could use a new, revised GFE/TIL/HUD-1 form to help clarify for consumers the difference between discount point and origination fees and back end compensation from the creditor to the MLO. The Residential Consumer Handbook should also be revised to better explain these elements of a mortgage loan.

Point Banks

We agree that there is a counter-productive rule in place when the lender or broker cannot make a contribution to the closing costs at or near the time of closing for the loan within some limits as to the type and amount of assistance. The point bank proposal helps address this problem.

The specific proposal from CFPB is not unacceptable but it seems overly bureaucratic because it involves contributions to the point bank by the creditor.
We question whether it might it be simpler to allow contributions from the MLO on a loan-by-loan basis as long as certain reasonable limits are not exceeded.

Under the point bank system, one could envision a situation where a broker is bound to a creditor because of the points that are built up in the point bank. This would not be in the best interests of consumers if that bank then raised its rates and was "out of the market."

Mortgage Loan Originator Qualifications:

We favor equal education, certification and screening requirements for loan officers at banks and non-banks. Consumers have the right expect consistency in this area and it will lead to consumers receiving more professional service. If bank loan officers are educated by their employers they should be able to meet standards set by the National Mortgage Licensing System. We think than bank employees would for the most part "rise to the occasion" and advance in their profession.

It is also our experience that banks have mortgage specialists who handle most mortgage originations. These personnel usually have a great deal of experience and would have no trouble meeting NMLS standards.

The proposal assumes than banks somehow have a higher level of immunity from greed and incompetence. On the contrary, recent histrory shows that the abnking industry has been heavily into sub-prime lending. Moreover, banks still have the discretion to lend funds at sub-prime rates.

It would be somewhat ironic if CFPB used the SBREFA process to help substantiate systems that allowed lower costs for professional education for larger lending institutions, thus creating a competitive imbalance.

Impact on Small Business Credit

The rules being proposed by CFPB would adversely impact the cost of business credit for smaller lenders. It is widely recognized in the industry that the "next step up" for a mortgage broker is to become a "table funded lender" and then to have a "warehouse line of credit" and finally to "sell directly to Fannie Mae and Freddie Mac". To the extent that CFPB rules discriminate against small lenders and reduce their profit margins they are unable to obtain lower cost credit to enable them to grow into these more profitable lending formats.

This, furthermore, reduces competition among all lenders and leads to higher mortgage rates for consumers.

Note on Points and Fees Definitions

The CFPB briefing note book presented at the May 23 meeting contains definitions on page 8 of 1) Consumer-paid compensation, 2) Brokerage-paid compensation and 3) Creditor-paid compensation. In this group, the term "Brokerage-paid compensation" is misleading based on the terms of its definition where it includes the consumer paying the brokerage firm. CFPB should seek a set of terms that more clearly distinguishes "Brokerage-paid compensation" from "Consumer-paid compensation."

Field Experience

CFPB has asked specific questions regarding the "real world experience" of each Small Entity Representative (SER). The following is a brief answers to these questions based on the expereince of the author of this letter.

Discount Points: (Page 11)

1. Less than 5% of our brokeage compensation is consumer paid. In short, very few consumers pay points.

2. Less than 5% of our customers pay discount points. The average reduction when they are paid is ¼ of a percent in rate for each point paid.

3. Yes, we offer customers similar sized loans, but, if there is any interest in discount and it is feasible and cost effective, we tell them they can borrow the discount points if they want to.

4. Prohibition of discount points would not drastically impact our consumers but this is a unique time when rates are so low that consumers do not see the need to buy the rate down further. We see no problem with offering discount points as long as the costs and benefits are understood by the consumer.

Origination Points (Page 15)

1. The in-house cost that vary pay for unexpected events, such as rate lock expirations, flawed appraisals, tolerance errors, GFE errors, and risk based premium contigencies.

2. Prohibition of up front origination points (not discount points) would not largely impact our business because we do not usually charge them now. Creditor paid deals arise fewer than 5% of the time.

3. We do not offer deals with varying origination points.

4. The "must offer a no point, no fee deal" and "reasonable relationship requirement" would not impact us directly although it might impact creditors because they ususally charge "underwriting fees".

5. We do not have any affilated business arrangements.

Brokerage Paid Compensation (Page 20)

1. The impacts would be similar

2. See answer #1 above

3. The flat fee requirement would negatively impact our business because the average consumer with smaller loans would see there is something inherently unfair about them paying more in fees in proportion to the amount of money they are borrowing. The flawed thinking here is that CFPB sees a loan as a "per transaction loan". In contract, the consumer and the loan broker view is a "volume of money" transaction. Therefore, as is the case with similar transactions (real estate purchases, auto purchases, insurance purchases and many other purchases) the consumer sees the commission approach as more fair. They view it as even more fair if there is a cap on the percentage based commission. (See comments above about the negative impact on small lenders overall)

MLO Retirement Plans, Profit Sharing and Bonuses (page 26):

We are not directly impacted by these issues and have not discussed them Maine Association of Mortgage Professional members who would be impacted.

Pricing Concessions and Point Banks (Page 31)

1. Settlement charges, not under MLO's control, can arise possibly 10% -20% of the time compared to the original GFE. Most of these have been accounted for with "change in circumstance' revisions to the GFE, but there is the occasional last minute issue, perhaps on 5% of closings, usually in a purchase transaction, where a last minute cost can present a major barrier to completing the transaction.

2. The proposed policies would be of great benefitr to small entitles because they could help "get the deal done" for their customers and other parties involved in the

transaction. These helps the overall image of the company and the only cost is to the company.

3. Yes, I would say point banks wouild help in most all in most all circumstances, if they are is only discretionary costs to the lender, and it helps the consumer and helps get the deal done.

4. The major concern with the point bank is that it seems like a needless contrivance if the lenders control it and it prohibits mortgage brokers from making a contribution to closing costs on their own if they decide to do so.

MLO Qualification and Screening (Page 34)

1. Yes, our MLO's are all licensed under the SAFE Act.

2. We would not have to take any new actions under Dodd Frank

3. The proposal being considered for bank lenders would not appreciably increase consumer protection because it sets a much lower standard for bank lenders and non-profit lenders.

We greatly appreciate this opportunity to respond in writng to the proposals being considered by CFPB.

Sincerely,

Anthony A. Armstrong

Anthony A. Armstrong
Chairperson
Commttee on Governmental Affairs
Maine Assciation of Mortgage Professionals

June 11, 2012

Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street N.W.
Washington, DC 20036

RE: SBREFA Review Panel Comments Residential Mortgage Loan Origination Standards

Director Cordray:

I would like to take this opportunity to thank you for allowing me to participate in the SBREFA Panel Outreach on May 23rd in Washington, D.C. It is an honor to have my voice heard as to how the CFPB's proposed rules make affect my small business.

In order to help you understand the rationale behind my comments, I'd like to provide you with some background regarding my company, RE Financial Services, Inc., a small state-licensed mortgage broker business based in Florida. The current economic downturn has severely affected the ability for my company and many others like me to thrive over the past 5 years. In turn, the effects that the government-tightening of underwriting and regulatory standards has placed on the industry have caused the housing market in my state to become stagnant. Placing further burdensome guidelines and regulations on an already unstable market can have catastrophic consequences on my business, my industry, the housing market and, ultimately, the economy as a whole.

With that being said, I would like to focus on those proposed rules which would have the greatest impact on my business and other small mortgage businesses throughout the country.

POINTS AND FEES

I applaud the CFPB's creation of the three categories of compensation. The creation of the "brokerage-paid" compensation category would allow my small business more flexibility in the pricing I offer my clientele and the manner in which I compensate my originators. Due to the current hourly/salary wage requirement that is connected with borrower-paid compensation, my company made a financial decision to only allow lender-paid compensation on all transactions. Through this change, I would now have more flexibility for the consumer as well as my originators.

ORIGINATION POINTS / FLAT FEES

The "flat-fee" concept that the CFPB is proposing would be detrimental not only to small business but to the consumer as well. As a mortgage broker business, I cannot close a loan in my own name and, therefore, cannot use my own monies to fund a loan. The only manner in which I can compensate my business and my loan originators for work performed is through fees collected from either the creditor or the consumer at the time of closing in the form of origination fees. I do not have the ability to collect a flat fee at the time of closing knowing I will receive additional monies when the loan is sold on the secondary market. The fees my company earns are full-disclosed at the time of issuance of the Good Faith Estimate (GFE) and at the time of settlement on the HUD-1.

By forcing my business to charge a flat-fee only that cannot vary based on the loan amount, the CFPB will force my business to do several things:

1. Make a decision as to the lowest loan amount my company can afford to handle based on my state's lending laws;
2. Charge the low-income, affordable housing borrower the same amount that I would charge the middle to upper-middle income borrower. This practice would force my company to be viewed as predatory because, for example, I would be forced to charge the $30,000 loan amount borrower a fee in the amount of $3,000 and also charge the $300,000 loan amount borrower a fee in the amount of $3,000;
3. Not be able to participate in state housing agency first time buyer programs since the only income to the originator allowed is in a percentage of the loan amount i.e., The Florida Housing Finance Agency, an affordable housing non profit, allows for originators to earn 1% origination in the form of a consumer paid transaction and
4. Make a decision to only offer creditor paid Veteran Administration loans to eligible consumers. The VA underwriting guidelines does not allow for a veteran to pay more than 1% origination based on the loan amount. The flat fee proposal could create a situation where my flat fee is greater than 1% and disqualify the loan.

The proposed flat-fee concept creates a highly unlevel playing field between the mortgage broker business and the bank or lender. The CFPB should not create processes or concepts which would disenfranchise one business and favor another.

FLAT FEES FOR AFFILIATES OF MLOS

The proposal, which would force affiliates of MLOs to charge upfront flat fees, requires further clarification. I was happy to hear that the CFPB was not including title insurance and, from what I understand, homeowner's insurance in this proposal however, the definition of "affiliate" needs to be further clarified. By using the Bank Holding Act of 1956 definition, it appears that businesses such as realtors, appraisers, surveyors, etc. can be included if common interest or ownership exists. Currently, appraisers and surveyors generally charge flat fees but they vary based on certain factors such as geographical location, amenities, etc. Realtors, however, generally charge a percentage of the purchase price – similar to the current lender-paid compensation scenario. By forcing a realtor to charge a flat fee, those consumers who are seeking to purchase or sell a home considered to be in the low to moderate-income range will become underserved by the realtor community.

PRICING CONCESSIONS

I fully support the CFPB's proposal with regards to pricing concessions. By allowing a business the flexibility of crediting the consumer for unanticipated increases in third-party settlement charges, this proposal helps make the process of completing a mortgage transaction smoother and simpler.

MLO QUALIFICATION AND SCREENING

While I want to thank the CFPB for taking the first steps in making state-licensed and registered loan originators on a more level playing field, I do not feel that the proposal goes far enough. Whether an individual is state-licensed or registered, they are performing the same origination functions with the intention of receiving compensation for the work performed. It is my opinion that all individuals who wish to originate mortgage loan transactions should be subjected to similar requirements (ie. testing, financial fitness, background checks, etc.).

In addition, I agree with the CFPB's proposal to impose similar licensing/registration limitations on those individuals who have been convicted of felonies. However, with regards to financial fitness requirements, I urge the CFPB to impose minimum standards for federally-registered loan originators. I have known many former state-licensed mortgage brokers who turned to banks for employment due to credit difficulties and a fear of not being able to obtain a state loan originator license.

With regards to education, I urge the CFPB to require federally-registered loan originators to be subject to the same minimum education requirements as state-licensed loan originators. It is important that all originators, whether licensed or registered, have the same educational tools and opportunities available to them in order to ensure that the consumer is properly served when making one of the biggest financial decisions of their life.

FLAT FEE LEGAL CONSIDERATIONS

The CFPB has indicated it will use the powers granted to it in the Dodd Frank Act (DFA) to solve a problem created by the DFA. I believe the better approach is use your authority to waive this provision and ask Congress to amend the DFA to solve this legislative problem.

Dodd Frank Act Created Problem

I view this as an unintended consequence created by the Dodd-Frank Act (DFA). The CFPB correctly determined the root of this problem and harm to consumers is a result of the DFA. I respectfully suggest the CFPB request Congressional action to remove the unintended consequence of the DFA rather than introducing changes to the business operations of market participants.

In summary the problem arises from the following: Both the Loan Originator Rule and Dodd-Frank generally prohibit MLOs from being compensated simultaneously by both the consumer and a person other than the consumer (*e.g.*, creditor or brokerage firm).

1. Dodd-Frank generally prohibiting consumers from paying discount points, origination points, or fees where an individual MLO is being compensated by the creditor or brokerage firm.

2. After January 2013, the DFA will prohibit a consumer from "buying down" their rate in the event they choose to do so. The DFA will take this choice away from consumers. In addition to this "rate buy down problem", the DFA will prohibit a consumer from paying origination fees out of their own cash funds at the closing table if the loan originator also receives payment from any source. This is clearly an unintended consequence of the DFA.

3. Dodd-Frank gives the CFPB authority to waive or create exemptions from this prohibition where doing so is in the interest of consumers and the public interest.

4. The CFPB is considering using this authority to allow consumers to pay upfront points and fees under certain circumstances.

5. I suggest the authority given to the CFPB in the DFA should be used to waive this provision of the DFA rather than creating the flat fee concept as an exemption. In addition, the Regulatory Flexibility Act would also need to be addressed by the CFPB which would require the CFPB to examine all avenues to address the problem created by the DFA.

Litigation Exposure

The CFPB flat fee proposal opens up small businesses like mine to litigation over disparate impact and litigation bar attacks. The inevitable consequence for small business mortgage brokers, lenders, banks and credit unions using the flat fee approach will be higher legal and litigation costs.

Regulatory Flexibility Act Background

I have also looked at the information on the SBA web site relative to regulations being issued that impact small business. The Regulatory Flexibility Act (RFA) requires agencies to consider the economic impact that a proposed rule making will have on small entities. Pursuant to the RFA, the federal agency is required to prepare an initial regulatory flexibility analysis (IRFA) to assess the economic impact of a proposed action on small entities. The IRFA must include: (1) a description of the impact of the proposed rule on small entities; (2) the reasons the action is being considered; (3) a succinct statement of the objectives of, and legal basis for the proposal; (4) the estimated number and types of small entities to which the proposed rule will apply; (5) the projected reporting, recordkeeping, and other compliance requirements, including an estimate of the small entities subject to the requirements and the professional skills necessary to comply; (6) all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and (7) all significant alternatives that accomplish the stated objectives of the applicable statutes and minimize any significant economic impact of the proposed rule on small entities. In preparing the IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable. The RFA requires the agency to publish the IRFA or a summary of the IRFA in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule.

The CFPB should abandon the flat fee concept because there are other less intrusive alternatives that accomplish the same objectives and have considerably less impact on small businesses, such as using its waiver powers in the DFA to remove this harm to consumers. In addition, when reviewing the documents the CFPB made reference to in the DFA, I saw the DFA specifically prohibits the CFPB from calling the loan amount a term or condition and as such the CFPB could not inhibit this practice in the market. Please address in any proposed rule how the CFPB is permitted to override Congress in this area.

Thank you very much for selecting me as a SERS for the SBA panel process. I look forward to working with the CFPB on any other questions it may have from a small business like mine.

Sincerely,

Appendix B

List of Materials Shared with SERs

Materials Circulated in Advance of Panel Outreach Meeting:

- Outline of Proposals under Consideration and Alternatives Considered
- Discussion Issues for Small Entity Representatives
- Fact Sheet: Small Business Review Panel Process

Panel Outreach Meeting Materials:

- PowerPoint slides

Appendix C

Outline of Proposals Under Consideration and Alternatives Considered

[See attached]

May 9, 2012

Small Business Review Panel for
Residential Mortgage Loan Origination Standards Rulemaking

OUTLINE OF PROPOSALS UNDER CONSIDERATION
AND ALTERNATIVES CONSIDERED

I. INTRODUCTION

- Compensation practices for mortgage loan originators ("MLOs") such as loan officers and mortgage brokers can create incentives and confusion that lead to consumer harm:
  - Compensation structures may create financial incentives to steer consumers to loans that are more costly, for which loan originators will receive greater compensation. For example, payments that are based on a transaction's terms potentially give an incentive to provide consumers loans with higher interest rates or other less favorable terms.
  - In addition, certain MLO compensation arrangements are not transparent, and consumers may not know or understand how the MLO's compensation is structured or that compensation arrangements may present a conflict of interest. Consumers may believe that the fee they pay is the MLO's sole compensation. This, in turn, may lead consumers to mistakenly believe that MLOs are working on their behalf and are obligated to provide the most favorable loan terms.
- In an attempt to address these concerns, the Federal Reserve Board ("Board") issued MLO compensation regulations pursuant to the Truth in Lending Act, which were effective as of April 2011 (the "Loan Originator Rule" or "Rule").[1] The general approach to these issues taken by the Loan Originator Rule is to: (1) prohibit payments to MLOs that are based on a loan's terms and conditions (except for payments that consumers make directly to MLOs); and (2) where the consumer directly pays the MLO, prohibit the MLO from also receiving compensation from any other party in connection with that transaction.
- The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") further addresses these concerns by imposing certain requirements concerning the compensation and qualification of MLOs, which the statute defines to include mortgage brokers, loan officers, and, for certain purposes, the brokerages or creditors that employ them.[2]

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[1] 75 Fed. Reg. 58,509 (Sept. 24, 2010) (effective April 2011).

[2] Dodd-Frank, Pub. L. No. 111-203. The statutory text relevant to this rulemaking is attached as Appendix A. A glossary of terms is attached as Appendix B. The Dodd-Frank definition of "mortgage originator" is somewhat different from the Loan Originator Rule's definition of "loan originator." *See* 15 U.S.C. § 1602(cc)(2); 12 CFR 1026.36(a). The CFPB, however, proposes to interpret these definitions similarly.

- As discussed in detail below, the Dodd-Frank requirements generally build on, but in some cases impose new or different requirements than, the Loan Originator Rule as well as the qualification requirements issued by several federal agencies pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act").[3]

- In addition to addressing MLO compensation based on the terms and conditions of mortgage loans and dual compensation from multiple parties, the Dodd-Frank Act focuses on the broader issue of potential confusion by consumers regarding payment of upfront costs, including discount points and origination fees, *in addition* to MLO compensation.

- The Consumer Financial Protection Bureau ("CFPB" or "Bureau") is developing proposals to implement Dodd-Frank requirements relating to MLO compensation and qualification that will otherwise automatically take effect on January 21, 2013.[4]

- Specifically, the proposals under consideration will address the following Dodd-Frank requirements:

1. *Dual Compensation and Payment of Upfront Points and Fees*:

- Both the Loan Originator Rule and Dodd-Frank generally prohibit MLOs from being compensated simultaneously by both the consumer and a person other than the consumer (*e.g.*, creditor or brokerage firm).

- The Loan Originator Rule *allows* a consumer to pay upfront points and fees.

- Dodd-Frank substantially differs from the Loan Originator Rule by generally prohibiting consumers from paying discount points, origination points, or fees where an individual MLO is being compensated by the creditor or brokerage firm.

- Dodd-Frank gives the CFPB authority to waive or create exemptions from this prohibition where doing so is in the interest of consumers and the public interest.[5] The CFPB is considering using this authority to allow consumers to pay upfront points and fees under certain circumstances.[6]

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[3] 12 U.S.C. § 5101 *et seq*. The CFPB has restated the SAFE Act rules at 12 CFR pt. 1007 and 1008, 76 Fed. Reg. 78483 (Dec. 19, 2011).

[4] Dodd-Frank §§ 1402-03 (amending TILA to add § 129B(b) and (c)) (codified at 15 U.S.C. § 1639b(b) and (c)); *see also* Dodd-Frank § 1400(c) (codified at 15 U.S.C. § 1601 note). This proposal will not implement TILA §129B(c)(3).

[5] TILA § 129B(c)(2)(B)(ii) (codified at 15 U.S.C. § 1639b(c) (2)(B)(ii)).

[6] A chart comparing the payment structures under the Loan Originator Rule with the proposals under consideration implementing these Dodd-Frank provisions is attached as Appendix C.

2. ***Compensation That Varies Based on Loan Terms:***

   - Both the Loan Originator Rule and Dodd-Frank generally prohibit varying MLO compensation based on the terms of a mortgage loan. These requirements were designed to eliminate incentives for MLOs to steer consumers into more profitable or higher-cost mortgages and away from lower-cost or other mortgages for which they are qualified. The Bureau is considering adjustments to the earlier rules to address interpretive questions, such as application of the rules to retirement plans, profit-sharing plans, and pricing concessions.

3. ***MLO Qualification and Screening Requirements:***

   - Dodd-Frank imposes certain qualification and screening requirements on the businesses that employ individual MLOs. It also requires that individual MLOs provide their license or registration number on loan documents.[7]

- The CFPB has prepared this summary of the proposals under consideration to assist the Small Business Review Panel convened under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), the small entity representatives ("SERs") who advise that panel, and the public. Accordingly, this summary focuses in part on the benefits and costs for small entities of the proposals under consideration.

- Consistent with SBREFA, this summary provides a preliminary, qualitative assessment of the potential benefits and costs to the types of small entities that would be subject to the proposals under consideration—primarily, mortgage lenders or creditors (such as community banks, credit unions, and non-depository private mortgage lenders), mortgage brokerage firms, and affiliates of brokerage firms and creditors.[8]

   - Many of the major elements of this rulemaking address issues that were previously addressed by the Loan Originator Rule, which took effect in April 2011. The CFPB does not anticipate that the proposals under consideration to implement Dodd-Frank provisions in ways that are substantially similar to the mandates of the Rule will impose costs or require changes to systems and operations of small entities beyond those that would already have occurred to comply with the Rule.

   - To the extent that Dodd-Frank imposes new requirements that are not covered by the Rule or where the CFPB is considering proposals concerning interpretive

[7] A chart comparing the current MLO qualification requirements for depository, non-depository, and non-profit entities and the requirements of the proposals under consideration implementing the Dodd-Frank provisions is attached as Appendix D.

[8] The proposals under consideration are expected to have substantial benefits for consumers. Drawing in part on information gained through the SBREFA panel process, the CFPB will publish with the proposed rule a more extensive analysis of the benefits and costs to consumers and firms, and of the impacts on small entities specifically.

issues that are not directly addressed in the Rule, it is difficult to extrapolate their effects from the Board's earlier impact analyses.

- For this reason, while the CFPB has considered the Board's impact analyses in the proposed and final versions of the Rule as mandated by the Regulatory Flexibility Act, the CFPB does not believe that these analyses accurately forecast the potential benefits and costs to small entities from the proposals now under consideration.

- Similarly, the CFPB has also considered the impact analyses performed by the OCC, Board, FDIC, OTS, NCUA and Farm Credit Administration in connection with their final joint rule implementing SAFE Act requirements in formulating its own preliminary impact analysis and questions for the SERs on related qualification and screening requirements on business employing MLOs.[9] However, to the extent that Dodd-Frank imposes new requirements on depositories and non-profits (including unique identifier requirements), the other agency analyses are of limited utility in assessing the potential costs and benefits to small entities from the proposals now under consideration.[10]

II. STATEMENT OF OBJECTIVES AND LEGAL BASIS

- Under Dodd-Frank § 1400(c), certain new provisions concerning MLO qualification and compensation automatically take effect on January 21, 2013, unless final rules are issued on or before that date that provide otherwise.[11] The CFPB plans to implement the statutory provisions and address other interpretive issues relating to the Loan Originator Rule by proposing amendments to Regulation Z, which implements the Truth in Lending Act ("TILA").[12]

- Dodd-Frank makes the following amendments to TILA that are relevant to this rulemaking:

[9] 75 Fed. Reg. 44656, 44676-83 (July 28, 2010); 75 Fed. Reg. 51623, 51644-49 (Aug. 23, 2010).

[10] HUD did not perform an impact analysis of its rule codifying SAFE Act MLO licensing standards, oversight responsibilities, and other requirements implementing the SAFE Act impose requirements on individuals and not on entities (large or small). HUD did, however, provide an analysis under Executive Order 12866. 76 Fed. Reg. 38464, 38488-92 (June 30, 2011).

[11] 15 U.S.C. § 1601 note. The Bureau may provide up to a year for a transition period to implement new rules.

[12] *See generally* 15 U.S.C. § 1601 *et seq*. The CFPB generally has broad authority to prescribe regulations to effectuate the purposes of TILA, including adjustment and exception authority. *See* TILA § 105(a), as amended by Dodd-Frank § 1100A. Dodd-Frank § 1405(b) also provides the CFPB general discretionary authority regarding disclosure requirements for any class of residential mortgage loans. The Bureau is required to issue certain additional anti-steering rules under § 1403 of Dodd-Frank (codified at TILA § 129B(c)(3)); those requirements will require the Bureau to issue rules to take effect. The Bureau will issue those rules at a later time.

- Section 1402 imposes new duties on MLOs "in addition to the duties imposed by otherwise applicable provisions of State or Federal law." The first duty is to be "qualified" and (where applicable) registered and licensed in accordance with the SAFE Act and other applicable state or federal law. The second duty is to include on all loan documents the originator's identifier number from the Nationwide Mortgage Licensing System and Registry.

- Section 1403 also builds upon the Loan Originator Rule by imposing two limitations on MLO compensation to reduce or eliminate steering incentives for residential mortgage loans (*i.e.*, closed-end consumer credit transactions secured in the first instance by interests in residential dwellings or residential real property, other than timeshare plan transactions).[13]

  - Section 1403 generally prohibits MLOs from receiving compensation for any residential mortgage loan that varies based on the terms of the loan, other than the amount of the principal.[14]

  - Section 1403 generally allows only consumers to compensate MLOs. An exception permits other persons to pay "an origination fee or charge" to an MLO, but only if two conditions are met: (1) the MLO does not receive any compensation directly from a consumer; *and* (2) the consumer does not make an upfront payment of discount points, origination points, or fees (other than bona fide third party fees that are not retained by the creditor, the MLO, or either company's affiliates). The Bureau may create exemptions or waivers of the latter requirement if such action is "in the interest of consumers and in the public interest."[15]

III. <u>OUTLINE OF PROPOSALS UNDER CONSIDERATION</u>

A. BAN ON DUAL COMPENSATION AND LIMITATIONS ON UPFRONT PAYMENTS OF DISCOUNT POINTS, ORIGINATION POINTS, OR FEES

- Both Dodd-Frank and the Loan Originator Rule generally prohibit dual compensation to an MLO. The MLO can be paid compensation by a person other than the consumer (*e.g.*, a

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[13] The Board proposed the Loan Originator Rule prior to the enactment of Dodd-Frank using general authority under TILA to prohibit acts or practices relating to the origination or refinancing of mortgage loans that are unfair, abusive or deceptive. 74 Fed. Reg. 43,232 (Aug. 26, 2009). Dodd-Frank incorporated key language and concepts from the proposal. The Board then finalized its rule, but acknowledged that further proceedings would be required to address certain issues and adjustments made by Dodd-Frank. 75 Fed. Reg. at 58,509-10.

[14] TILA § 129B(c)(1) (codified at 15 U.S.C. § 1639b(c)(1)). Additionally, TILA § 129B(c)(4)(D) (codified at 15 U.S.C. § 1639b(c)(4)(D)) states that no provision in that subsection shall be construed as "prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time."

[15] TILA § 129B(c)(2)(B) (codified at 15 U.S.C. § 1639b(c) (2)(B)).

creditor or brokerage firm) only if the MLO is not paid by the consumer.

- o The prohibition on dual compensation generally applies to commissions and other payments tied to the loan transactions that are made to individual brokers, individual loan officers, and brokerages. The Board has applied this prohibition in a way that allows salaries or hourly wages paid to individual employees. The Bureau is considering interpreting the Dodd-Frank prohibition on dual compensation, consistent with the Loan Originator Rule, as not prohibiting salaries or hourly wages paid to individual MLO employees.

- Dodd-Frank's language mandates generally that MLOs can only be compensated by consumers, but provides an exception that allows MLOs to be compensated by other parties under two conditions: (1) the MLO must not receive any compensation directly from a consumer; *and* (2) the consumer must not make an upfront payment of discount points, origination points, or fees, other than bona fide third party fees that are not retained by the creditor, the MLO, or either company's affiliates.[16]

  - o We refer to this second requirement as the "points and fees provision" because the statutory requirements prohibit any points and fees in a transaction in which the MLO is being paid by a creditor or brokerage. These include any origination fees, origination points, discount points, or any other upfront fees, as well as fees retained by an affiliate of the MLO or creditor.[17]

  - o The Bureau may create exemptions to the points and fees provision if it finds that such action is "in the interest of consumers and in the public interest."[18]

- Dodd-Frank identifies three types of compensation structures that are subject to different rules, absent exercise of the Bureau's exception authority concerning the points and fees provision.[19]

[16] TILA § 129B(c)(2)(B)(ii) (codified at 15 U.S.C. § 1639b(c)(2)(B)(ii)). *See* Appendix C.

[17] Points on a residential mortgage loan are a fee, expressed as a percentage of the loan amount, to be paid by the borrower to the lender at the time of loan origination. In some cases, lenders will offer a reduced interest rate in return for the payment of points; for clarity, these are referred to as "discount points." In contrast, "origination fees" are discrete, fixed-dollar, upfront payments meant to cover the costs related to the origination of a mortgage loan, including for example, underwriting and preparing legal documents. Similar upfront charges computed as a percentage of the loan are referred to as "origination points."

[18] TILA § 129B(c)(2) (codified at 15 U.S.C. § 1639b(c)(2)).

[19] The CFPB has interpreted "origination fee or charge" to include commissions paid by a creditor to its own employees (loan officers) and to a brokerage and by the brokerage to its brokers. Accordingly, the prohibition on points and fees under TILA § 129(c)(2)(B) will apply to all or most loans originated in the retail channel (because creditor banks typically pay commission to their employee loan originators), and to wholesale (*i.e.*, brokered) transactions , except originations where there is consumer-paid compensation. The CFPB also considered interpreting "origination fee or charge" not to include commissions paid by a creditor or brokerage firm to its own employees and recognizes that this may be a permissible alternative interpretation.

- ***Consumer-paid compensation*****:** Dodd-Frank generally prohibits an MLO from receiving from "any person other than the consumer … any origination fee or charge." We refer to such compensation as "consumer-paid compensation." Consumer-paid compensation generally arises where the consumer directly pays compensation to an MLO that is a brokerage firm. (Employee MLOs, such as loan officers and brokers employed by brokerage firms, are typically not permitted to accept compensation directly from the consumer). Provided the brokerage firm does not pay transaction-specific compensation to its employees (*e.g.*, the MLO is only paid a salary or hourly wage), the consumer is free to make upfront payment of points and fees.[20]

- ***Creditor-paid compensation*****:** As noted above, a creditor may pay compensation to MLOs that are its loan officers or to a brokerage firm (including where the brokerage firm then pays its employee brokers), provided the consumer does not directly compensate those MLOs and does not pay points or fees.

- ***Brokerage-paid compensation:*** When the consumer pays the brokerage firm and the brokerage firm pays its employee broker compensation tied to the transaction, this presents an additional complication under Dodd-Frank. Absent use of the Bureau's exemption authority, the brokerage would only be allowed to compensate its MLO employees if the consumer did not make "an upfront payment of discount points, origination points, or fees, however denominated." However, the consumer payment to the brokerage firm would itself constitute an upfront payment. Accordingly, absent exercise of the Bureau's exemption authority, brokerage-paid compensation is not permitted under Dodd-Frank.[21]

- The CFPB considered implementing Dodd-Frank's prohibition on the payment of upfront points and fees without exercising its exemption authority. However, implementation without an exemption would significantly restructure pricing for most mortgage transactions with unpredictable results for both consumers and industry.

- As written, Dodd-Frank prohibits the consumer from paying upfront points or fees to the MLO, creditor, or their affiliates in all retail and wholesale loan originations where creditors or brokerage firms compensate MLOs (*i.e.,* where there is creditor-paid compensation or brokerage-paid compensation). Because these types of compensation are present in the vast majority of originations and the payment of upfront points and fees is widespread, implementation without exemption would significantly change the

[20] The Bureau is considering proposing that payments made from the consumer to the brokerage firm out of loan proceeds (*i.e.*, borrowed by the consumer as part of the initial loan amount) would be considered compensation received directly from the consumer, but compensation paid through a higher interest rate would not. This approach would be consistent with the treatment in the Loan Originator Rule of compensation from the consumer to the brokerage firm from the loan proceeds. *See* 12 CFR part 1026, Supplement I (Comment 36(d)(1)-7).

[21] Brokerage-paid compensation is also prohibited under the Loan Originator Rule. *See* 12 CFR part 1026, Supplement I (Comment 36(d)(2)-1).

financing for most current mortgage loan originations.[22]

- Points and fees present the possibility of consumer confusion. For example, consumers may have difficulty understanding trade-offs between upfront points and fees versus paying for these charges through increases in the interest rate or the loan amount. Furthermore, even if consumers generally understand such trade-offs, they may not be able to determine in a particular instance whether discount points paid up front result in a reasonably proportionate interest rate reduction or whether they are receiving appropriate value for originations fees. Finally, there is a concern that some lenders offer multiple permutations of points and fees in a way that makes shopping and pricing comparison difficult to extract profit at consumers' expense rather than to provide optionality and value to consumers.

- Providing no exemptions would force lenders to provide no-point, no-fee loans and to recover their administrative costs through the rate over time rather than through upfront payments. It is possible that simplifying the pricing of loans by incorporating the whole price of the loan in the interest rate would make prices more transparent for consumers. Greater transparency could aid consumers in shopping among different loan products.

- However, curtailing consumers' ability to pay discount points, origination points, or origination fees upfront in exchange for lower monthly mortgage bills could negatively impact consumers' access to credit (*see* discussion of Potential Impacts on Small Entities below) and would restrict choices for the class of borrowers who simply prefer to pay more at origination and less each month. In addition, eliminating discount points would eliminate a potential benefit to consumers that comes from "signaling" to lenders that the consumer does not intend to prepay his or her mortgage loan. This signaling, in turn, may facilitate a more efficient market in which lenders are able to provide such consumers with a better deal. Similarly, to the extent lenders incur upfront costs associated with processing an application and underwriting a loan, consumers may benefit by paying those costs upfront rather than forcing those costs to be recovered through a higher interest rate over the life of the loan.

- Predicting outcomes of a full prohibition on payment of upfront points and fees is particularly difficult because data are limited generally on the prevalence, size, and distribution of upfront points and fees in the mortgage market and specifically on the interaction of these points and fees with MLO compensation or with consumer decision making. Outcome prediction is further complicated by a number of factors, including the fact that the Loan Originator Rule took effect just one year ago, the existence of pending additional regulatory changes (such as implementation of new federal mortgage disclosures) that could impact consumer understanding, and the fact that the mortgage market is still under significant stress from the mortgage-lending and financial crises.

[22] Specific public data about the prevalence of upfront fees and points is very limited. Surveys from Freddie Mac and FHFA have some limited information about the level and/or prevalence of upfront points and fees; however, these sources do not disclose the nature of any upfront payments.

- Legislative history does not clearly indicate Congress' specific reasons for prohibiting consumer payment of upfront points and fees. Congress' decision to provide exemption authority specific to the points and fees prohibition, however, suggests that it recognized a risk of significant unanticipated consequences from the prohibition and the prospect that the CFPB's use of this exemption authority may be prudent to mitigate those consequences.

- For these reasons, the CFPB believes that a cautious approach is warranted. As described below, the CFPB is considering using its exemption authority to permit consumer payment of upfront points and fees under certain circumstances for loan transactions involving creditor-paid compensation or brokerage-paid compensation.[23] Because the statutory language differentiates between points and fees that are retained by creditors, loan originators, or their affiliates and those that are retained by bona fide third parties, the Bureau is further considering whether to propose particular conditions for payments to affiliates.

1. Proposals Under Consideration for Creditor-Paid Compensation

- In light of these outstanding policy questions, the rapidly evolving mortgage lending market, and the risks inherent in a broad ban on points and fees in originations where there is brokerage-paid or creditor-paid compensation, the CFPB is considering exercising its exemption authority to issue a partial exemption. The proposed exemption would be designed to limit the payment of points and fees where the possibility of consumer confusion (and thus harm) is greatest. Specifically, the proposal under consideration would permit consumers to pay certain upfront points and fees in retail and wholesale loan originations when the creditor compensates an MLO, subject to the following conditions:
  - Consumers may pay discount points, provided: (1) the discount points are bona fide, meaning they result in a minimum reduction of interest rate for each point paid; and (2) the creditor also offers the option of a no discount point loan. The Bureau is already in the process of defining "bona fide discount points" for the purpose of a separate rulemaking on ability to repay requirements under Dodd-Frank.[24]
  - Consumers may pay upfront origination fees (except compensation to the MLO, which is prohibited by the statute), provided that the origination fees are "flat" and thus do not vary with the size of the loan.
  - Upfront fees may also be paid to affiliates of the MLO or affiliates of the creditor, provided that such fees are flat and so do not vary with the size of the loan. Payments to affiliates of the MLO or creditor for title insurance, however, would be permitted to vary with the size of the loan.

[23] *See* Appendix C.

[24] *See* 76 Fed. Reg. 27,390 (May 11, 2011).

- The CFPB is considering whether to "sunset" this potential partial exemption from the statute. Under the sunset provision under consideration, after a specified period (*e.g.*, three or five years), the rule permitting creditors to compensate MLOs when consumers paid points or fees would automatically expire (and the points and fees provision would take full effect) unless the CFPB takes affirmative action to extend it. With or without a sunset provision, the CFPB would review the regulation within five years of its effective date pursuant to § 1022(d) of Dodd-Frank, which requires the CFPB to "conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law" and publish a report of its assessment.[25] At that time, the CFPB will have had time to conduct a more detailed assessment of the payment of points and fees in a more stable regulatory environment to determine the long-term regulatory regime that would maximize consumer protections and credit availability.

Other Alternatives Considered for Creditor-Paid Compensation:

- The CFPB has also considered proposing other conditions on charging upfront points and fees, in addition to those described above. It seeks the advice and feedback of SERs on these alternatives and their potential impacts on small entities:
    - The creditor must offer a no-fee loan, and the difference between the higher interest rate on the no-fee loan and interest rate on the loan with upfront fees must be reasonably related to the amount of upfront fees.[26]
    - Consumers must be offered the option of a no-point, no-fee loan.

a. <u>Potential Impacts on Small Entities</u>

Benefits

- Relative to the Dodd-Frank ban on points and fees in creditor-paid transactions, allowing the creditor both to compensate the MLO and to charge the consumer points and fees would increase the range of mortgage transactions available to consumers. The increased range of payment options would allow small creditors and brokerages to be more flexible in marketing different mortgage loan products to consumers. In addition, the availability of different payment options would enhance the ability of creditors and brokerages to enter into certain mortgage loan transactions with consumers.
- A consumer's ability to refinance is costly to the creditor. Preserving consumers' ability

[25] 12 U.S.C. § 5512(d). The assessment must address, among other relevant factors, the effectiveness of the rule or order in meeting Dodd-Frank's purposes and objectives and the specific goals stated by the CFPB, and it must reflect any available evidence and data collected by the CFPB. Before publishing a report of its assessment, the CFPB is required to invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

[26] Discrete, "add on" benefits or services requested by the consumer (*e.g.*, rate lock, expedited handling) could possibly be excluded from the no-fee requirement.

to choose to pay interest upfront in the form of discount points would reduce the ultimate cost to creditors from both loan default and prepayment.

- The ability for creditors to charge discount points in exchange for lower interest rates can accommodate those consumers who prefer to pay more at settlement in exchange for lower monthly interest charges and could produce a greater volume of available credit in residential mortgage markets. Preserving this ability would potentially allow a wider access to homeownership, benefitting consumers, creditors, brokerages, and individual MLOs.

- The ability to charge origination fees up front would allow creditors to recover fixed costs at the time they are incurred rather than over time through increased interest payments or through the secondary market prices.

- Similarly, preserving the flexibility for affiliates of creditors and brokerages to charge fees upfront should allow for these firms to charge directly for their services. Creditors and brokerages may be less likely to divest such entities than if the Dodd-Frank mandate takes effect as written.

Costs

- The proposals under consideration would impose some restrictions on discount points when creditors compensate MLOs. The discount points must be bona fide, *i.e.*, they result in a minimum reduction of interest rate for each point paid. Relative to the Loan Originator Rule, or to a broader exemption, this condition would restrict small entities' flexibility in pricing.

- Implementing a requirement that discount points be bona fide would also impose compliance and monitoring costs. However, small creditors will need to determine when discount points are bona fide for the purposes of the ability to repay rule. To the extent that the definitions of bona fide discount points are similar, the additional costs would be reduced.

- A requirement to offer consumers a no-point option might also impose costs on smaller creditors to the extent that they would be forced to price and offer terms they might not otherwise offer.

- A requirement that upfront origination fees paid by the consumer be flat and not vary with the size of the loan might limit a small entity's ability to price differentially. To the extent that fixed origination costs do vary in this dimension, small entities might be forced to use "average costs pricing" to recoup origination costs.

- The sunset provision being considered may be disruptive. It could pose greater costs compared to making any changes through the assessment process mandated by § 1022(d) (which requires an opportunity for public comment) or a rulemaking with a notice and comment and that could provide for an implementation period.

2. <u>Proposals Under Consideration for Brokerage-Paid Compensation</u>

- The Bureau has considered implementing as written Dodd-Frank's complete prohibition on a brokerage paying an individual broker a commission if the consumer has paid the brokerage. This approach would be consistent with the Loan Originator Rule, which also bans brokerage-paid compensation. However, the Bureau believes that caution is warranted.

    - Some MLOs have indicated that the Dodd-Frank provisions would likely cause brokerage firms not to accept compensation from consumers. Brokerage firms currently are prohibited by the Loan Originator Rule from paying their own employees a commission for these transactions (although they could pay a salary or an hourly wage to their employees). Furthermore, some brokerages have claimed that paying their brokers only a salary or hourly wage presents difficulties, particularly for small brokerage firms.

    - In addition, the Loan Originator Rule banned brokerage-paid compensation in part to reduce the risk that brokerage firms would structure that compensation in a way that created an incentive for individual MLO brokers to steer consumers into less favorable loans than they would otherwise qualify for. Because Dodd-Frank reduces that risk by prohibiting the consumer from compensating the brokerage based on loan terms (*see* B below), the Bureau believes that a categorical ban on brokerage-paid compensation may no longer be warranted.

- The CFPB is therefore considering a proposal under which it would exercise its exemption authority and issue a rule permitting the brokerage-paid compensation structures. Under this approach, the CFPB is considering (and seeks input from SERs on) imposing the same conditions on upfront points and fees paid by consumers to creditors and their affiliates as the CFPB would impose for the creditor-paid compensation scheme discussed above (*e.g.*, discount points must be bona fide and origination fees must be flat and thus must not vary based on the size of the loan). The CFPB seeks the advice and feedback of SERs on whether there should be restrictions on certain or all upfront fees paid by the consumer to the brokerage firm and its affiliates, such as the flat fee requirement.

- As with the proposals under consideration for creditor-paid compensation, the CFPB is considering whether to include a sunset provision on any CFPB exemption, and in any event would expect to evaluate the regulation five years after its effective date under § 1022(d) of Dodd-Frank.

a. <u>Potential Impacts on Small Entities</u>

Benefits

- Outside creditor-paid compensation, the brokerage must earn its revenue from the consumer. As a result, the main benefit to small brokerages from the proposals under consideration, relative to the current Loan Originator Rule, would be the exemption allowing brokerages to pay commission payments to brokerage employees when the consumer pays the brokerage. Such commissions allow brokerage firms to offer their employees performance-based incentives.

- The proposals under consideration would level the playing field between brokerage firms and creditors in regard to the incentives for origination available to brokerage firms, since a majority of banks and thrifts compensate their MLOs through commissions.

Costs

- Relative to an even broader exception, the proposal under consideration would limit the structure of origination fees, banning those calculated as a percentage of the loan. This would limit some small entities' ability to price as they see warranted as discussed above.

- The costs of the affiliates provision and proposed sunset are similar to those discussed above for creditor-paid compensation.

B. MLO Compensation That Varies Based on Loan Terms (Other Than Principal)

- Under Dodd-Frank, MLOs may not receive (and no person may pay to MLOs), directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of principal).[27]
    - While the Loan Originator Rule contains a similar prohibition against compensation based on loan terms and conditions, the Rule's prohibition does not apply to consumer-paid transactions.[28]
    - Dodd-Frank makes a significant change to the Loan Originator Rule by imposing a ban on compensation that varies based on loan terms even on transactions where the consumer compensates the brokerage firm. The Dodd-Frank prohibition on varying compensation based on loan terms thus applies to consumer-paid, creditor-paid, and brokerage-paid compensation.
    - Dodd-Frank's extension of the Loan Originator Rule to consumer-paid transactions reduces potential incentives for a brokerage to upcharge consumers and steer them into less favorable loans in originations with consumer-paid or brokerage-paid compensation.

- The proposed rules under consideration will implement this statutorily-mandated change extending the ban on varying compensation based on loan terms to consumer-paid and brokerage-paid compensation.

[27] TILA § 129B(c)(1) (codified at 15 U.S.C. § 1639b(c)(1)).

[28] 12 CFR 1026.36(d)(1).

- The Bureau is also considering certain changes to the Loan Originator Rule to clarify or address interpretive and compliance issues relating to this prohibition that have arisen since the Rule went into effect in April 2011. The proposals under consideration to implement these changes are discussed below.

1. Compensation Based on Profits Derived From Mortgage Business

- The Commentary to the Loan Originator Rule ("Commentary") states that "compensation" includes salaries, commissions, and any similar payments, as well as annual or periodic bonuses.[29]

- The Commentary also provides that "terms or conditions" of the transaction include the interest rate, annual percentage rate, loan-to-value ratio, and the existence of a prepayment penalty.[30]

- The Bureau has received a number of questions on the application of the Loan Originator Rule to employer contributions to qualified retirement plans, such as employer-paid 401(k) plans, and to non-qualified plans, such as bonus or certain types of profit-sharing plans.

    - Under the Loan Originator Rule and Commentary, MLOs cannot be paid more compensation as a result of their origination of mortgages that have specific loan terms or conditions.[31]

    - Questions have arisen because, for many companies, the amount of the employer's contribution to these plans varies based on the company's profits, which in turn vary, in part, on the terms of the loans that the company's MLOs originate (such as the interest rate).[32]

- As noted above, Dodd-Frank generally follows the principles governing employee compensation in the Loan Originator Rule in prohibiting an MLO from receiving, directly or indirectly, compensation that varies based on the terms of the loan.[33] To

[29] 12 CFR part 1026, Supplement I (Comment 36(d)(1)-1).

[30] 12 CFR part 1026, Supplement I (Comment 36(d)(1)-2).

[31] 12 CFR 1026.36(d)(1).

[32] On April 2, 2012, the CFPB issued a bulletin clarifying that, until it adopts final rules implementing Dodd-Frank's mortgage loan origination standards, employers may make contributions to qualified retirement plans for MLOs out of a pool of profits derived from loans originated by MLO employees. *CFPB Bulletin 2012-02* (Apr. 2, 2012).

[33] The Rule allows MLO compensation based on "a fixed percentage of the amount of credit extended," *see* 12 CFR 1026.36(d)(1)(ii). Dodd-Frank similarly allows an MLO to receive compensation that varies with the amount of the principal and with loan volume. *See* TILA § 129B(c)(1) and (4)(D) (codified at 15 U.S.C. § 1639b(c)(1) and (4)(D)).

reduce any unintended consequences and unnecessary burdens, the CFPB is considering proposals to clarify the circumstances where these contributions or payments are permissible.

- The Bureau considered proposing a prohibition on MLOs participating in bonus and non-qualified profit-sharing plans if employer payments of bonuses or contributions to the plans were made from profits derived, wholly or partly, from the company's mortgage business. The Bureau considered a similar approach for qualified retirement, qualified profit-sharing, and qualified stock ownership plans.

    - However, the Bureau believes that Dodd-Frank provides some flexibility regarding treatment of such plans and that a strict prohibition may not be necessary or appropriate to implement Dodd-Frank's objectives, provided that potential steering incentives can be sufficiently addressed.

    - The Bureau further recognizes the burdens that strict prohibitions may impose on creditors, brokerages, and MLOs.

- Accordingly, the Bureau is considering proposals that would allow MLO compensation paid from mortgage business profits where the compensation is substantially deferred in time or there are other safeguards presented by the requirements of "qualified" plans and other compensation schemes to sufficiently mitigate steering incentives.

    - The three proposals under consideration, discussed below, would each permit, in certain circumstances, employers to compensate MLOs from profits derived from the company's mortgage business. However, consistent with the general Dodd-Frank prohibition on MLO compensation that varies based on loan terms, these proposals would *not* permit an employer to compensate individual MLOs differently depending on the profitability of the loans he or she originates.

    - The Bureau is still evaluating whether the proposals under consideration discussed below: (1) are operationally feasible to administer and sufficiently minimize burdens; (2) mandate sufficient safeguards to effectively mitigate steering incentives; and (3) are viable given other existing requirements for qualified plans under federal law.

    - The Bureau is continuing to consider and investigate these issues and may revise its proposals as it obtains additional information and feedback. Thus, the Bureau welcomes the input of SERs on these aspects of the proposals under consideration.

a. **Proposals Under Consideration**

The CFPB is considering proposals to:

(1) Permit employers to make contributions to MLO employees' qualified retirement plans, qualified profit-sharing plans, and qualified stock ownership plans even if contributions to a particular plan are made from profits derived from the company's mortgage business.

Examples:

- Company A maintains a qualified 401(k) plan (meeting the qualification requirements under the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 ("ERISA")) in which eligible employees, including MLOs, may participate. The proposal under consideration would permit Company A to make contributions to this plan, even if the contributions are funded from company-wide profits that include profits from its mortgage business. The company may make a matching contribution, contribute a fixed amount based on percentage of salary or other formula, or make a discretionary contribution to the plan on behalf of its MLO and other employees.

- Company B maintains a qualified profit-sharing plan (meeting the qualification requirements under the Internal Revenue Code and ERISA) that is set up to allow for discretionary employer contributions (*i.e.*, the amount contributed by the employer to the plan each year is not fixed). As a qualified plan, the company's profit-sharing plan provides, among other things, a definite formula for allocating the employer's contribution among the participants and for distributing the accumulated funds to the employees after they reach a certain age, after a fixed number or years, or certain other occurrences. Some or all of the eligible plan participants are MLOs. The proposal under consideration would permit Company B to contribute company profits, including profits from its mortgage loan business, to the qualified profit-sharing plan.

(2) Permit employers to pay MLO employees bonuses or to make contributions to non-qualified profit-sharing or similar non-qualified plans from profits derived from the company's mortgage business, provided that mortgage-related revenue does not contribute more than a set percentage of the company's total revenue. The CFPB is considering setting that percentage at a fixed percentage between 20 percent and 50 percent of total revenue.[34]

[34] The CFPB seeks input from the SERs on what percentage cap should be selected and the impact on small entities. While revenue percentages will differ from profit percentages, the CFPB recognizes the potential implementation and operational difficulties of using a profits-based measure, especially for smaller entities.

Example:

- ➢ Company A and Company B are both solely engaged in the residential mortgage and credit card businesses. Each company earns $1 million revenue and $200,000 profits yearly, although revenue and profits are quite differently distributed between the companies' business lines. Company A's mortgage business accounts for $150,000 revenue (or 15 percent of total revenue) and $50,000 profits; its credit card business accounts for $850,000 revenue (or 85 percent) and $150,000 profits. Company B's mortgage business accounts for $750,000 revenue (75 percent) and $100,000 profits, and its credit card business accounts for $250,000 revenue (25 percent) and $100,000 profits. The proposal under consideration would permit only Company A to pay a discretionary bonus to an MLO employee and to make a contribution to a non-qualified profit-sharing, retirement, or similar account of an MLO derived from the entire $200,000 of company-wide profits (which includes profits from its mortgage business). In contrast, if Company B wishes to pay a discretionary bonus or to contribute to its MLOs non-qualified plans, it would be restricted to paying from the $100,000 of profits derived from its credit card business. In either case, however, the bonus payments or employer contributions to an MLO employee may not vary based on the terms of the loans originated by that MLO.

(3) Permit employers to make contributions to MLO employees' qualified or non-qualified plans and to pay MLO employees bonuses from profits derived from the company's mortgage business provided: (1) the number of loans originated by the MLO is below a set small number; and/or (2) the MLO has originated a small proportion of the total loans originated by the company.

Example:

- ➢ An employee of Company A originated one residential loan during the year. The proposal under consideration would permit Company A to contribute to the qualified retirement, profit-sharing, or stock ownership plans in which the employee participates, even if the company's contribution is from profits derived from its mortgage business. The company may also pay bonuses and contribute to any non-qualified retirement, profit-sharing, or similar plans in which the employee participates, irrespective of the percent of total revenue that is attributable to the company's mortgage business. The employee may not, however, receive different payment or contribution amounts depending on the terms of the loans that he or she originates.

b. Potential Impacts on Small Entities

- With respect to Proposal 2 above:
  - o For small depository institutions and credit unions (defined as those institutions with assets under $175 million), regulatory data from 2010 indicate that at the

higher threshold of 50 percent of total revenue, roughly 1.5 percent of small commercial banks (about 100 banks) and 3 percent of small credit unions (about 200 credit unions) would remain subject to the proposed restrictions on profit-related MLO compensation. Using a lower threshold of 20 percent of revenue, 40 percent of commercial banks and 32 percent of credit unions would be subject to the proposed restrictions.

  - The numbers are larger and more significant for small savings institutions whose primary business focus is on residential mortgages. At the higher threshold, 56 percent of these firms would be restricted from paying bonuses based on mortgage-related profits to their MLOs.[35]

- The Bureau lacks comprehensive data on nonbank lenders and, in particular, does not have information regarding the precise range of business activities that such companies engage in. As a result, it is unclear at this time the extent to which such nonbank lenders will face restrictions on their compensation practices.

- The Bureau does not have data, however, on what percentage of these institutions previously paid bonuses based on their profits. The Bureau assumes some institutions did not pay bonuses based on loan terms prior to the Loan Originator Rule, and others may have moved to a system based on the number of loan originations or loan amount, which are not restricted by the Rule. Accordingly, the actual percentage of financial institutions that would be restricted from paying certain bonuses may be smaller than the numbers reflected above.

Benefits

- Adopting the proposals under consideration would allow creditors to make payments to an MLO's qualified retirement plan and to pay bonuses out of profits under certain circumstances. This change could reduce operating costs for brokerages and creditors that might otherwise have to restructure their current compensation plans, including bonuses and profit-sharing.

- The proposals under consideration would offer small entities greater flexibility for MLO compensation than a strict categorical approach, which should help them maintain their competitiveness when recruiting, hiring, and retaining MLOs.

- The proposals under consideration would provide small entities with greater clarity regarding circumstances under which bonuses, profit-sharing, or other incentive-based compensation are or are not allowed.

- Proposal 3 would allow MLOs who originate a small number or proportion of loans to

[35] Estimates are based on 2010 call report data. Revenue from loan originations is assumed to equal fee and interest income from 1-4 family residences as reported. To the extent that other revenue on the call reports is tied to loan originations, these numbers may be underestimated. Revenue estimates for credit unions are not available; instead, the percentage of assets held in 1-4 family residential real estate is used instead.

receive bonuses from profits derived from the company's mortgage business regardless of the percent of profits that the mortgage business contributes.

Costs

- Companies above the percentage cap that desire to maintain bonus plans or other forms of profit-based compensation would have to calculate profits related to their mortgage business and either remove them from the relevant profit pool or maintain different plans funded by different profit pools for different sets of employees. However, these companies likely already have or are in the process of making these changes due to the status of profit-sharing, bonus, and qualified plans under the Loan Originator Rule.

- The implementation of any percentage cap could create differences for institutions based on the percentage of revenue that comes from mortgages. Thus, some companies might gain a competitive advantage.

2. Pricing Concessions

- The Loan Originator Rule does not allow creditors and brokerages to set the MLO's compensation at a certain level and then lower it in selective cases where different loan terms are negotiated because such a structure could be used to circumvent the ban on compensation based on a transaction's terms or conditions. Commentary to the Loan Originator Rule notes an example of a "pricing concession," stating that a creditor may not offer to extend a loan with specified terms and conditions (such as the rate and points) and then increase or decrease the MLO's compensation for that transaction if different loan terms are negotiated.[36]

- Because Dodd-Frank extends the application of the prohibition on compensation to the MLO based on loan terms to originations where there is consumer-paid compensation and brokerage-paid compensation, the restriction on pricing concessions also applies to the compensation paid from the consumer to the MLO. Thus, the MLO could not agree with a consumer to be compensated a set amount for a particular origination and then attempt to renegotiate compensation when loan terms are subsequently changed.

a. <u>Proposals Under Consideration</u>

- The CFPB is considering a proposal that would allow MLOs to make certain types of pricing concessions to cover unanticipated increases in third-party settlement charges, where those settlement charges are not controlled by the MLO, the creditor, or their affiliates and exceed or are in addition to the amounts disclosed on the Good Faith Estimate disclosure required by the Real Estate Settlement Procedures Act.
    - For example, an appraiser may discover structural damage to a property or a

[36] 12 CFR part 1026, Supplement I (Comment 36(d)(1)-5).

possible environmental hazard, which necessitates a special inspection. The proposal under consideration would permit the MLO to pay for the special inspection out of the MLO's compensation, instead of imposing the cost on the creditor or consumer.

  - This would provide additional flexibility to MLOs to close loans when the creditor will not agree to a pricing concession for the settlement charges and the consumer is not able or is unwilling to pay such new or additional amounts.

- The CFPB also seeks input from SERs on whether there should be further limits on any exception allowing MLOs to make pricing concessions (such as limits on the dollar amount or volume of concessions made by a particular MLO) or whether pricing concessions should be allowed in other situations.

  - The CFPB, however, is concerned that permitting MLOs to make other pricing concessions—such as concessions to prevent the creditor from making a high-cost mortgage, to undercut a competing offer (*e.g.*, lowering closing costs or the interest rate and then lowering MLO compensation to cover the decreased closing costs or interest rate), or to make corrections—could create a loophole that would undermine the general rule that MLO compensation may not vary based on the terms of the loan. An MLO could attempt to impose fees on consumers with the understanding that the MLO may have to make concessions to more savvy borrowers, who may be more likely to choose not to pay such fees.[37] Additionally, a creditor could inflate an MLO's compensation and then decrease the compensation on a transaction-specific basis to, for example, pay for certain costs, possibly resulting in compensation based on the loan's terms.

b. <u>Potential Impacts on Small Entities</u>

Benefits

- Permitting MLOs to make pricing concessions out of their compensation when unanticipated increases in third-party settlement charges occur at closing would provide flexibility for MLOs to close loans when the creditor will not agree to meet the increased settlement costs or the consumer declines to pay such costs and the creditor cannot provide the funds in time for closing.

Costs

- Because amending the current rule regarding pricing concessions would permit such concessions under certain circumstances, such a change when compared to a categorical prohibition could impose some additional costs on small MLOs for employee training

[37] For example, the Bureau's proposal under consideration would not permit an MLO to use the MLO's compensation to pay for rate lock extensions only when savvy consumers refuse to pay, but would permit an MLO to pay for an extension if the closing is delayed by a special inspection, as described above.

regarding compliance along with changes to systems or operations needed to comply with the proposal under consideration.

- The adoption of a proposal allowing an MLO to engage in pricing concessions might weaken the bargaining position of the small MLO relative to a creditor. Creditors might insist that the MLO make such concessions from their compensation, whereas with a complete prohibition on concessions paid out of MLO compensation, creditors might be more likely to make the concession themselves.

3. Point Banks

- In a point bank, a creditor contributes points to an MLO for each transaction that the MLO closes. The MLO may then use these points to obtain pricing concessions from the creditor. For example, the MLO may pay discount points to the creditor from the MLO's point bank in order to obtain a lower rate for the consumer. Point banks may exist in both retail and wholesale contexts.

- A point bank may provide an MLO with the ability to close some transactions that may not have closed if the MLO did not have the benefit of a point bank. Accordingly, under the Loan Originator Rule, a point bank could be viewed as compensation since it is providing "a financial or similar incentive" to the MLO.

- The CFPB is considering clarifying that MLO point banks fall within the definition of "compensation" and providing guidance on the award of points to MLOs that would not violate Dodd-Frank's prohibition against compensation that varies based on loan terms.

a. <u>Proposals Under Consideration</u>

- The CFPB is considering proposing amending the Commentary to the Loan Originator Rule to clarify that:

  - Point banks funded based on the difference between the rate required by the creditor for a given consumer and the actual rate the MLO sells the consumer, or based on the difference between any other term required by the creditor and the actual term the MLO sells the consumer, are not permissible because the contributions to the point bank would vary based on the terms of the mortgage transaction; and

  - Point banks funded by a creditor are permissible provided: (1) the creditor does not base the amount of the contribution to an MLO's point bank for a given transaction on the terms and conditions of the transaction; (2) the creditor does not change its contributions to the point bank over time based on terms or conditions of the MLO's transactions, or on whether the MLO overdraws the MLO's point bank; and (3) if a creditor permits an MLO to overdraw the MLO's point bank, the creditor does not reduce the MLO's commission on a transaction when he or she does so.

b. Potential Impacts on Small Entities

Benefits

- Relative to the current rule, the proposal under consideration would clarify the permissible ways in which point banks may be funded, and allow the use of such point banks by MLOs to close transactions that may not have otherwise closed, thus benefitting the MLO and the consumer.

Costs

- By clarifying that point banks are a form of compensation, the proposal under consideration would make it clear that point banks are subject to the current Rule and thus clearly limit the ways in which point banks may be funded. To the extent that MLOs are currently utilizing point banks that are being funded in a manner that would be prohibited under the proposal being considered, the funds available to be awarded to those points banks might decrease, thereby restricting the ability of MLO employees of small entities to use them to originate loans in certain circumstances.

- By clarifying that point banks are permissible under certain circumstances, the proposals under consideration may further weaken the MLO's bargaining position with the creditor over the payment of unanticipated third-party costs at closing.

4. Proxies

- Commentary to the Loan Originator Rule indicates that compensation "based on a factor that is a proxy for a transaction's terms or conditions" is prohibited because compensation based on proxies could potentially lead to circumvention of the ban on compensation based on the terms and conditions of the loan.[38] The comment identifies credit scores and debt-to-income ratios as examples of factors that are proxies for loan terms.

- Based on the numerous inquiries received by the CFPB, there is uncertainty regarding the scope of the prohibition of receiving compensation based on a proxy of a loan term or condition under the Loan Originator Rule. While the Bureau does not believe that any departure from the approach in the Rule is necessitated by Dodd-Frank, the Bureau is considering whether to provide examples of compensation that is or is not based on loan terms or conditions to clarify whether particular factors serve as proxies for loan terms and whether to amend the Commentary to adopt one or more of the following analytical frameworks to clarify the proxy concept and to ease compliance burdens. It especially seeks information from SERs on any difficulties in using the test proposed below, whether the test is effective at preventing harm to consumers, and whether the test would be overbroad or have unintended consequences.

[38] 12 CFR part 1026, Supplement I (Comment 36(d)(1)-2).

a. Proposals Under Consideration

- The Bureau is considering proposing the following test to determine whether a factor is a proxy for a loan term:
  - o A factor is a proxy if: (1) it substantially correlates with a loan term; and (2) the MLO has discretion to use the factor to present a loan to the consumer with more costly or less advantageous term(s) than term(s) of another loan available through the MLO for which the consumer likely qualifies.

Other Alternatives Considered:

- The Bureau considered a definition of proxy as any factor that substantially correlates with a loan term. For example, pursuant to this definition, whether a loan is a purchase loan or a refinance would be considered a proxy for a loan term if it substantially correlates to interest rate, which is itself a loan term. If the correlation was substantiated, an MLO's compensation could not vary based on whether the loan is a purchase loan or a refinance. While this definition of proxy is consistent with the treatment of the issue in the Loan Compensation Rule and would be permissible under Dodd-Frank, the Bureau believes that such an approach may be overly inclusive because it could include practices where the risk of steering is not present.

b. Potential Impacts on Small Entities

Benefits

- Narrowing the concept of proxies would provide creditors and MLOs greater flexibility in their compensation structures and would permit incentives for the origination of certain types of loans.

5. Record Retention Requirements for MLOs

- Under the Loan Originator Rule, a creditor maintains records of the compensation it provided to the MLO for the transaction and of the compensation agreement in effect on the date the interest rate was set for the transaction.[39] The creditor must maintain these records for two years after a mortgage transaction is consummated.[40] However, an MLO is not required under the Loan Originator Rule to maintain records of the compensation it receives from a creditor, directly from the consumer, or from the brokerage firm.

- Under § 1404 of Dodd-Frank, MLOs are subject to civil liability for violations of TILA, including liability for receiving compensation that varies based on the terms of the loan, regardless of whether that compensation comes directly from the consumer or from a

[39] 12 CFR part 1026, Supplement I (Comment 25(a)-5).

[40] General guidance for maintaining these records is set forth in Regulation Z and accompanying commentary. *See* 12 CFR 1026.25.

person other than the consumer.[41]

a. **Proposals Under Consideration**

- The CFPB is considering requiring brokerages (in addition to creditors) to maintain: (1) records of MLO compensation arrangements and agreements; and (2) records of compensation provided to MLOs by a consumer or a person other than the consumer.

b. **Potential Impacts on Small Entities**

Benefits

- Record-keeping will improve the CFPB's ability to monitor compliance with applicable requirements and to better protect consumers, and will assist entities in assessing their compliance with the rule.

Costs

- MLOs currently without record-keeping procedures will incur the costs associated with the establishment and maintenance of such procedures.

C. MLO Qualification and Screening Requirements

- Section 1402 of Dodd-Frank Act amends TILA to impose a duty on MLOs to be "qualified" and, where applicable, registered or licensed as a mortgage originator under state law and the federal SAFE Act.[42] It also requires MLOs to provide their identifying numbers under the Nationwide Mortgage Licensing System and Registry ("NMLSR") on all loan documents.

- The SAFE Act created minimum federal standards to supplement and reinforce states' traditional licensing and registration requirements for individual MLOs in order to minimize mortgage loan origination practices harmful to consumers. The SAFE Act currently imposes the following requirements on MLOs:

    - ***Non-Bank MLOs:*** The SAFE Act requires MLOs who are not employees of depositories to be licensed in the states in which they operate, and it provides minimum standards for states to follow in their licensing. To become licensed, an MLO must complete pre-licensure education courses, pass a written test, demonstrate character and fitness, and have no disqualifying felony convictions. To maintain a license, the MLO must take annual continuing education courses and continue to meet the character and fitness requirements.

[41] TILA § 129B(d) (codified at 15 U.S.C. 1639b(d)).

[42] TILA § 129B(b) (codified at 15 U.S.C. 1639b(b)).

- ***Non-Profit and Government Agency MLOs:*** A final rule issued by the Department of Housing and Urban Development ("HUD") (now inherited by the CFPB) implementing the SAFE Act clarified that MLO employees of bona fide non-profit organizations[43] and government agencies are not subject to these licensing requirements.[44]

- ***Bank MLOs:*** Under the SAFE Act, individual MLOs employed by depositories (*e.g.,* banks and credit unions) must be registered. Registration requires the MLO to submit information concerning the individual MLO's identity, personal history, and experience into a national database, but does not require the individual to meet substantive standards, such as those imposed on non-bank MLOs for character, competence, and education.

- The Dodd-Frank definition of "mortgage originator" is broader than the SAFE Act definition of "loan originator" because it encompasses both entities and individuals while the SAFE Act definition encompasses only individuals.[45] The broader Dodd-Frank definition does not expand the SAFE Act's coverage to include entities. However, it does apply the new TILA requirement for MLOs to be "qualified" to both entities (*i.e.*, creditors and brokerages) and individuals (*i.e.*, brokers and loan officers).[46] In addition, Dodd-Frank creates a federal remedy under TILA against individual MLOs for violation of the SAFE Act's licensing and registration scheme.

a. <u>Proposals Under Consideration</u>

- The CFPB is considering proposing rules to implement Dodd-Frank's requirement that entities employing or retaining the services of MLOs be "qualified." Specifically, the proposals under consideration would:

  - Require that to be "qualified," MLO entities must ensure that MLO individuals who work for them are licensed or registered, to the extent those individuals are already required to be licensed or registered under the SAFE Act and its implementing regulations. The proposal being considered would clarify that MLO entities are obligated under TILA to ensure that their MLO employees comply with SAFE Act requirements, but would not impose any new procedures for SAFE Act compliance.

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[43] The rule defines "bona fide non-profit organizations" only to include 501(c)(3)s.

[44] 12 CFR 1008.103(e)(7).

[45] *See* 15 U.S.C. § 1602(cc)(2); 12 U.S.C. § 5102(3). Dodd-Frank includes creditors as "mortgage originators" for the purposes of qualification requirements, but excludes them for the purposes of compensation and steering requirements. 15 U.S.C. § 1602(cc)(2)(F).

[46] A chart comparing the current MLO qualification requirements for depository, non-depository, and non-profit entities and the requirements of the proposals under consideration is attached as Appendix D.

- Require entities whose employee MLOs are not subject to SAFE Act licensing (*i.e.*, depositories and bona fide non-profit MLO entities) to:[47] (1) ensure that their MLO employees meet character and fitness and criminal background standards equivalent to the licensing standards that the SAFE Act applies to employees of non-bank MLOs; and (2) provide appropriate training to their MLO employees commensurate with the size and mortgage lending activities of the entity. The proposed requirement to provide appropriate training to MLOs who are not subject to SAFE Act licensing is analogous to the continuing education requirement that applies to individuals who are subject to SAFE Act licensing. However, the proposed requirement would be tailored to correspond to the actual lending activities of the MLO and would not impose a minimum number of training hours. The proposed character and fitness, criminal background check, and training requirements would improve parity among the minimum standards that apply to individual MLOs working for different types of entities.

- Require all MLO entities (banks, non-banks, and non-profit organizations) to comply with applicable state law requirements for legal existence and foreign qualification.

- Clarify that only disclosure and closing documents that include loan terms must include the required unique identifiers and the names of individual MLOs, and, for those cases in which multiple individuals (or entities) meet the Dodd-Frank definition of mortgage originator, clarify which MLOs must include their unique identifiers and names on the documents.

b. <u>Potential Impacts on Small Entities</u>

Benefits

- To the extent that some small MLOs face competitors with lower costs or other advantages resulting from their lesser requirements for registration, the proposed requirement will increase parity between these firms and reduce potential unfairness.

Costs

- Employees of depositories and bona fide non-profit organizations do not have to meet the SAFE Act standards that apply only to licensing, such as taking pre-licensure classes, passing a test, meeting character and fitness standards, having no felony convictions within the previous seven years, or taking annual continuing education classes. The proposal under consideration would require these institutions to adopt character and criminal record screening and ongoing training requirements. However, the CFPB believes that many of these entities already have adopted screening and training requirements, either to satisfy safety-and-soundness requirements or as a matter of good business practice.

[47] The CFPB is not contemplating imposing these requirements on governmental entities.

- For any entity that adopted screening and training requirements in the first instance, the CFPB estimates the costs as follows: The CFPB estimates that the cost of a criminal background check through a commercial service ranges from approximately $39 to $49. Checking employment and character references of an applicant are expected to require approximately one hour. The time and cost required to provide occasional, appropriate training to MLOs will vary greatly depending on the lending activities of the entity and the skill and experience level of MLOs, and the CFPB anticipates that the training that many non-profit and depository MLOs already receive will be adequate to meet the proposed requirement. The CFPB expects that in no case would the training needed to satisfy the proposed requirement be more comprehensive, time-consuming, or costly than the online training approved by the NMLS to satisfy the continuing education requirement imposed under the SAFE Act on those individuals who are subject to state licensing. The typical cost of a stand-alone 8 hour continuing education course is approximately $129.

- The requirement to include the NMLSR unique identifiers and names of MLOs on loan documents may impose some additional costs relative to current practice. The Federal Housing Finance Agency requires the NMLSR numerical identifier of individual MLOs and MLO entities to be included on all loan applications for Fannie Mae and Freddie Mac loans.

IV. OTHER FEDERAL RULES

- As discussed above, Dodd-Frank codified requirements for MLO compensation contained in Regulation Z and, in some cases, added to or altered those requirements. Through the current proposals under consideration, the CFPB is working to harmonize the earlier rules with the new statutory requirements.

- The CFPB's Regulations G and H implement the SAFE Act, which imposes licensing and registration requirements on individual MLOs and sets minimum standards for licensing and registration.[48] The current proposal under consideration would not alter the scope of individuals who are subject to licensing or registration, and it would not alter the minimum standards for licensing or registration. It would instead define what is necessary for entities that employ or retain the services of such individuals in order to comply with the new Dodd-Frank requirement that they also be "qualified."

- A separate proposal previously issued by the Board on qualified mortgages, which the CFPB is in the process of finalizing, provides that bona fide discount points are excluded from the determination of whether a mortgage is a qualified mortgage.[49] If the CFPB adopts the option described above permitting bona fide discount points in creditor-paid

[48] *See* Regulation G; Regulation H.

[49] 76 Fed. Reg. 27,390 (May 11, 2011).

and brokerage-paid compensation structures, it intends to harmonize the terms in the two rules.

- The Board's proposal on qualified mortgages also addressed the magnitude of MLO compensation for the purpose of determining whether the mortgage is a qualified mortgage, in relation to the Dodd-Frank provisions on a borrower's ability to repay. The proposals presently under consideration in this rulemaking do not address the magnitude of compensation that an MLO may receive, other than to provide that the compensation may not vary based on the terms of the loan and may not come from both the consumer and a person other than the consumer (*e.g.*, compensation to an MLO from both a consumer and creditor).

V. POTENTIAL IMPACT ON COST OF CREDIT FOR SMALL ENTITIES

- Section 603(d) of the Regulatory Flexibility Act requires the CFPB to consult with small entities regarding the potential impact of the proposals under consideration on the cost of credit for small entities and related matters.[50]

- At this time, there is no evidence that the proposals under consideration would result in an increase in the cost of credit for small entities. The proposals under consideration would apply only to consumer credit transactions secured by a mortgage, deed of trust, or other security interest on a residential dwelling or a residential real property that includes a dwelling. These requirements do not apply to consumer credit transactions under open-end credit plans, such as home equity lines of credit, or to timeshare plan transactions.

- They also would not apply to loans obtained primarily for business purposes.

- The CFPB, however, will seek the advice and recommendations of the small entity representatives during the SBREFA outreach session regarding this issue.

[50] 5 U.S.C. § 603.

APPENDIX A

STATUTORY TEXT RELEVANT TO RULEMAKING

Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA")
(Pub. L. 111-203, approved July 21, 2010)

Subtitle A—Residential Mortgage Loan Origination Standards

SEC. 1401. DEFINITIONS.

Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following new subsection:

''(cc) DEFINITIONS RELATING TO MORTGAGE ORIGINATION AND RESIDENTIAL MORTGAGE LOANS.—

''(1) COMMISSION.—Unless otherwise specified, the term 'Commission' means the Federal Trade Commission.

''(2) MORTGAGE ORIGINATOR.—The term 'mortgage originator'—

''(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

''(i) takes a residential mortgage loan application;

''(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

''(iii) offers or negotiates terms of a residential mortgage loan;

''(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

''(C) does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph, or (ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A) and who does not advise a consumer on loan terms (including rates, fees, and other costs);

''(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

''(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 3 properties in any 12-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan, provided that such loan—

‘‘(i) is not made by a person, estate, or trust that has constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of such person, estate, or trust;

‘‘(ii) is fully amortizing;

‘‘(iii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

‘‘(iv) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

‘‘(v) meets any other criteria the Board may prescribe;

‘‘(F) does not include the creditor (except the creditor in a table-funded transaction) under paragraph (1), (2), or (4) of section 129B(c); and

‘‘(G) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

‘‘(3) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term ‘Nationwide Mortgage Licensing System and Registry’ has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

‘‘(4) OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR. For purposes of this subsection, a person ‘assists a consumer in obtaining or applying to obtain a residential mortgage loan’ by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

‘‘(5) RESIDENTIAL MORTGAGE LOAN.—The term ‘residential mortgage loan’ means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 129B and 129C and section 128(a) (16), (17), (18), and (19), and sections 128(f) and 130(k), and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

‘‘(6) SECRETARY.—The term ‘Secretary’, when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

‘‘(7) SERVICER.—The term ‘servicer’ has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).’’.

SEC. 1402. RESIDENTIAL MORTGAGE LOAN ORIGINATION.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended—

(1) by redesignating the 2nd of the 2 sections designated as section 129 (15 U.S.C. 1639a) (relating to duty of servicers of residential mortgages) as section 129A; and

(2) by inserting after section 129A (as so redesignated) the following new section:

''§ 129B. Residential mortgage loan origination

''(a) FINDING AND PURPOSE.—

''(1) FINDING.—The Congress finds that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

''(2) PURPOSE.—It is the purpose of this section and section 129C to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.

''(b) DUTY OF CARE.—

''(1) STANDARD.—Subject to regulations prescribed under this subsection, each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law—

''(A) be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable State or Federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008; and

''(B) include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.

''(2) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129 the following new items:

''129A. Fiduciary duty of servicers of pooled residential mortgages.
''129B. Residential mortgage loan origination.''.

SEC. 1403. PROHIBITION ON STEERING INCENTIVES.

Section 129B of the Truth in Lending Act (as added by section 1402(a)) is amended by inserting after subsection (b) the following new subsection:

‘‘(c) PROHIBITION ON STEERING INCENTIVES.—

‘‘(1) IN GENERAL.—For any residential mortgage loan, no mortgage originator shall receive from any person and no person shall pay to a mortgage originator, directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal).

‘‘(2) RESTRUCTURING OF FINANCING ORIGINATION FEE.—

‘‘(A) IN GENERAL.—For any mortgage loan, a mortgage originator may not receive from any person other than the consumer and no person, other than the consumer, who knows or has reason to know that a consumer has directly compensated or will directly compensate a mortgage originator may pay a mortgage originator any origination fee or charge except bona fide third party charges not retained by the creditor, mortgage originator, or an affiliate of the creditor or mortgage originator .

‘‘(B) EXCEPTION.—Notwithstanding subparagraph (A), a mortgage originator may receive from a person other than the consumer an origination fee or charge, and a person other than the consumer may pay a mortgage originator an origination fee or charge, if—

‘‘(i) the mortgage originator does not receive any compensation directly from the consumer; and

‘‘(ii) the consumer does not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or originator), except that the Board may, by rule, waive or provide exemptions to this clause if the Board determines that such waiver or exemption is in the interest of consumers and in the public interest.

‘‘(3) REGULATIONS.—The Board shall prescribe regulations to prohibit—

‘‘(A) mortgage originators from steering any consumer to a residential mortgage loan that—

‘‘(i) the consumer lacks a reasonable ability to repay (in accordance with regulations prescribed under section 129C(a)); or

‘‘(ii) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms);

‘‘(B) mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage (as defined in section 129C(b)(2)) to a residential mortgage loan that is not a qualified mortgage;

‘‘(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age; and

‘‘(D) mortgage originators from—

‘‘(i) mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer;

‘‘(ii) mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit; or

‘‘(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discouraging a consumer from seeking a residential mortgage loan secured by a consumer's principal dwelling from another mortgage originator.

‘‘(4) RULES OF CONSTRUCTION.—No provision of this subsection shall be construed as—

‘‘(A) permitting any yield spread premium or other similar compensation that would, for any residential mortgage loan, permit the total amount of direct and indirect compensation from all sources permitted to a mortgage originator to vary based on the terms of the loan (other than the amount of the principal);

‘‘(B) limiting or affecting the amount of compensation received by a creditor upon the sale of a consummated loan to a subsequent purchaser;

‘‘(C) restricting a consumer's ability to finance, at the option of the consumer, including through principal or rate, any origination fees or costs permitted under this subsection, or the mortgage originator's right to receive such fees or costs (including compensation) from any person, subject to paragraph (2)(B), so long as such fees or costs do not vary based on the terms of the loan (other than the amount of the principal) or the consumer's decision about whether to finance such fees or costs; or

‘‘(D) prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time.’’.

APPENDIX B

GLOSSARY

This glossary is provided for the convenience of the reader for the purposes of this document only. Definitions or interpretations issued by the CFPB on the same or similar terms may vary from those set forth in this document.

Affiliate: any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.).

Bona fide non-profit: an entity organized under § 501(c)(3) of Internal Revenue Code that, under the SAFE Act, is certified by the state as meeting certain standards as a result of its activities, products, funding, and compensation practices.

Bona fide third party fees: fees that are reasonable in amount and paid to parties unaffiliated with the creditor or originator for services associated with loan origination. For example, a charge for an appraisal conducted by an appraiser that in not affiliated with either the creditor or a brokerage.

Broker: an MLO individual who obtains or arranges a mortgage loan between a creditor and a borrower (*i.e.,* an employee of a brokerage). Brokers often assist borrowers to find a loan from one of a number of lenders.

Brokerage: an MLO entity that operates through its brokers. Brokerages originate loans but do not fund them from their own resources.

Commission: compensation paid to an MLO contingent on the closing of a particular loan transaction.

Creditor: a person or entity that closes a particular loan in its own name from its own resources. Creditors may employ loan officers who arrange loans between the creditor and borrowers or may fund loans brokered to them from brokerages. Creditors include banks, thrifts, credit unions, and non-depository lenders such as mortgage companies.

Discount Point: a fee that may be offered by a creditor, expressed as a percentage of the loan amount, paid by the borrower at the time of origination to prepay a portion of the loan's interest. Payment of a discount point or points reduces the interest rate of the loan.

Loan officer: an employee of a creditor who serves as an MLO in retail loan transactions.

Mortgage Loan Originator ("MLO"): generally, a person or entity that arranges or obtains mortgage loan terms for a consumer for compensation or gain. However, the precise definition of MLO depends on the requirement being discussed. Under the SAFE Act, "loan originator" includes only individuals. Under Dodd-Frank qualification requirements, "mortgage originator" includes both entities (creditors and brokerages) and the individuals they employ (loan officers and brokers). For purposes of Dodd-Frank's compensation and steering provisions, the term includes brokerages, individual brokers, and individual loan officers but excludes creditors.

Origination Charge or Origination Fee: a discrete, fixed-dollar, upfront payment meant to cover the costs related to the origination of a mortgage loan, including for example, processing, underwriting and reviewing and preparing documents.

Origination Points: a fee, expressed as a percentage of the loan amount, to be paid by the borrower at the time of loan origination meant to cover the costs related to the origination of a mortgage loan, including for example, underwriting and preparing legal documents.

Residential Mortgage Loan: any consumer credit transaction that is secured by a mortgage or deed of trust on a dwelling or on residential real property that includes a dwelling, other than a home equity line of credit or a time share plan.

Retail Loan: a mortgage loan originated by the creditor directly to the consumer often through loan officers employed by the creditor (*i.e.*, not originated through a broker).

Salary: compensation that is not tied to a particular transaction, such as an annual salary or an hourly wage.

Upfront payment: payment for points, charges, fees, or services performed in connection with a residential mortgage loan at or before closing (typically before the first scheduled mortgage loan payment after closing).

Wholesale Loan: a mortgage loan originated by a brokerage and funded by a creditor.

APPENDIX C

Residential Mortgage Loan Origination Standards Rulemaking: Payment Structures Under Regulatory Models

Regulatory Models	Creditor-Paid Compensation	Consumer-Paid Compensation	Brokerage-Paid Compensation
Status Quo (Loan Originator Rule)	Retail: Creditor pays its loan officer salary or commission. Wholesale: Creditor pays brokerage a commission. Brokerage pays its broker a salary and/or commission. Consumer cannot pay brokerage. Points and Fees: Consumer can pay points and fees to creditor and its affiliates without limitation.	Wholesale: Consumer pays the fees to the brokerage that can vary with loan terms or conditions.[1] The brokerage pays its broker a salary, but not a commission. Creditor cannot pay the brokerage. Points and Fees: Consumer can pay points and fees to brokerage, creditor, and their affiliates without limitation.	Prohibited. (Brokerage cannot split with broker compensation received from consumer and thus cannot pay broker commission.)
Dodd-Frank Proposals Under Consideration	Retail: Creditor pays its loan officer a commission.[2] Wholesale: Creditor pays brokerage a commission. Brokerage pays its broker a commission and/or salary.[3] Consumer cannot pay brokerage. Points and Fees: Consumers can pay: (1) discount points provided that they are "bona fide": result in a minimum reduction of the interest rate and a no discount point loan must be available; and (2) upfront fees to creditors and affiliates of brokerages and creditors provided they are "flat": not varying with size of loan.	Wholesale: Consumer pays fees to the brokerage. The brokerage pays its employee broker a salary, but not a commission. Creditor cannot pay the brokerage. Points and Fees: Consumer can pay points and fees to brokerage, creditor, and their affiliates without limitation.	Wholesale: Consumer pays fees to the brokerage. Some of these fees may be subject to additional conditions, including flatness requirement. Brokerage pays broker a commission. Creditor cannot pay the brokerage. Points and Fees: Consumers can pay: (1) discount points provided that they are "bona fide": result in a minimum reduction of the interest rate and a no discount point loan must be available; and (2) upfront fees to creditors and affiliates of brokerages and creditors provided they are "flat": not varying with size of loan.[4]

Terms used in chart:

"Loan officer" is an employee of a creditor who serves as an MLO in retail loan transactions.
"Brokerage" is a company or firm that serves as a MLO in a wholesale loan transaction. "Broker" is an MLO that is an employee of a brokerage.
"Commission" is compensation that is tied to a particular transaction.
"Salary" is compensation that is not tied to a particular transaction.

[1] In all other regulatory models, payments to MLOs (*i.e.*, brokerages, broker, loan officer) cannot vary with loan terms except the size of loan (unless subject to flatness requirements as noted).

[2] If creditor pays a loan officer a salary and not a commission, then a consumer may pay points and fees without limitation.

[3] If creditor pays a brokerage a commission, the consumer may not pay upfront points and fees in the transaction, regardless of whether the brokerage firm pays its brokers a salary or a commission.

[4] As noted above, consumer payment of fees to brokerage may be subject to additional conditions.

APPENDIX D

CURRENT MLO QUALIFICATION REQUIREMENTS AND PROPOSALS UNDER CONSIDERATION

	SAFE Act Requirements	State Law Requirements	CFPB Proposals Under Consideration Implementing Dodd-Frank Requirement That MLOs Be "Qualified"[5]
Banks (depositories and their subsidiaries)	Employees must register and obtain NMLS ID by: - entering information; and - submitting fingerprints Banks must: - check FBI record for crimes that violate Federal Deposit Insurance Act (*i.e.,* crimes of dishonesty, breach of trust, and money laundering); and - implement policies to ensure MLOs are registered and have obtained an NMLS ID	State banks must be state chartered and obtain foreign qualification (if applicable)	Banks must: - comply with applicable state requirements to be chartered and to obtain foreign qualification (if applicable);* - ensure that MLOs are registered and have obtained NMLS ID;* - ensure that MLOs have good character, fitness, and financial responsibility (currently imposed on non-bank MLOs under the SAFE Act); - ensure that MLOs meet standards equivalent to those for non-bank MLOs under the SAFE Act by running criminal character checks for disqualifying felonies; and - provide appropriate training to MLOs commensurate with size and activities of the bank
Non-banks (*e.g.,* mortgage companies and mortgage brokers)	Individuals must be state licensed and registered and must obtain NMLS ID by: - passing criminal background check for disqualifying felonies; - demonstrating good character, fitness, and financial responsibility; - taking pre-licensing classes; - passing national standardized test; and - taking 8 hours of approved continuing education classes annually	Companies must: - be lawfully formed, maintained, and foreign qualified (if applicable); and - be licensed	Companies must: - comply with applicable state requirements for non-profits to be lawfully formed, maintained, and foreign qualified (if applicable);* and - ensure their MLOs meet SAFE Act requirements to be state licensed and registered and have obtained an NMLS ID
Bona fide non-profits[6]	Nothing	Non-profits must be lawfully formed, maintained, and foreign qualified (if applicable)	Non-profits must: - comply with applicable state requirements to be lawfully formed, maintained, and foreign qualified (if applicable);* - ensure that MLOs have good character, fitness, and financial responsibility (currently imposed on non-bank MLOs under the SAFE Act); - ensure that MLOs meet standards equivalent to those for non-bank MLOs under the SAFE Act by running criminal character checks for disqualifying felonies; and - provide appropriate training to MLOs commensurate with size and activities of the non-profit

* These proposed requirements simply provide TILA remedies for the entities' failure to comply with existing duties under the SAFE Act or state law.

[5] The proposed Dodd-Frank requirements would supplement, and not displace, the requirements of the SAFE Act and state law.

[6] To be a "bona fide non-profit," the entity must have 501(c)(3) status and the state must review its activities, products, funding, and compensation practices.

Appendix D

Panel Outreach Meeting PowerPoint Slides

[See attached]

Residential Mortgage Loan Origination Standards Rulemaking

SBREFA Panel Outreach

May 23, 2012

Note: This document was used in support of a live discussion. As such, it does not necessarily express the entirety of that discussion nor the relative emphasis of topics therein.

Consumer Financial Protection Bureau

WELCOME AND INTRODUCTIONS

- CFPB Welcome and Opening Remarks
- SBA Opening Remarks
- Introduction of SBREFA Panel
- Introduction of Small Entity Representatives and Agency Staff

OUTREACH AGENDA / SCHEDULE

Item	Time (min)
Welcome and Introductions	8:00 – 8:15
General Overview: What is SBREFA? Your Role in the SBREFA Process Background on MLO Regulation	8:15 – 8:30
Topic 1: Discount Points	8:30 – 9:15
Topic 2: Origination Points/Fees in Creditor-Paid Compensation	9:15 – 10:30
Morning Break	10:30 – 10:45
Topic 3: Origination Points/Fees in Brokerage-Paid Compensation	10:45 – 11:15
Topic 4: MLO Retirement Plans, Profit-Sharing, and Bonuses	11:15 – 12:15
Lunch Break	12:15 – 1:15
Topic 5: Pricing Concessions and Point Banks	1:15 – 2:00
Topic 6: MLO Qualification and Training Requirements	2:00 – 3:00
Afternoon Break	3:00 – 3:15
Topic 7: Impact on the Cost of Business Credit	3:15 – 3:45
Additional Feedback/Wrap-Up	3:45 – 5:00

WHAT IS SBREFA?

- The Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA") requires the CFPB to form a Small Business Review Panel to seek input directly from small financial service providers for any proposed rule that may have a significant economic impact on a substantial number of small providers.

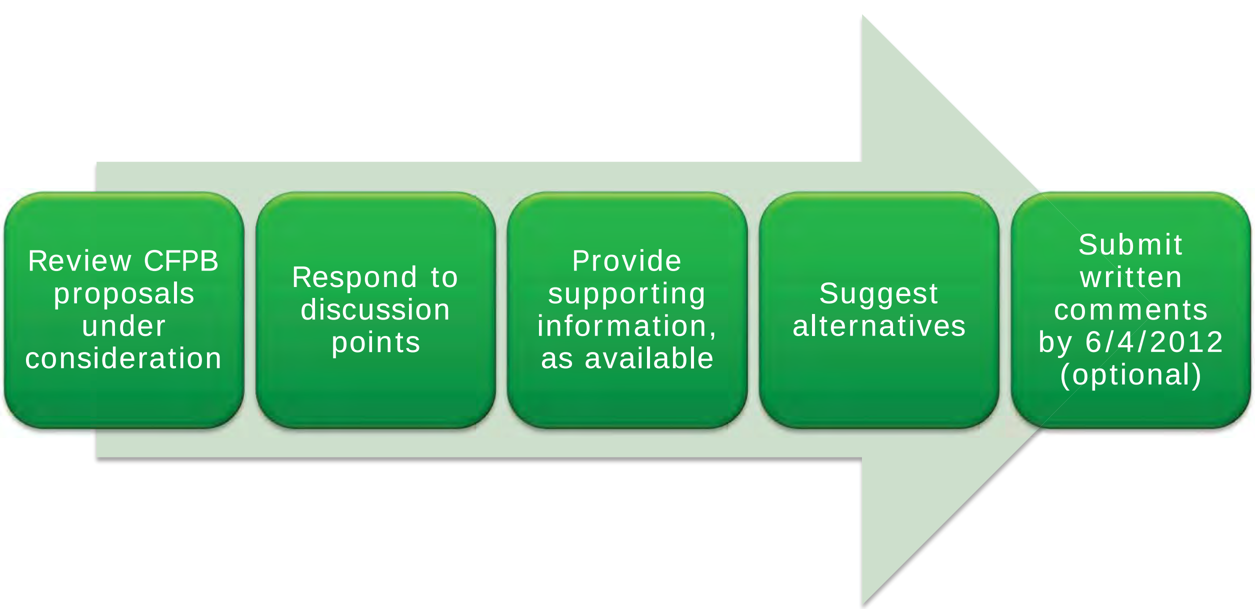
- A Small Business Review Panel consists of the representatives from:
  - the CFPB;
  - the Chief Counsel for Advocacy of the Small Business Administration ("SBA"); and
  - the Office of Management and Budget's Office of Information and Regulatory Affairs ("OMB").

YOUR ROLE IN THE SBREFA PROCESS

You have been selected as a small entity representative ("SER") for the residential mortgage loan origination standards rulemaking.

- A SER is a representative of a small entity that will likely be subject to the requirements of a proposed rule under consideration by the CFPB.
- SERs' participation in the rulemaking process helps to ensure that the CFPB is made aware of the concerns and issues specific to small entities.
- The Panel (CFPB, SBA, & OMB) uses your input to prepare a report that includes your verbal and written comments and feedback and the Panel's findings on alternatives to minimize costs and burden on small entities.
- The report is made part of the public rulemaking record and is considered by CFPB decision makers.

YOUR ROLE IN THE SBREFA PROCESS



BACKGROUND ON MORTGAGE LOAN ORIGINATOR REGULATION

- The Dodd-Frank Act builds on existing requirements for mortgage loan originator ("MLO") qualification and compensation, and imposes a new limitation on upfront points and fees.
  - The Dodd-Frank Act imposes a duty on MLOs to be "qualified," in addition to the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act") and state law.
  - Like the regulations on MLO compensation that took effect last April ("Loan Originator Rule"), Dodd-Frank generally bans varying MLO compensation based on loan terms and "dual compensation" of MLOs—compensation of MLOs by both consumers and other parties.
  - Unlike the Loan Originator Rule, Dodd-Frank restricts payment of upfront points and fees depending on the type of MLO compensation.
    - The Bureau can create exceptions that are "in the interest of consumers and the public interest."

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Additional Feedback/Wrap-Up	3:45 – 5:00

Introduction to Topics 1-3: Points and Fees

- Where an MLO is compensated by someone other than a consumer, Dodd-Frank bans the consumer from compensating the MLO *and* paying upfront points or fees to the MLO, creditor, or their affiliates (except for bona fide third party charges)
- This creates three categories of compensation:
  - "Consumer-paid compensation," where the consumer pays a brokerage firm and the brokerage firm pays only salaries or other compensation not tied to the transaction to its employees.
  - "Brokerage-paid compensation," where the consumer pays a brokerage firm and the brokerage firm pays compensation that is tied to the particular transaction (*e.g.*, commission) to its employees.
  - "Creditor-paid compensation," where the creditor pays compensation that is tied to a particular transaction to its loan officers or to brokerage firms.

Introduction to Topics 1-3: Points and Fees (con't)

- The Dodd-Frank Act permits the CFPB to create exemptions to the points and fees provision if the exemptions are "in the interest of consumers and in the public interest."
- The Bureau is considering using this authority to permit consumers to pay discount points and upfront origination fees under certain conditions in loan transactions with creditor-paid or brokerage-paid compensation.
  - The CRPB is considering whether conditions on payment of origination fees should be different for transactions with creditor-paid compensation than transactions with brokerage-paid compensation.
  - The CFPB is further considering whether to propose conditions for payments to affiliates of creditors and MLOs, which would otherwise be subject to the ban.

CFPB PROPOSAL UNDER CONSIDERATION

The CFPB is considering exercising its exemption authority to permit consumers to pay discount points to the creditor, provided:

(1) the discount points are bona fide, meaning they result in a minimum reduction of interest rate for each point paid; and

(2) the creditor also offers the option of a no-discount-point loan.

DISCUSSION TOPICS

1. What portion of your residential mortgage loan compensation is consumer-paid? What portion is creditor-paid?

2. What percentage of your customers pay discount points to reduce the coupon rate on their mortgage loan? What is the average reduction in the coupon rate that is obtained by paying discount points?

3. Do you market a loan of similar size but without discount points to customers when you offer customers the opportunity to buy down the coupon rate by paying discount points?

4. How would a prohibition on the upfront payment by the consumer of all discount points in residential mortgage loan originations affect your business and the types and volume of loans you could originate when there is creditor-paid compensation?

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Topic 2: Origination Points / Fees in Creditor-Paid Compensation

CFPB PROPOSAL UNDER CONSIDERATION

Where there there is creditor-paid compensation, the CFPB is considering exercising its exemption authority to:

1. Prohibit points;

2. Permit consumers to pay upfront origination fees to the creditor, provided that the origination fees are “flat” and thus do not vary with the size of the loan; and

3. Permit consumers to pay upfront fees to affiliates of the MLO or affiliates of the creditor, provided that such fees are “flat” and thus do not vary with the size of the loan.

- Payments for title insurance to affiliates of the MLO or affiliates of the creditor, however, would be permitted to vary with the size of the loan.

Alternatives Considered

The CFPB has also considered the following other conditions on charging consumers upfront points and fees:

(1) The creditor must offer a no-fee loan, and the difference between the higher interest rate on the no-fee loan and interest rate on the loan with upfront fees must be reasonably related to the amount of upfront fees.

(2) Consumers must be offered the option of a no-point, no-fee loan.

DISCUSSION TOPICS

1. Which fees that are typically charged on residential mortgage loans vary with the size of the loan? Which ones do not vary? Do the costs of providing services associated with the fees vary with the size of the loan and if so, how?

2. How would a prohibition on the upfront payment by the consumer of all origination points and fees in residential mortgage loan originations affect your business and the type and volume of loans that you could originate where there is creditor-paid compensation?

3. When you offer mortgage loans with origination points, do you also offer consumers a mortgage loan with a similar principal amount but without origination points? On average, over the last few years, how have the yields differed on no-point loans relative to one-point loans?

DISCUSSION TOPICS (cont'd)

4. What impacts, if any, would the additional conditions that the CFPB has considered (*i.e.*, must offer the option of a no-point, no-fee loan and must be a reasonable relationship between the payment of upfront fees and the loan's interest rate) have on your business?

5. If your company controls or is controlled by another entity that supports your loan origination business, or is under common control with another company that supports your loan origination business:

- How do these affiliated entities support your business? What services do they provide?
- How are these affiliated entities currently compensated?
- Should the same conditions imposed on consumer payment of upfront points and fees to creditors or MLOs also be imposed on any affiliates of these entities? Why or why not?
- How would the proposals under consideration relating to potential conditions on affiliate fees impact your business model or practices?

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Topic 3: Payment of Points and Fees in Brokerage-Paid Compensation

CFPB PROPOSAL UNDER CONSIDERATION

- Brokerage-paid compensation is prohibited under the current Loan Originator Rule in consumer-paid transactions. A brokerage firm that receives compensation from a consumer therefore may not pay compensation to its employee brokers that is tied to that particular transaction (*e.g.*, commission). (A salary or other compensation that is not tied to a particular transaction is permitted.)
- The Dodd-Frank Act essentially bans brokerage-paid compensation because the fee paid by the consumer to the brokerage firm would be prohibited under the points and fees provision.
- The CFPB is considering using its exemption authority to permit brokerage-paid compensation where discount points and origination fees paid to the creditor or its affiliates satisfy the same conditions that the Bureau is considering proposing on transactions with creditor-paid compensation (*i.e.,* discount points are bona fide, a no-point option, origination fees are flat).
- The CFPB seeks advice and feedback on whether there should be restrictions on certain or all upfront fees paid by the consumer to the brokerage firm and its affiliates, such as the flat fee requirement.

Topic 3: Payment of Points and Fees in Brokerage-Paid Compensation

DISCUSSION TOPICS

1. Would the prohibition on the upfront payment by the consumer of points and fees to the creditor, its affiliates, or the MLO's affiliates impact your business differently where there is brokerage-paid compensation versus where there is creditor-paid compensation? Or would you anticipate that the impacts would be similar in both compensation schemes?

2. Do the fees (other than commissions) charged by brokerage firms to consumers on mortgage loans vary with the size of the loan? Do the costs of providing services associated with the fees vary with the size of the loan and if so, how?

3. How would a requirement that fees paid by a consumer to the brokerage firm be "flat" and thus not vary with the size of the loan impact your business?

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Introduction to Topics 4 and 5: Compensation That Varies Based on Loan Terms

- Compensation structures may create financial incentives to steer consumers to loans that are more costly or have less favorable terms, for which loan originators will receive greater compensation. To reduce the risk of steering, the Dodd-Frank Act limits MLO incentive compensation.

- Under Dodd-Frank, MLOs may not receive (and no person may pay to MLOs), directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of principal).
  - This prohibition applies even to transactions where the consumer compensates the brokerage firm.

- The Loan Originator Rule contains a similar prohibition against compensation based on loan terms and conditions (but it does not apply to consumer-paid compensation).

Introduction to Topics 4 and 5: Compensation That Varies Based on Loan Terms (con't)

- The CFPB is considering certain changes to the Loan Originator Rule to address or clarify interpretive and compliance issues relating to this prohibition that have arisen since the Rule went into effect in April 2011.

- The proposals under consideration seek to continue to control the financial incentives that may lead to steering while reducing any unintended consequences and unnecessary burdens.

CFPB PROPOSALS UNDER CONSIDERATION

- The CFPB is considering addressing and clarifying the application of the Loan Originator Rule to employer contributions to qualified and non-qualified retirement, profit-sharing, and similar plans in which MLOs participate and bonuses paid to MLOs.

- For many companies, the amount available for employer contributions to retirement plans that include MLO participants or to fund a profit-sharing or bonus pool used to make payments to MLO employees will vary based on the company's profits, which in turn vary, in part, on the terms of the loans that the company's MLOs originate (such as the interest rate).

- The CFPB is considering the following three proposals that would permit, in certain circumstances where any steering incentives may be sufficiently mitigated, employers to compensate MLOs from profits derived from the company's mortgage business (but would *not* permit an employer to compensate individual MLOs differently depending on the profitability of the loans he or she originates).

CFPB PROPOSAL UNDER CONSIDERATION (cont'd)

The CFPB is considering the following three proposals:

Qualified Plans

(1) Employers would be permitted to make contributions to qualified retirement plans, qualified profit-sharing plans, and qualified stock ownership plans in which MLO employees participate, even if the contributions to the plan are made from profits derived from the company's mortgage business.

Non-Qualified Plans and Bonuses

(2) Employers would be permitted to pay bonuses to MLO employees or to make contributions to non-qualified profit-sharing or similar non-qualified plans in which MLO employees participate from profits derived from the company's mortgage business, provided that mortgage-related revenue does not contribute more than a set percentage of the company's total revenue. The CFPB is considering setting that percentage at a fixed percentage between 20 percent and 50 percent of total revenue.

De Minimis Originations

(3) Employers would be permitted to make contributions to MLO employees' qualified or non-qualified plans and to pay MLO employees bonuses from profits derived from the company's mortgage business provided: (1) the number of loans originated by the MLO is below a set small number; and/or (2) the MLO has originated a small proportion of the total loans originated by the company.

DISCUSSION TOPICS

1. What types of qualified, non-qualified, and bonus plans do you offer to MLOs? How are these plans structured and funded? How do you determine the type and amount of the employer plan contribution, bonus, or other payment awarded to MLOs and how is that payment made?

2. (a) How would the proposal under consideration permitting employer contributions to non-qualified plans and bonus payments to MLOs where mortgage-related revenue does not contribute more than a set percentage of the company's total revenue impact your business? Would these impacts differ based on the set percentage amount of the restriction that is selected?

(b) What percentage cap on mortgage-related revenue do you believe would be appropriate and why? Will the impact on your business vary based on the specific percentage cap selected and if so, how?

3. What actions would you need to take to comply with the proposals under consideration? Please describe the cost and feasibility of these actions. Which costs would be one-time and which would be ongoing?

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Topic 5: Pricing Concessions and Point Banks

CFPB PROPOSAL UNDER CONSIDERATION

Pricing Concessions

- The CFPB is considering clarifying the Loan Originator Rule to permit MLOs to make certain types of pricing concessions to cover unanticipated increases in third-party settlement charges where those settlement charges are not controlled by the MLO, the creditor, or their affiliates and exceed or are in addition to the amounts disclosed on the Good Faith Estimate disclosure required by the Real Estate Settlement Procedures Act.

Topic 5: Pricing Concessions and Point Banks

CFPB PROPOSAL UNDER CONSIDERATION (cont'd)

Point Banks

- The CFPB is considering clarifying that MLO point banks fall within the definition of "compensation" and providing guidance on the award of points to MLOs that would not violate Dodd-Frank's prohibition against compensation that varies based on loan terms.
- Under the proposal being considered, point banks funded by a creditor would be permissible provided that:
  1. The creditor does not base the amount of the contribution to an MLO's point bank for a given transaction on the terms and conditions of the transaction;
  2. The creditor does not change its contributions to the point bank over time based on terms or conditions of the MLO's transactions, or on whether the MLO overdraws the MLO's point bank; and
  3. If a creditor permits an MLO to overdraw the MLO's point bank, the creditor does not reduce the MLO's commission on a transaction when he or she does so.
- The proposal would not permit point banks funded based on the difference between the rate required by the creditor for a given consumer and the actual rate the MLO sells the consumer, or based on the difference between any other term required by the creditor and the actual term the MLO sells the consumer because the contributions to the point bank would vary based on the terms of the mortgage transaction.

Topic 5: Pricing Concessions and Point Banks

DISCUSSION TOPICS

1. How often are there settlement charges, not under the MLO's control, that exceed amounts shown on the GFE?

2. What costs and benefits to small entities do you believe would result from the proposals under consideration regarding pricing concessions and point banks?

3. Are there any other circumstances in which you believe that pricing concessions and point banks should be permitted? If so, when and why?

4. Do you think there be any further conditions or limits on pricing concessions (such as limits on the dollar amount or volume of concessions made by a particular MLO) or point banks other than those being considered?

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Topic 6: MLO Qualification and Screening

CFPB PROPOSAL UNDER CONSIDERATION

To implement Dodd-Frank's requirement that entities employing or retaining the services of MLOs be "qualified," the CFPB is considering the following proposal:

- Entities whose employee MLOs are not subject to SAFE Act licensing (*i.e.*, depositories and bona fide non-profit MLO entities) must:

  (1) ensure that their MLO employees meet character and fitness and criminal background standards equivalent to the licensing standards that the SAFE Act applies to employees of non-bank MLOs; and

  (2) provide appropriate training to their MLO employees commensurate with the size and mortgage lending activities of the entity.

- The proposed requirement to provide appropriate training to MLOs who are not subject to SAFE Act licensing is analogous to the continuing education requirement that applies to individuals who are subject to SAFE Act licensing. The proposed requirement would be tailored to correspond to the actual lending activities of the MLO and would not impose a minimum number of training hours.

- The CFPB is not currently considering imposing these requirements on governmental entities.

Topic 6: MLO Qualification and Screening

DISCUSSION TOPICS

1. Are the MLOs you employ currently required to be licensed under the SAFE Act? Do you already do criminal background checks, consider the character and fitness of applicants, or provide training to MLOs?

2. What actions would you need to take to comply with the proposal under consideration implementing Dodd-Frank's requirement that MLOs be "qualified"? What would these actions cost? Which costs would be one-time and which would be ongoing?

3. Do you believe that the proposal being considered would enhance consumer protection? Would it affect competition between banks and non-banks? Would it affect consumers' decisions whether to seek loans from non-profit organizations?

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Topic 7: Impact on the Cost of Business Credit

The Regulatory Flexibility Act, as amended by the Dodd-Frank Act, requires the CFPB to consult with small entities regarding any potential increase in the cost of credit *for small entities* that would result from the proposals under consideration, and on alternatives that minimize any such increase.

- At this time, the CFPB has no evidence that the proposals under consideration would result in an increase in the cost of credit for small entities.
  - The proposals under consideration would apply only to consumer credit transactions secured by a mortgage, deed of trust, or other security interest on a residential dwelling or a residential real property that includes a dwelling. Thus, these are mortgage loans that are used *primarily* for personal, family, or household purposes.
  - The proposals under consideration do not apply to consumer credit transactions under open-end credit plans, such as home equity lines of credit, or to timeshare plan transactions.
  - The proposals would also not apply to loans obtained primarily for business purposes.
- However, the CFPB seeks the advice and recommendations of the SERs regarding this issue.

Topic 7: Impact on the Cost of Business Credit

DISCUSSION TOPICS

1. Do you believe any of the proposals under consideration may impact the cost of credit *for small entities*? Why or why not?

2. If you believe any of the proposals under consideration may impact the cost of credit for small entities, in what ways do you believe the cost of credit may be impacted?

3. Are there any alternatives to the proposals being considered that could minimize such costs while accomplishing the statutory objectives addressed by the proposal?

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ADDITIONAL FEEDBACK

DISCUSSION TOPICS

- Do you have any additional comments or feedback on any of the proposals under consideration?
- Are there any feasible alternatives to the proposals under consideration that we have not yet discussed that you believe would minimize any significant economic impact on your business while accomplishing the CFPB's statutory mandate and objectives?
- Are there any other federal rules that you believe may duplicate, overlap or conflict with the proposals under consideration?
- How long would your business or organization need to make any changes to systems or operations or to take any other actions that you believe would be required to comply with the proposals under consideration?

WRAP-UP

CLOSING REMARKS **DAN SOKOLOV, CFPB**

- Written comments from small entity representatives (optional) are due no later than **June 4, 2012.**
- Please email any written comments to Rachel Ross at the CFPB.
- Your written comments may be attached to the Panel Report, which will be made part of the public rulemaking record.