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Subject: Reg Z - Truth in Lending

Comments:

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Proposal: Regulation Z - Truth in Lending - Closed-end Mortgages
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December 7, 2009 TO: Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW. Washington, DC 20551. RE: 12 CFR Part 226 [Regulation Z; Docket No. R-1366] Truth in Lending ACTION: Proposed rule; request for public comment Dear Board of Governors: I have been in the mortgage banking profession for nearly 24 years. I have owned my own brokerage for the last 17. Throughout the years we have successfully served thousands of clients, their friends and families. Today, we are licensed in 20 states.
There is not a single complaint filed against our company anywhere in America, nor am I aware of any client who could say that they were not served properly by our company. My point, of course, is that we, as mortgage brokers / originators, are not all the miscreants portrayed in the media and by the regulators who seek to bring change to our industry. Those of us who refused to partake in the oft noted abuses deserve a chance to be heard as the country seeks to fashion a solution that is in the best interest of all parties.
Clearly, we are confronted with the detritus of a housing market run amok.
While the housing crisis has many authors, the mortgage banking industry, especially including mortgage originators, are in jeopardy of being legislated out of business. While there were unquestionable abuses perpetrated by some in our industry, I would argue that the majority never engaged in the salacious behavior that caused so much distress, though we will now bear the brunt of the hangover. Ironically, it is widely believed within our industry that those most guilty of unethical behavior have already exited the business. With the demise of the very products that caused so much injury, those most active in selling these products no longer have a client base to support them. The Federal Reserve proposed rule R-1366 will eliminate the Yield Spread Premium (YSP) and abolish our ability to pay our loan originators through commission income. In the future, we will either be compensated directly by the client,

or we will be paid a "flat" fee from the lender for work performed by our loan originators on behalf of our company. I would suggest to you today that the elimination of the YSP payment method is unnecessary and its' demise would have the very real potential to devastate the mortgage delivery system in America while offering fewer choices for the consumer. Furthermore, elimination of commission paid income will make it impossible to maintain a competitive mortgage origination industry in this country. If the intent of this new legislation is to protect and serve the interests of the American consumer, asking them to pay the mortgage banker / broker directly for their services is almost universally undesirable to them. In all of my years in this business, only a handful of my clients would have chosen to pay points out of their pocket to secure an interest rate. Rather, they would prefer to accept a slightly higher rate of interest over the life of the loan. Rarely would they choose to finance points into the new financing knowing it would take years to recoup. Most, in fact, will not carry that mortgage long enough to recoup the financed cost (the average life of a mortgage being far shorter than the term!). I would suggest that if properly managed and with a commitment to strict regulatory compliance, a robust loan origination network serves many purposes. First, more loan originators, not less, will create a competitive environment. Competition has been shown throughout history to drive down costs to the consumer while providing greater choice and enhanced service levels. In fact, many times over the years I have had to accept less profit simply to secure the loan from my competition. Second, a robust mortgage broker community assumes the costs of mortgage originations. This provides the major banks and lending institutions the opportunity to defer operating costs, thereby allowing them to heal their balance sheets and redirect their resources to a struggling American business community. I would suggest that the solution to the concern of originator steering, which is the basis for these changes, is actually quite simple. Properly implemented, this solution can effect the result the Federal Reserve is seeking without devastating an entire industry and the hundreds of thousands of jobs incumbent therein. To that end, I would recommend a few, very simple, easy to implement changes which incorporate policies our company has employed for years. First, reasonably restrict the total YSP compensation lenders / brokers can earn on a mortgage loan transaction. We have had this as a written company policy almost from our inception. This restrictive policy has discouraged many originators from joining us over the years, but it has prevented the very steering which is the greatest concern of theFederal Reserve. While this solution would still find originator compensation is tied to the interest rate or terms of the mortgage, concerns of steering are essentially eliminated. For instance, our average gross spread is between 1.250% to 1.500% of the loan amount. This would typically equate to .25% to .375% in the interest rate. At times we make more and, as often, less, because of the competitive nature of the business under this model. Setting a reasonable maximum YSP, while allowing some flexibility for variances in product and loan sizes, could be enacted on an industry wide level. Second, payments to brokers which would exceed established maximums are easy to monitor, as our loans are funded by the lender. Accordingly, compliance with the mandated maximums would be easy to enforce. If we were to restrict, rather than eliminate the YSP, the lender can ensure final compliance by refusing to fund a loan with a YSP greater than the maximum established amount / percentage. Some lenders have already put this limitation in place, so an industry wide maximum could be implemented almost immediately and without a major restructuring of the industry. I realize that there is also great concern that the consumer may be confused about, or entirely unaware of the YSP. This, of course, is similar to my dilemma when buying a car and I do not understand the Manufacturer's Suggested Retail Price. Frankly, we have kept this an industry mystery for far too long. Why operate with terms that are indecipherable to the common consumer? In fact, the new Good Faith Estimate of Closing Costs will create greater understanding and transparency so that the average American consumer will understand all relevant terms. This should lead to a greater understanding of how we get paid to originate their loan. I believe under new RESPA guidelines this issue will now be resolved. With nearly 100 loan originators, our company, as a small business, is part of the great job machine in America, one that produces employment, opportunity and precious tax revenues. I am concerned, however, that the solutions proposed by the Federal Reserve will impact on companies like mine so significantly, that I can fashion no reasonable solution as to how to pay to maintain all, if any, of these positions. It is simply not possible for the vast majority of the mortgage origination companies to accept the risk of fixed income guarantees for so many employees. This is especially true with the uncertain future of the housing industry. Without YSPs or commission income, especially since we cannot guarantee a minimum fixed income sufficient to maintain their position, hundreds of thousands of people who work in the origination industry will have no choice but to seek employment outside of mortgage banking. While some may believe this to be a desired and a justifiable conclusion, I cannot think of a worse time to displace so many people, not when unemployment and foreclosure numbers are already so elevated. I simply do not know how my 17 year old company could survive such dramatic changes. Let me be very clear, I agree with those who feel that we need to do something to eliminate confusion and restore accountability to the mortgage banking/broker industry, but it is important to understand that many were complicit in this debacle, including certain members of the real estate industry who steered their clients to the disreputable among us and the Wall Street executives who created these unsavory products to begin with. Destroying the ability of so many in the mortgage banking profession to make a reasonable income will do nothing to reverse the damage from the past. Instead, careful changes thoughtfully deliberated with those of us in this industry can be the catalyst for substantive and lasting change. To do otherwise will invite, unnecessarily, the devastation of an entire industry at the very moment we need it the most, when we see the early signs of a nascent recovery in the housing market. I would suggest that those responsible for R-1366 solicit personal meetings with the many of us who serve on the front lines of our industry, not just those who sit at the pinnacle of the major, "too big to fail," lenders. It is important that the policy makers and members of their staffs are mindful of preserving American jobs in the worst employment environment in a generation, even as they put into place safeguards for the American public. For those of us in this industry, and collateral industries, this is not just an academic exercise. Hundreds of thousands of jobs are at risk here, positions that may be gone forever. It is important to put a human face on this discussion. While I very clearly understand that the mortgage banking industry is viewed as the poster child for bad behavior, and that a certain amount of retribution is expected by the consumer and the politician alike, I want to reiterate a comment from my pening remarks - not everyone in our industry was involved in the questionable, abusive behavior that left so many American consumers vulnerable. Responsible brokers / lenders like us disliked those elements of our industry every bit as much as those who are now charged with fixing this problem. Many of us had reason to suspect the ethics of those who perpetrated these abuses and we knew that the "good guys" would be left behind, once again, to clean up their mess. Unfortunately, we simply could not fashion a solution which exposed them for their unsavory practices without leaving us vulnerable to personal and professional liability. So I know I speak for the vast majority of us who remain in this industry when I say that we are very

happy to work with Congress and/or the regulators to establish guidelines for our industry which will serve the needs of all parties to a mortgage transaction. Ultimately, destroying thousands of jobs in the mortgage banking industry through the elimination of the YSP and commission paid income will not improve the mortgage delivery system in this country, nor will it serve to benefit the American consumer. I urge you to work together with us, instead, as we seek a common purpose. Thank you for your time.
Sincerely,

Gregory L. Kundinger