From: "Tom Mercadante" <TomM@cmshomeloan.net> on 04/02/2008 08:25:03 PM

Subject: Regulation Z

I applaud your efforts to protect consumers from predatory lending practices. I am a mortgage broker and co-owner of Creative Mortgage Solutions, Inc here in Bellingham, Washington State, who has operated in integrity for over 15 years. I personally helped blow the whistle on predatory financing companies like Household Finance. I get totally upset when I see unrighteous things happen to customers! I have referred many customers to the Washington State Department of Financial Institutions and Attorney's General.

That being said, I am opposed to the proposal to restrict compensation for mortgage brokers for the following reasons:

Most of the fraud I have seen has been from banks and finance companies where in-experienced and untrained "application takers" have misrepresented borrowers' income. Some companies have sent out appraisers to customers who have not even received Good faith estimates, given permission to pull credit, or signed a single piece of paper!

I did only TWO negatively amortizing adjustible rate mortgages for customers who had six digits in cash reserves. Washington Mutual, a bank, did the majority of them and I told customers on my radio show, that their loans would re-cast in 2.5 years and that their payments would rise out or reach! We have yet to see the results of that: owing 15% more than you paid and having your home value decline 15%...Why

wouldn't people walk away from their homes. The underlying problem is clearly the lack of affordability for homes where jobs create demand for housing!

Operating as mortgage brokers, we are required to sign lengthy agreements with Banks and Lenders that specifically preclude us claiming any fiduciary relationship! We are not legally permitted to claim we represent the lender without violating our contracts.

If we were to claim more than a contractual relationship to our borrowers, we could be sued for not giving them "the best rate" in the country. Rates and fees vary dramatically by regions of the country, change hourly with market news, vary widely by credit scores, loan to value, property type etc. There is no practical way to guarantee fees before the entire circumstance of the borrower is clarified.

To single out the mortgage brokers and not force compliance with the same rules upon Attorneys (who are apparently exempt from licensing etc.), Realtors doing in house loans, Banks, Finance companies and Credit Unions will reduce competition and ultimately leave consumers subject to higher rates and fees. Some of these entities already advertise that they have "no origination fees" misleading the consumers about the true cost.

For example, when I was offering customers 4.75% 30 year fixed with a 5.25% APR, one of the local banks was offering 6.5% no closing costs, zero fees. On that $300,000 loan amount, the bank was earning $15,000 in fees it did not have *to disclose! Over the life of the loan, the consumer would pay over $117,000 more in finance charges! My offer was much better for the consumer but because the bank did not have to disclose their yield spread, the consumer took the bank offer and paid more!*

We have experienced Realtors steering clients to banks because "their clsoing costs" were less even when comparing Good faith estimates for the same rates. Why? Because Banks don't have to disclose yield spread.

When we are trying to help consumers who have very little down and closing costs, we can often use some of the yield spread to lower the funds they need to bring in. This is especially true for FHA and VA purchasers. Since VA pre-cludes the veteran from paying certain closing costs, who will do VA loans if there is no yield spread to pay for real costs of third party services??

I don't understand how anyone could give an honest or accurate estimate before fully submitting and locking a file! After locking a file would be a good time to confirm fees! Here in Washington State, we re-disclose whenever there is more than a $100 change in our fees. But things can change dramatically if a purchaser buys a manufactured home or a refinacer has a credit card late! Neither one of these events could be known ahead of time.

A mere 20 point difference in credit score can cost a borrower 1.75% more in fee, and $100 more per month in mortgage insurance surcharge! Sometimes the borrowers tell us one

thing for their income which proves to be inaccurate when we get verifications back from their employers! The new Fannie/Freddie guidlines are not even in the automated system yet and the lenders themselves are changing criteria weekly! How are we to account for this?

If you ask us to freeze our price quotes before getting to the finish line, you will create an unworkable situation that will cause us to have to decline the loan rather than do it for nothing! What will you have us use as our explanation? Broker cannot afford to close the loan at orginal prices offered due to program changes? Borrowers scores went down? Lender no longer offers loans under these terms?

We already put in many hours of counseling, reviewing and recommending solutions to borrowers and already can have all our work nullified by recision or worse yet by realtors directing files to their in house lenders? How can we remain viable in this market.

If everyone had 740 scores and chose a 30 year fixed rate, life would be easy but no two borrowers are alike and lending criteria already is harming lower to middle income first time homebuyers by exclusion.

I understand your concerns about liquidity and the desire to prevent a run on the banks but the recent melt-down has limited competition to the benefit of the banks. Why not increase the reserve requirements of the banks to prudent levels? How can a mere rise in losses of .9% cause this problem if the liquidity of the banks was healthy?

I'm glad you're going to regulate derivatives and shore up the banks with some fiscal responsibility! I still don't get why the "marketing department" is being punished for defects in the "manufacturing department." Wall Street and the Banks created these products and the banking lobby doesn't want to take responsibility for it but rather has turned it into an opportunity to make themselves richer and trash their competition...

No one seems to be present to the fact that these programs did well because home prices are now about 12 times the average persons wage compared to one times the annual wage back in the forties!

Was the .9% higher foreclosure rate that great a price to pay in light of the fact that more people were placed in homes in the last five years than any time in our history? No one is talking about that.

Now that over 150 channels of distribution have gone out of business merely because Wall Street underpriced risk, why not make cross collateralizing mortgage backed securities owned by Wall Street Companies a regular Fed tool to increase/restore competition?

Why are we punishing the entire country for problems in 4 parts of the country? We have had only a .49% default rate in Washington State for the last 10 years! The media has created a fear to buy stating that prices "need to fall another 15%". Where? In Arkansas? In Lousianna?

The media has also contributed to longer marketing times for the sales of homes which then makes it difficult for appraisers to find sales comparables! This becomes a self-fulfilling prophecy that drives home values down in areas of the country NOT in trouble!

Well, thanks for enduring my lenghty comments. I hope Mr Bernanke gets to read them. I am as frustrated as he is about market conditions but I think we're over-spanking the wrong child here.

Warmest Regards,
Thomas C Mercadante
Creative Mortgage Solutions Inc.
4120 Meridian St, #230
Bellingham, WA. 98226
360-738-1520

Explain the services that mortgage brokers provide as an intermediary between borrowers and lenders, and the value the broker adds in the real estate transaction by serving BOTH parties, but representing NEITHER.

- Explain how mortgage brokers must compete with direct lenders, and how the distinctions between brokers and lenders have blurred in recent years as lenders themselves typically package and resell loans they originate

- Note how consumers are largely unable to distinguish between brokers and lenders, which have similar names, use similar signage, and rely on similar advertising

- Insist that any disclosures apply equally to ALL mortgage originators, not just brokers

- Explain how yield spread premiums are much more than just compensation, and how they are used to pay certain costs and facilitate the loan transaction

- Explain how, in the real world, requiring brokers, but not other loan originators, to make compensation disclosures enable the brokers' competitors to steer consumers away from brokers, even if brokers offer more favorable loans

- Explain how it is impossible to give a reasonably precise dollar estimate of fees a broker will charge in a transaction even before an application is submitted because the broker does not yet know the prospective borrower's financial status, transaction details, type of product sought, or amount of loan, all of which may vary as the transaction progresses

- Suggest that the Fed consider alternatives to the proposed regulation which would protect consumers in their dealings with all mortgage originators, and encourage competition on price and service

- Thank the Board of Governors of the Federal Reserve for considering the comments

Warmest Regards
Thomas C. Mercadante
360-738-1520 office
360-410-7186 cell