

Comment on the proposed rules issued by the Board of Governors of the Federal Reserve System, Regulation Z, Docket No. R-1417, published at 76 FR 27390-01

This comment is respectfully submitted in response to the Board's request for comment on the inclusion or exclusion of charges paid to an affiliate of the creditor in the calculation of Points and Fees for the determination of a Qualified Mortgage pursuant to the Dodd-Frank Act's Ability to Repay provisions.

First and foremost, I do not see a logical distinction between the fees paid to an affiliated provider versus fees paid to a non-affiliated provider. In all of the states in which we do business, the fees charged by affiliated title insurance agents are equivalent to, and in many cases less than, the fees charged by non-affiliated title insurance agents. In some states, title insurance fees are promulgated by the state regulators and apply equally across the board regardless of any affiliation that the title insurance agent may have. The determination to include charges paid to affiliates of a creditor in the points and fees calculation places an affiliated provider at a competitive disadvantage and may ultimately result in a reduction of competition in the market place.

The Truth in Lending Act is designed to be a consumer protection act. Assuming that the charges imposed by an affiliated provider are reasonable and competitive with other providers of similar services, I do not see how the inclusion of the charge to an affiliated provider in the points and fees calculation advances the intention of the act in protecting the consumer. Whether the fee for the product or services is paid to an affiliated or non-affiliated provider, in almost all transactions, the cost is ultimately passed through to the consumer. As the consumer is paying for the service in either case, the inclusion of the charge paid to an affiliate provider in the points and fee calculation penalizes creditors with affiliated business arrangements and does not provide any additional protection to the consumer. Affiliated providers of settlement services are subject to additional disclosure requirements and restrictions under Real Estate Settlement Procedures Act's (RESPA) statutes and regulations. Under the provisions of RESPA, the consumer is advised in writing of the affiliated arrangement that the creditor has with the provider, the consumer is provided with an estimate of the charges, and the consumer is encouraged to shop for other providers of the services to insure that they are getting the best deal possible. In the event that a creditor recommends the use of an affiliated provider, the consumer receives an additional level of protection due to the inclusion of the charges in the 10% tolerance calculation contained in the new RESPA rules for the Good Faith Estimate.

The stated purpose behind the Dodd-Frank Wall Street Reform and Consumer Protection Act's amendments to the Truth in Lending Act is to "prohibit creditors from making mortgage loans without regard to the consumer's repayment ability." The fees charged by affiliated settlement service providers are equivalent to those charged by non-affiliated settlement service providers for the same services; the party that the payment is being made to will have no impact on the consumer's ability to repay the loan for which they have applied. For example, a consumer obtaining a residential mortgage to purchase a \$150,000 home in North Carolina will be required to provide a lender's policy of title

insurance. The basic premium for this policy is \$285. If the consumer obtains this policy through a title agency affiliated with the creditor, they will pay \$285. If the consumer obtains this policy through a title agency not affiliated with the creditor, they will pay \$285. Both the affiliated and non-affiliated title agency will have cost structures that are very similar and for this example, assume that both agencies generate a \$50 profit. If the agencies distribute the profit, the agency affiliated with the creditor will pay the profit to the creditor based on their ownership interest in the agency, and the non-affiliated agency will pay the profit to its owners based on their respective ownership interest in the agency. The creditor's affiliation with the title insurance agency does not have any impact on the consumer's ability to repay the loan for which they have applied and requiring the inclusion of the fee paid to affiliated providers only serves to increase the administrative burden on the creditor.

I respectfully request that the Board of Governors amend the proposed rule to exclude fees paid to affiliates in the calculation of points and fees as it does not advance the purpose of TILA or aid in a determination of a consumer's ability to repay any specific mortgage loan, nor does this provision of the proposed rule provide any additional consumer protection. I have not been able to locate any empirical evidence that would indicate that a consumer's ability to repay any particular loan is in any way affected by their election to use a settlement service provider that is affiliated with the creditor.

As an alternative, I ask that the Board consider amending the proposed rule to limit the scope of the fee included in the calculation of the points and fees. As stated in the Discussion of the Proposed Rule, "The Board notes that Congress appears to have rejected excluding from points and fees real estate-related fees where a creditor would receive indirect compensation as a result of obtaining distributions of profits from an affiliated entity based on the creditor's ownership interest in compliance with RESPA." The essential component of Congress' concern is the "indirect compensation" received by the creditor. In order to address this specific concern, it is logical to only include this indirect compensation component in the points and fees calculation. As it would be difficult to calculate the amount of indirect compensation on any specific proposed transaction, the rule could be based on a calculation similar to the Average Cost Pricing calculation contained in RESPA. Most lenders are already familiar with the Average Cost Pricing concept, and obtaining the data necessary to make the required calculation would not create an undue burden on creditors or their affiliated settlement providers. The most simplistic approach would be to divide the return on investment received by the creditor by the number of transactions that were referred to the provider. While this figure would overestimate the "indirect compensation" received by the creditor due to non-affiliated transactions handled by the provider, it would be a more accurate estimate than the inclusion of the entire fee paid to the affiliated provider. This alternative would achieve the Congressional goal of including the "indirect compensation" in the points and fees calculation while helping reduce the inequity borne by affiliated providers.

The inclusion of the entire fee paid to an affiliate in the creditor's points and fees calculation fails to achieve the TILA goal of providing consumers with accurate information to make an informed decision pertaining to possibly the single largest

financial decision a consumer will make in their lifetime. This approach of unnecessarily including a component also has no bearing on Congress' stated purpose under Dodd-Frank of making a reasonable determination of a consumer's ability to repay the loan sought.

Thank you for considering my comments.

Respectfully submitted.