From: "Sherman Daley" <sdaley@keybranch.com> on 03/27/2008 09:20:03 PM

Subject: Regulation Z

To:
Re: Proposed Amendment to Regulation Z
Date: March 27, 2008

To Whom It May Concern,

I am a licensed mortgage broker in the State of Florida and I feel compelled to comment on the above titled action to amend Regulation Z. Prior to taking my examination and becoming a mortgage broker several years ago, the only thing I knew about mortgages was that you went to the bank and got one. That's how I had done it and my parents before me. Now after being in this industry and seeing the many benefits of a mortgage broker, I can attest to the fact that having an alternate sales channel for such an important transaction is a must. How? Because I personally would have benefited financially and strategically had I been aware and availed myself of the services of a licensed mortgage broker.

The program offered to me by my bank back in 2000 when I was building my home was the typical one-size-fits-all loan that did not allow me the flexibility of retaining the smaller home I had currently owned as an income-generating rental unit. This would have helped me create a passive stream of income that would have been a tremendous asset to my family when the telecom market imploded and I lost several hundred thousand dollars in my stock portfolio and 401-K. I am still recovering from this lack of diversification of asset due to the lack of options when dealing only with a bank for my mortgage.

The reason for this short real-life experience story is to highlight the fact that consumers are best served when there are alternate sources of capital to fund real estate transactions insofar as these programs are founded in common-sense underwriting guidelines. Given that mortgage brokers and brokerage businesses originate more than 60% of mortgage loans in the US, we are that viable and needed alternate source to ensure consumers' rights to choice. It is evident that the Federal Reserve Board of Governors' goal is to protect the consumer however it is my opinion that the Proposed Amendment as it stands will have the unintentionally devastating effect of completely wiping out the mortgage brokerage industry and with it the livelihood of the more than 80,000 licensed hard working men and women in Florida that constitutes this state's indirect mortgage loan channel as well as the national wholesale lending business as a whole. This will leave only retail banks (who, when left without competition, have never shown a propensity for doing what's in the best interest of the consumer) as the only source of lending available to the consumer. This is anti-competitive and is evidenced by the various reports issued by the government's own consumer watch dog agency, the FTC.

What exactly is it that's in the Proposed Amendment that will have these dire consequences? Allow me to summarize.

There is a requirement that mortgage brokers ONLY, not banks or other originators, must disclose ALL their fees to the borrower before the borrower even applies for a loan. This is impossible to do as the wholesale lenders that brokers represent CANNOT price loans without knowing the following, which in many cases we are only allowed to get AFTER the client applies and sign the appropriate disclosures;

- the clients credit score,
- Appraised property value or contract sales price
- Complete financial history and data
- Type of loan borrower will ultimately qualify for or choose – all of which have a bearing on compensation and varies throughout the loan process.

Even with this information, a broker rarely, if ever, knows what his or her yield spread premium will be until the lender issues the clear-to-close and sends the HUD to the escrow agent. This is usually 72 hours before closing here in Florida and can vary substantially from the initial phone call! Additionally, whether a loan is floated or locked will also have an unknown impact on the fees paid to the broker by way of YSP. Since the amendment would require upfront disclosure of all fees to which we are ignorant until doc are drawn prior to closing, and that these fees CANNOT BE CHANGED, one can see the impossibility of compliance. Therefore, the only outcome is that the broker will be put out of business as we will not be paid under the rules of the new legislation. It is also very unfair to the broker and consumer alike that banks will not be required to abide by this requirement to disclose compensation paid to their staff, thereby allowing them unbridled freedom from competition to do as the will to the consumer. Does anyone think that if there was a true alternate source of revolving credit that credit card consumers would be paying 25% interest rates? When lenders are allowed to compete only amongst themselves, excesses like the credit card scenario quickly become reality. And if this wasn't an issue, why then is congress taking banks to task on behalf of the consumer on this very issue.

It should be noted that here in the state of Florida, all broker compensation is already REQUIRED to be disclosed on the GFE within 3 days of applications and then AGAIN, along with disclosure on the HUD, 3 days prior to closing. This provides the consumer with the necessary information that I think the Proposed Amendment is seeking. Florida's Chapter 494 statute achieves this goal while taking into consideration the business realities and milestones in the process.

As a broker, I willingly provide these disclosures to assist my borrowers in comparison shopping for the best and most cost effective loans for their situations. It is interesting to note that invariably consumers comment on the lack of the same type of disclosures from banks which makes it impossible for them to compare and contrast apples with apples. This lack of lender disclosing has caused borrowers to think that banks are hiding behind the tilted regulations. Being that lenders now package and sell the loans they originate in their retail outlets, the lines between a bank and a broker have blurred and they should be required to also disclose the fees they will be paid upon such secondary market sales. Consumers already have a hard time distinguishing between lenders and brokers as they use similar signage and names and rely on similar advertising. Consumers should not have to try to make a distinction between lenders and brokers, rather regulation should be structured to allow the consumer to simply comparison shop with all originators on the same level playing field and choose either the lender or the broker that meets their needs at the price they're willing to pay. Fair and open competition - this is the idea behind the much touted market driven economy, correct? Again, disclosures should apply to brokers AND lenders equally or the Board will be creating a monopoly for lenders while driving hundreds of thousands of Americans out of work and escalating the costs of lending for all consumers. Again, if in doubt of the accuracy of this statement, just look at credit cards and the exorbitant fees and costs consumers currently bear as a predictor of what would come.

Additionally, the regulations seem intent on removing yield spread premiums, but again only for mortgage brokers. This is somewhat understandable if one only follows the shallow drivel that passes for reporting these days. YSP is most often portrayed as if it is a dirty form of compensation and is the

reason that the mortgage crisis exists (make no mistake – not one broker underwrote a loan in this country – the lenders did!). No matter the industry, every indirect channel's compensation structure has built in some form of YSP, whether it's called market development funds, coop advertising or factory to dealer incentives. The dealer, or in our case, the broker, uses these "back-end" monies to defray costs and more importantly, in many cases to lower the price to the buyer. As an example of this, I am right now working with a borrower who very early in the process specifically asked that I take my compensation only through YSP. He chose a rate that resulted in a monthly payment increase of $18 to reduce his upfront closing costs by over $2,500. He loved that NPV analysis and this is in no way an isolated case! Without YSP, borrowers and brokers will lose this flexibility with the end result being a disservice to consumers – the very people the Proposed Amendment seeks to protect. And let us not forget that banks also get paid YSP, except they call it Service Release Premium. So if it is good enough for them, why then is the mortgage broker being singled out for a loss of compensation and made to look unscrupulous at the same time? The comp structure should be equal between broker and lender.

Another aspect of the Proposed Amendment that will destroy many consumers' ability to procure needed financing is the new category of "high costs" loans that effectively remove the Stated Income and No Doc loan programs from the lending portfolio. While many brokers such as myself are not enamored with the Stated Income Stated Asset and No Doc loan programs, the Stated Income Verified Asset loan is an excellent product when used and underwritten correctly and the only program that many self employed, commissioned professionals and small business owners are able to use to gain access to financing. Due to the nuances of the tax code in this country, these borrowers tax returns preclude them from applying as full documentation borrowers. When taken at face value, their returns would seem not to demonstrate the income required to pass the debt to income ratio tests, though in truth and fact, they make more than enough money and have sufficient assets to validate the income they are "stating" they make. These borrowers make up a significant portion of the population and should not be penalized for poorly designed programs and lax underwriting by craven banks who indiscriminately funded loans in the past and are now successfully if not incorrectly foisting the blame for these non-performing loans on brokers, appraisers, real estate agents, et al. When underwritten with properly crafted program guidelines, these programs are viable options for the appropriate borrowers and is the ONLY avenue available to the vast majority. Again, lenders need to be held accountable for their actions and the Board need not inadvertently penalize the consumer by restricting options because banks failed to follow their own internal guidelines and/or employ sufficient business acumen in the crafting of same.

Finally, the new APR triggers of 3% on a first mortgage and 5% on a second over the Treasury will have the unintended effect of making just about every loan offered in the US a High Cost loan. Given the regulatory issues surrounding origination of a high cost loan, lenders will very quickly stop funding transactions. This pull-back has been seen many times in recent months when for instance, states have enacted legislation without due consideration of the comments and recommendations of the mortgage industry. The results were the that the rules went too far and lenders pulled programs or curtailed lending rather than face uncertain legal problems down the road. This had the chilling effect of hurting the consumers instead of helping as the regulators had initially intentioned.

In summation, I respect and applaud the Board of Governors for your efforts to protect consumers with the amending of Regulation Z. It is my sincerest hope though that the Board uses this opportunity at reform to truly level the playing field between lenders and brokers by auctioning our comments and recommendations. Combined with regulation that encourages flexibility, true competition between brokers and lenders and that is geared towards offering the consumer choices instead of restrictions, I

believe that such a revised Amendment would achieve the goals the Board set for this exercise.

Thank you for your efforts and also for taking the time to read and consider my comments.

Regards,

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