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Comments:

Regulation Z - Truth in Lending [R-1305] Comments by Stephen L. Ross on April 3, 2008 My name is Stephen L. Ross, and I am a Professor of Economics at the University of Connecticut. I am considered a national expert in research on housing and mortgage lending discrimination. I have been a consultant on these topics for many organizations including the New York State Attorney's Generals Office, FannieMae, Abt Associates, and the Urban Institute. In my research activities, I have had multiple opportunities to work with administrative data on mortgage underwriting and pricing, as well as review individual loan files and examine detailed borrower narratives in cases of alleged abusive lending. I have followed the recent subprime lending crisis closely including testifying before the State of Connecticut Legislature and being interviewed by reporters at Reuters and the Wall Street Journal on the crisis. My comments follow: 1. While public presentations by representatives of the Federal Reserve Board of Governors often mention the "right of private action" for violations of HOEPA, I have not found any discussion of details concerning the application of a "right of private action". Based on my experience, allegations of an abusive or predatory loan almost always occur in response to the conduct of independent mortgage brokers while the loans are originated by a separate lender, securitized, and sold on the secondary market. Therefore, these new regulations need to be clear about the scope of the “right of private action.” a. Specifically, will violations of these new HOEPA regulations be covered by the assignee liability provisions in HOEPA? b. Second, are lenders responsible for violations of HOEPA on the loans that they originate even when the violations may have arisen based on the actions of mortgage brokers? The new regulations need to be precise in terms of which agents in the mortgage transactions bear the responsibility of HOEPA violations and designed to extend meaningful relief to borrowers. In my opinion, the “right of private action” is meaningless unless borrowers are able to protect themselves against foreclosure based on violations of HOEPA by mortgage brokers and lenders. Because most mortgage loans were and are securitized, generally securitized trusts or their agents are the parties who institute foreclosure suits. In most states today, borrowers cannot defend themselves against foreclosure in actions brought by securitized trusts, even in the most obvious cases of abuse. Further, mortgage brokers are often judgment proof typically having little assets relative to the value of mortgages originated, as such a right of private action applied to mortgage brokers provides no meaningful borrower protection. 2. The “pattern or practice” conditions in the following provision “Creditors would be prohibited from engaging in a pattern or practice of extending credit without considering borrowers’ ability to repay the loan” dramatically increases the burden on individual borrowers and will often prevent meaningful relief for individual borrowers. The requirement that borrowers only be approved for affordable loans is central to addressing the current abuses in the system. Without pre-trial discovery, borrowers have little ability, let alone financial resources, to build a pattern and practice case, and so this regulation is unlikely to provide much protection or any course of action for individual borrowers. Further, the structure of the mortgage market and the importance of independent mortgage brokers in the subprime sector suggest that “pattern and practice” could be very difficult to establish especially in a timeframe that would allow an individual to save their home from foreclosure. 3. The current proposal does not address or discuss “rate locks” in any way. Every narrative of alleged abuse that I have ever seen involves changes in or revelations of loan terms at the closing when the borrower is least able to object and under the most pressure to sign the documents. These changes are tantamount to bait-and-switch techniques and almost always involve an increase in the interest rate resulting in a substantial increase in broker compensation. As with escrow, rate locks are common in the prime market, and almost unheard of in the subprime market. In fact, I have never seen a subprime loan that had a rate lock, and while I have seen prime loan pricing that allow for no rate lock the vast majority of prime loans that I have seen have rate locks. Therefore, the borrowers who are least able to object to changes at closing and weather the financial implications of not accepting a loan at closing are the borrowers who have little or no interest rate protection prior to closing.