From: "Alan Kirth" <alan@elifetime.com> on 04/08/2008 07:35:04 PM

Subject: Regulation Z

To Whom It May Concern:

While many of the proposed changes that will benefit consumers and improve the quality of the disclosures they receive, there are still too many suggested changes that appear written by bank lobbyists with the intention of eliminating mortgage broker competition. Whether intentional or not, many points of the proposed changes target small business mortgage brokers but will affect small business appraisers in the same manner, putting us both out of business! My mortgage broker business has already been dramatically affected by the industry's downturn and the Mortgage Backed Securities (MBS) market crisis. I guarantee that it will not survive if these proposed changes are implemented in whole. I have to ask: how is the consumer benefited from the loss of mortgage broker competition, currently representing well over 50% of all loans originated annually in the US? Is there an understanding by those promoting the proposed changes of what effect there will be on mortgage brokers throughout the US? There appears a naïve assumption that mortgage brokers are to blame for consumer financing abuses. Let's take a look at the forest through the trees. The mortgage brokers' wholesale sources (banks, savings & loans, mortgage bankers) are the actual crux of the problem associated with industry and all consumer abuses, which includes but is not limited to mortgage broker abuses. It was the Big Profits being made by every one of the mortgage brokers' <u>wholesale sources</u> that caused these same banks, savings and loans, and mortgage bankers, to play hear no evil—see no evil—speak no evil. It is the mortgage brokers' wholesale sources who hold the <u>final responsibility for approving a mortgage broker's fee request.</u> This is true on every loan ever funded when the originating source is a mortgage broker. The reality is that <u>wholesale sources not only turned a blind eye</u> to fee abuses by US mortgage brokers <u>in the name of closing more loans</u>. They exacerbated the practice of consumer fee abuses with promotions to mortgage brokers on how the mortgage brokers could make more money funding loans with once wholesale source over another. With an overly permissive agenda of endorsing big profits by all of the wholesale lending sources, they invited unethical mortgage broker business practices in line with those same practices being promoted within their own organizations, including their inside loan sales divisions. To further highlight the banks', savings and loans', and mortgage bankers' profits over ethical business practices, consider this question: why did wholesale lending sources move to only accepting automated approvals, eliminating their automated loan condition reviews by high priced and highly experienced underwriting staff employees, while replacing them with less experienced and lower salaried underwriters whose jobs were only to validate conditions placed by automated underwriting formats? Answer: highly experienced underwriters were not only much more expensive to employ but they were stopping loans from closing and being sold in the MBS arena that had already been approved by automated formats. My point is that many of the proposed changes in the Truth in Lending are not properly addressing the real issues that need be addressed to truly protect consumers, while further hurting the consumer by reducing the effectiveness and benefits of the consumer's use a mortgage broker over going directly to a bank, savings and loan, or mortgage banker. In essence, many of the proposed changes will affect the consumer adversely by handing the wolf the key to the chicken coup. I will delineate each of the proposed changes and their ineffective and/or unintentional affects below:

1. How could the mortgage broker be put out of business and the consumer

negatively impacted by the reduction of the threshold to 3%?

Answer: most prime wholesale lending sources for mortgage brokers do not fund loans that fall into high cost categories, like Section 32, etc. By making the threshold 3% above the 10 year treasury for 30 year fixed loans, the current threshold today would equate to 6.54%. Prime consumers will not be able to shop prime jumbo fixed rates through any mortgage broker sources based upon today's jumbo fixed rates offerings or even conforming-jumbo rate offerings. Wholesale sources available to mortgage brokers simply will not offer mortgage brokers the availability of standard conforming or jumbo prime fixed rates if they are considered high cost loans! This will eliminate over 50% of the consumer's current sources in shopping for a jumbo and, potentially, conforming loans. With daily rate fluctuation and increasing lender profit margins resulting from the affects of the MBS crises, even standard prime conforming loans will be included as a high cost loans from time to time, by virtue of rate fluctuations. Just a few weeks ago, while rates had spiked due to market instability, all conforming fixed rate loans would have fallen into the high cost loan category, and as such, would not offer products available to mortgage brokers nor those consumers then working with mortgage brokers….at all. This is unfair to the consumer that has chosen a trusted mortgage broker while rates are down, only to be surprised by the a fluctuation of an instable market suddenly making their loan a high cost loan. The proposed lower threshold does not answer the problem, it is an incubator for disaster due to the potential negative impact on prime consumers choosing to work with mortgage brokers. Consumers will soon learn that their only solution to avoid becoming stuck in the situation suggested is by NOT using a mortgage broker to help them with their financing. Singling out Mortgage Brokers to fully disclose all income is unfair and hurts small business. All lenders should have a level playing field and all lenders should be required to provide disclosure for all revenue earned on a loan. Banks have just as much incentive to sell a loan at a higher rate as a Broker does, yet singling out Mortgage Brokers discredits them with consumers, creates confusion and implies they are more expensive than a bank.

2. If prime conforming, conforming-jumbo, and standard jumbo borrowers can be impacted as having their loans being considered "high cost loans" due to fluctuation and/or instability in the daily interest rate marketplace, what impact does other of the suggested changes resulting from a loan being considered as "high cost" have on the prime consumer as they are directly related to using a mortgage broker, such as no negative amortization, no prepayment penalty options to lower the rate and/or margin, no stated income or no doc loans, and escrow accounts being required for taxes and insurance?

Answer: First, these additional requirements are of no consequence because once a prime borrower's loan is in process with a mortgage broker and that loan is suddenly considered "high cost", no prime conforming, conforming-jumbo, or jumbo loan solutions will exist! Wholesale sources will not offer mortgage brokers any options at all! Assuming options were made available to mortgage brokers by wholesale sources for prime consumers suddenly cast into a "high cost' category, these additional limitations would have the most dramatic effect upon high net worth consumers. High net worth consumers that have excellent credit scores, substantial equity and assets, are often self employed business owners without the ability to sufficiently document an income sufficient to qualify. If they are not able to acquire stated income or no ratio loans they will not be able to replace their existing financing or purchase additional property. All prime borrowers currently in a performing stated income loan will almost certainly be locked out of future financing. High net worth prime borrowers often elect negative amortization as a cash flow alternative to allow their equity to build in other real estate and non real estate vehicles within their overall financial portfolios. These savvy borrowers realize the impact of their financing decisions upon their wealth management when looking at loans with or without prepayment penalties. They may wish to choose a loan with a prepayment penalty because they have equivalent assets tied up elsewhere that will become available after the prepayment period ends, seeing the need and/or advantage of an offsetting rate reduction in return for agreeing to prepayment penalty terms. Elimination of prepayment penalties removes incentives for lenders to offer lower interest rates and lower margins. Borrowers should be informed they are not required to have a prepayment penalty and shown comparable loans. Expiration of prepay penalty is a nice concept but will create further confusion and limit financing options.

3. How does eliminating the mortgage broker's ability to order appraisals directly with appraisers and/or discuss the content of an appraisal with the appraiser negatively impact consumers while putting small business mortgage brokers and appraisers, alike, out of business?

Answer: Eliminating the ability for mortgage brokers to order and/or discuss appraisals with appraisers is unnecessary and will hurt consumers because it erodes the basic premise of a mortgage broker's primary stock in trade and thereby the consumers value in electing to work with a mortgage broker: interest rates made available through the mortgage broker's ability to shop a borrower's loan to many lenders. If the mortgage broker cannot order and own the appraisal in a loan file for the benefit of delivering that completed loan package (inclusive of an appraisal) to any lender the broker has at their option to submit, the value of a mortgage broker to the consumer marketplace is completely diminished. By virtue of the law of supply and demand, the mortgage broker as a small business will be eliminated because he no longer has any supply, regardless of demand! The mortgage broker must be allowed the ability to prepare a completed loan package, including the appraisal, to be of benefit to consumers in finding or obtaining the best available financing for their individual circumstances. This new appraisal concept forces a mortgage broker to determine a final wholesale lender <u>before</u> the appraisal has been completed, one of the single most important factors in a loan file and one that often is a determining factor, in and of itself, as to where a loan needs to or can be placed. Moreover, what about the good and honest appraisers that have built business relationships over a period of many years with mortgage brokers instead of banks, savings and loans, and mortgage bankers? Without the mortgage brokers to order appraisals directly from them, these fine and ethical appraisers will certainly not be on the lists used by the banks, savings and loans, and mortgage bankers. They too will lose their businesses and homes. We are talking about a mortgage broker/appraiser marketplace that represents over 50% of the appraisers in the US! The issue in regard to open discussion between mortgage brokers and appraisers as it is considered to allow, influence, or encourage, appraisers to arrive at inappropriate values, again goes back to lenders allowing abuses to take place in return for profits. The elimination of experienced underwriters with the ability to appropriately review appraisals and other appraisal review standards by wholesale lenders, along with the elimination of approved appraiser lists by these same wholesale lenders, became an open door to abusive mortgage broker and appraisal practices. The solution is not to eliminate dialog; it is in requiring wholesale lenders (banks, savings and loans, and mortgage bankers) to improve their appraisal review procedures and to bring them back to the standard that they once had been. Making the assumption that by eliminating dialog between a mortgage broker and an appraiser will hurt the consumer is as far from reality as can be imagined. <u>No appraiser has access to every facet of the market data</u> necessary to establish value on a real estate property. Open communication between Realtors, mortgage professionals, and appraisers, allows the appraiser the ability to ascertain all of the pertinent market data. It is an appraiser's primary job to sufficiently support to the lender whatever value they arrive upon. Without open communication with all of the players involved in a real estate transaction, the appraiser may not be able to ascertain important data that might both positively and/or negatively impact their value findings, which will adversely affect the consumer. The elimination of open dialog with appraisers, mortgage brokers, and forcing appraisals to be ordered by lenders only, will eliminate the public's perception for the need and value of mortgage brokers, which will eliminate mortgage broker small business, the small businesses of appraisers who currently work primarily with mortgage brokers, and the consumer's ability to shop their loan to multiple lenders via the use of a mortgage broker, thereby giving the banks, savings and loans, and mortgage bankers a monopoly on the consumer's future mortgage business, all from a simple little change in the threshold guidelines that determine what is considered a "high cost" loan. Please don't do it!

Respectfully submitted,

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