

TIM JOHNSON  
SOUTH DAKOTA

CITY OFFICE: (605) 341-3991  
1098, RAPID CITY, SD 57709

JEEN OFFICE: (605) 226-3440  
1154, ABERDEEN, SD 57402

FALLS OFFICE: (605) 332-8938  
1424, SIOUX FALLS, SD 57101

## United States Senate

WASHINGTON, DC 20510-4104  
December 21, 2014

WASHINGTON OFFICE:  
136 HART SENATE OFFICE BUILDING  
WASHINGTON, DC 20510-4104  
(202) 224-5842

TDD: (202) 224-8279

TOLL FREE  
1-800-937-5825  
1-800-819-0788

WEB SITE: <http://johnson.senate.gov>

The Honorable Richard Cordray  
Director  
Consumer Financial Protection Bureau  
1275 First Street, NE  
Washington, DC 20002

Dear Director Cordray,

I write to you today regarding what many agree is a "definitional error" in the Wall Street Reform and Consumer Protection Act of 2009 (H.R. 4173). This error affects the calculation of points and fees for purposes of determining what is a Qualified Mortgage and it has resulted in an unintended distortion of the mortgage market delivery system to the detriment of countless consumers.

Fortunately this error can be corrected through the regulatory process and, by doing so, you would make it possible to maintain healthy market competition ensuring that affordable mortgage credit is available to everyone while protecting consumers. If this error is left uncorrected I am concerned about the possible disparate impact that may be felt by low and moderate income borrowers who find themselves in higher rate mortgage loans than they could otherwise qualify for.

The calculation of points and fees for purposes of determining what is a Qualified Mortgage was not intended to include creditor payments to loan originator organizations (brokerage entities), provided such payments are already included in the rate established and offered by the creditor.

However, an inadvertent definitional error occurred in the text of the statute relating to which mortgage entities' fees should be included in the points and fee cap for purposes of determining a Qualified Mortgage. In relevant part, Section 1431(c)(A) of the Dodd-Frank Act (current Section 103(bb)(4)(B) of TILA) provides:

"(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction;"

Payments from creditors to an entity brokering a mortgage are already included in the rate offered to consumers. This fact was highlighted by your agency in its release published in the Federal Register June 12, 2013, (78 FR 35429). In that release, your agency utilized its Congressionally-granted power to exclude payments from a creditor to the creditor's employees from the Qualified Mortgage points and fees calculation. In the same release, your agency further pointed out that a similar result should occur for payments from lenders to mortgage brokerage

## United States Senate

WASHINGTON, DC 20510

companies and their loan originator employees since such fees are also already reflected in the mortgage rate and are being counted twice. The discussion highlighted, in part, the following:

"The final rule excludes from points and fees loan originator compensation paid by a consumer to a mortgage broker when that payment has already been counted toward the points and fees thresholds as part of the finance charge under § 1026.32(b)(1)(i). The final rule also excludes from points and fees compensation paid by a mortgage broker to an employee of the mortgage broker because that compensation is already included in points and fees as loan originator compensation paid by the consumer or the creditor to the mortgage broker."

It is appropriate for the CFPB to exercise its authority to correct this error - an error that your agency has previously identified as such - as the fees paid by creditors to loan originator organizations cannot vary under the compensation rules issued by the Federal Reserve Board and the CFPB. Perhaps more importantly, correcting this definitional anomaly will help ensure that consumers borrowing lower loan amounts will not be adversely impacted by the Qualified Mortgage rules and forced to obtain higher-priced loans than they could otherwise obtain in the market.

With all of this in mind, I respectfully request that the CFPB re-examine its Ability to Repay final rule and further exercise its rulemaking authority to clarify that the calculation of points and fees, for purposes of determining what is a Qualified Mortgage, does not include creditor payments to loan originator organizations, provided such payments are already included in the rate established and offered by the creditor.

Thank you, in advance, for your consideration of this important issue.

Sincerely,



Tim Johnson

TPJ

Follow Senator Tim Johnson on Twitter at <http://www.twitter.com/SenJohnsonSD>  
and on Facebook at <http://www.facebook.com/SenatorTimJohnson>.