From: "James Wheeler" <jwheeler@apexlending.com> on 04/02/2008 10:35:03 PM

Subject: Regulation Z

This is James Wheeler. I'm a licensed mortgage broker in Riverview, Florida. I'd like to express my support for the consumer protection goals of the Federal Reserve's proposed amendments to Regulation Z, but I respectfully oppose the proposal to restrict compensation for mortgage brokers.

Independent mortgage brokers originate about two-thirds of all mortgages in this country. We provide valuable services to consumers, and we've been doing so for many years. There's plenty of blame to go around in the continuing mortgage crisis, but it is disingenuous to suggest that mortgage brokers developed any of the loan products or disclosures in question. The fact of the matter is, lenders create loan products and establish the guidelines for those products, regardless how they are sold to borrowers. And mortgage brokers have virtually no discretion when it comes to disclosures, which are determined entirely by lenders, regulators, and government auditors.

I am perplexed at the notion that mortgage brokers are unregulated players in the mortgage market. We are highly regulated, especially at the state level, and we are subject to audit at both the state and federal levels (including by those whom we fondly call the "RESPA Rangers"). In Florida, mortgage brokers undergo criminal background checks and are required to pass professional exams and take continuing education. On the contrary, the bagboy at the local grocer could be a retail loan officer at the corner bank tomorrow. Because retail loan officers work for banks, they are generally exempt from all regulation and oversight that would otherwise apply to them as individual mortgage originators. Allow me to give you two very specific examples of how that plays out in the real world.

First, as a mortgage broker, I am required to prepare and send to applicants an extensive set of disclosure documents up front, even before I submit the loan to a lender. All of those disclosures must be signed by the applicants and returned to me. Strictly speaking, the act of sending the disclosures meets the legal requirements. But to meet the requirements of lenders and government auditors, those initial disclosures must be signed, dated and returned by applicants. Every brokered loan has initial disclosures that are signed and dated by the borrower. In Florida, we must also re-disclose in advance of closing under various circumstances. Compare this to a situation where the consumer is dealing directly with a retail loan officer employed by, say, Countrywide or Wells Fargo. The consumer would not be required to sign anything related to that loan until closing. Not a single disclosure. Obviously, there is a much higher probability in this situation that the consumer would be getting a loan that they do not fully understand. (The retail loan officer also gains an unfair competitive advantage, because he or she can effectively offer a lower "hassle factor" since their disclosures do not have to be signed and returned in advance.)

Second, all loan officers receive some type of variable compensation on loans they originate. In the case of brokers, the payments we receive from lenders are generally known as "Yield Spread Premium" (YSP). We are already required to disclose YSP in our Good Faith Estimates, and the final YSP is also disclosed on the settlement statement (the HUD-1). The commission paid to a retail loan officer, however, is never disclosed. The lender pays the retail loan officer in secret, with the borrower none the wiser. That is current practice. The Federal Reserve's proposed changes would require even more restrictive disclosures for brokers, and put us at an even greater competitive disadvantage vis-à-vis retail loan officers.

Because mortgage brokers originate most mortgages, we obviously originated a good chunk of the mortgages that are now in trouble. That doesn't mean we should be regulated out of existence. We can and should be part of the solution. As it stands, we are excluded from post-closing involvement with our loans. Many of us would gladly help with workout / mitigation efforts, if we were only permitted to. We have personal relationships with our borrowers, and they would much rather discuss their situations with us than with faceless customer service reps at a loan servicing company.

Retail loan officers tend to have far less expertise in mortgages than mortgage brokers do. That's primarily because retail loan officers have to be jacks of all trades, selling car loans, home loans, CDs, etc. It's also because retail loan officers are familiar with their own company's mortgage products, but they usually don't know what else is available on the market. Even on conforming loans, underwriting rules and product availability vary significantly from lender to lender. Any consumer who relies on the advice of a retail loan officer is not getting the whole picture when it comes to mortgages.

Thank you for considering my comments.

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