

March 29, 2010

The Honorable Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Chairman Bernanke:

The American Bankers Association requests that the Board delay implementation of the recently finalized Truth in Lending (TILA) regulation governing compensation to mortgage loan originators (75 FR 58509, September 24, 2010). We refrained from making this request pending a detailed analysis of potential clarifications offered by Federal Reserve staff on March 17 in the Outlook Live webcast on Loan Originator Compensation. As the webcast did not offer workable clarifications as hoped, it is now apparent that the rulemaking is filled with both new and lingering questions that require formal responses before the rule should be made applicable to every mortgage transaction in the marketplace.

This request comes after considerable analysis and earnest attempts to understand the rule and assist member banks with compliance. ABA has consulted heavily with in-house banking counsel and private legal experts on all aspects of this new regulation, and ABA staff has attended practically every industry event where Board staff offered advice and guidance on compliance. Notwithstanding all our efforts, there are key compliance questions that remain unanswered. Novel interpretations continue to emerge in a way that frustrates banks' regulatory execution and risk analysis of these provisions.

The March 17th webcast offered some useful guidance, but exacerbated banks' concerns over regulatory risks in other areas. The extensive advice delivered on the call was indicative of the sheer amount of interpretive guidance that is verbal and outside the black letter of the final rule's written text. The expansion of the rule's provisions from compensation based on loan terms to any and all payments premised on vague notions of "profitability" is a serious extension and amplification that cannot be solidly anchored in any specific provision of the regulation. Also, the interpretation that all referral activities can be defined as loan origination services is likewise transformative and based entirely on verbal indications by Board staff. More examples exist, which collectively are building a pyramid of verbal regulatory extrapolations that do not enjoy the imprimatur of official guidance or the rule itself.

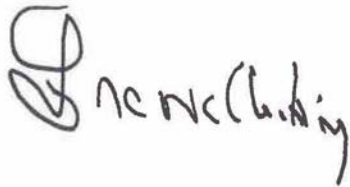
The Board's continuing informal interpretations have altered the rule's definitions and reach to the extent that legal experts no longer understand its precise scope. The interpretations have in fact turned non-prohibited activity into "proxies" for prohibited activity, a confusing circumstance to say the least. These expansions by interpretation and other ambiguities cause us extreme concern because of their vagueness and because of the readiness to apply changing standards without constraint in any setting, regardless of lender intent.

ABA is not suggesting that the Board end this rulemaking. We fully support efforts to prohibit abusive practices that have been associated with yield spread premium payments and similar compensation arrangements. Instead, we are requesting that the Board postpone the implementation date for 90 days to better assess the interpretive expansions that were just announced verbally in the webcast, and that the Board offer written and formal guidance that allow banks to properly comply.

These rules are filled with regulatory, judicial and commercial risk. They are also tightly linked to new statutory provisions under the Dodd-Frank Act that could eliminate a loan's collateral support where uncertainty gives rise to a compliance lapse. Given the high stakes, ABA urges the Board to recognize that these rules are not yet ripe for implementation.

A hallmark of good regulation is that it can be understood and anticipated so that institutions can reasonably comply and avoid unintended consequences. We are now only days away from the April 1st implementation date, and we respectfully ask for an immediate 90 day delay to these increasingly ambiguous and contradictory rules. We also offer our full assistance to help achieve these objectives.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Keating". The signature is written in a cursive, somewhat stylized font.

Frank Keating