ASSOCIATION OF INDEPENDENT MORTGAGE EXPERTS

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April 29th, 2023

Loan Originator Rules RFA Review

c/o Legal Division Docket Manager

Consumer Financial Protection Bureau

1700 G Street NW

Washington, DC 20552

RE: Notice of Section 610 Review and Request For Public Comment: Docket No. CFPB2023-0017

Dear Director Chopra**,**

The Association of Independent Mortgage Experts (AIME) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's Regulation Z Mortgage Originator Rules.

AIME is a non-profit, national trade association representing over 65,000+ independent mortgage brokers in all 50 states, Puerto Rico, and Guam. The association works to protect and support our members and grow the wholesale mortgage channel with curated tools, industry-leading resources, education and training, sustainable partnerships, and increased access to technology.

Independent mortgage brokers are an important part of the communities they serve and are uniquely positioned to provide local expertise in the home-buying process. They are the small business segment of the mortgage industry, employing on average 5-10 people per brokerage. Mortgage brokers are stakeholders in the communities in which they operate, ultimately serving homebuyers of all socio-economic backgrounds, ages, genders, and ethnicities. Our mission is to advocate alongside our members to advance homeownership opportunities for all consumers.

We believe two specific changes to Regulation Z would directly benefit consumers, maintain the intended protections of the rules, and create a more competitive marketplace to the benefit of the consumer:

1. **Include lender credits in the Annual Percentage Rate (APR) calculation.**

The purpose of including an APR calculation is to provide the consumer with a single metric (rate) to help compare competing financing terms across multiple lending sources. However, the current APR methodology fails to provide an accurate reflection of competing financing terms when lender credits are involved.

<u>Example #1:</u> A consumer is comparing mortgage quotes. The quotes are identical in every way, with the same interest rate and finance charges. However, Option A offers a $1,000 credit against closing costs, while Option B does not. Option A is the superior offer, but the APR does not reflect this fact because lender credits are not currently included in the APR calculation.

<u>Example #2:</u> A consumer is shopping for a $500,000 mortgage with two Loan Officers. One works for a direct lender, and the other is a mortgage broker. The terms from the direct lender are 6.25% with 1 point in origination costs. The mortgage broker is offering a Borrower Paid Compensation (BPC) transaction, and the terms are 6.25% with 1.25 points in origination costs and a 1% lender credit. All other aspects of the terms are identical. In this scenario, the mortgage broker's offer would be $3,750 cheaper in upfront costs than the direct lender's offer. However, in this scenario, the mortgage broker's offer would have a <u>**higher**</u> APR, despite the upfront savings.

Including lender credits in the APR calculation would solve both of these problems and increase APR's accuracy and intuitiveness. Finance charges result in an increase in APR, and finance credits, such as lender credits, should result in a decrease in APR. By adding this provision, consumers will have a clearer understanding of the total cost of financing options, and APR will better fulfill its intended purpose by serving as a single number that consumers can rely on to make informed decisions that best suit their needs.

2. **Mortgage broker compensation should not be included as part of the 3% Qualified Mortgage (QM) calculation on Lender Paid Compensation (LPC) transactions.**

The stated purpose of the 3% QM rule is "to make sure borrowers don't pay very high fees".[1] Yet mortgage broker compensation is included in the 3% calculation, even when the wholesale lender, not the borrower directly, pays that compensation. This type of compensation is called Lender Paid Compensation (LPC), and the following commentary is made strictly within the confines of LPC transactions.

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[1] https://www.consumerfinance.gov/ask-cfpb/my-lender-says-it-cant-lend-to-me-because-of-a-limit-on-points-and-fees-on-loans-is-this-true-en-1795/

The argument for including LPC in the 3% rule is that the lender is recouping "the fee from the consumer through the interest rate over time."[2] This argument misstates the manner in which lenders recoup the compensation they pay mortgage brokers and is not an accurate reflection of how the system actually works. When a QM mortgage closes, it is ultimately packaged and sold to either Fannie Mae, Freddie Mac, or a mortgage aggregator, who may also retain the servicing rights. The lender is compensated for this transfer, and this is a significant component of the gross revenue in their business model. They pay all of their employees from it, including internal loan officers if they are a retail lender or mortgage brokers if they are a wholesale mortgage lender. While higher interest rate loans can yield higher premiums, this is not a channel-specific fact. QM rules that include compensation in the wholesale product calculation while not including it in the retail product calculation creates an unlevel playing field without any consumer benefit.

In fact, the inclusion of broker compensation against the percentage cap causes consumer harm, specifically on smaller loan amounts for borrowers with less-than-perfect credit, who are often in underserved communities. By including broker compensation against the percentage cap, mortgage brokers are often unable to help these borrowers, as they cannot cover their expenses and still make a profit under the current rules. While Regulation Z allows for higher fee percentages to be charged on loans less than $100,000, this is not enough to overcome the disparity for mortgage brokers. If these loans have upfront points or flat fees related to origination, the Mortgage Broker cannot serve these borrowers while still operating a profitable business. As a result, Mortgage Brokers are not a viable option for these borrowers, resulting in a less competitive marketplace and worse terms for borrowers than they might otherwise receive.

This inequality must be addressed, and by removing Broker compensation on LPC loans from the QM calculation, we can create a more equitable and competitive marketplace, benefiting both Mortgage Brokers and the consumers they serve.

We appreciate your willingness to consider changes to existing rules. We are available to schedule a conversation with AIME's Chairman & CEO, Katie Sweeney, and our President of Advocacy, Brendan McKay, to discuss how we can help support the proposed improvements to Regulation Z.

We look forward to your response and to working together to ensure that borrowers are fairly and fully informed. Please email our team at advocacy@aimegroup.com for additional information or to set up a conversation.

Sincerely,

[2] https://files.consumerfinance.gov/f/201512_cfpb_atr-qm_small-entity-compliance-guide.pdf (page 45)

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