From: BCE27@cs.com on 04/08/2008 02:45:05 PM

Subject: Regulation Z

Having been in the Mortgage and related fields (Real Estate) for almost 35 years in various States and being Licensed for both in the State of Colorado and with that experience, I have the following statement of opinions and points of consideration regarding the aforementioned proposed Rules & Regulation changes to Reg Z and HOEPA, affecting the Mortgage Industry which I feel should be considered.

OPINION
First, against the backdrop of boom industry conditions and growing self-policing policies during this period by submitting itself, in most States to Licensure, Professional Training, and Standards while at the same time dealing with increasingly LAX Underwriting Standards brought about by loose money, and together with an unchecked and apparently unregulated inflation of Mortgage Backed Securitized Instruments as Deritives of unknown value, the Mortgage Broker Industry actually did a good job during this period organizing itself into, on the whole, a very Professional and trustworthy Public Servant. It was not hard to observe from afar, figuratively, that things became wildly out of control between 2001 & 2007 although the cause was only guessed by a few in the industry. However, it has become the conclusion of some, in a climate of blame that the Broker, acting as the procurer go-between of those unregulated securities/loose money, and the ultimate Borrower are at fault for the entire problem created primarily by a failure of the current Regulatory structure. (After all, Lenders offered these deals, they appealed to borrowers, who asked for them. If they were unwise, why were they offered & why were they approved by Underwriters regardless of who filled out the Application?) At least, the proposed Regulations seem to make this or similar assumptions but without the qualifiers. I beg to differ and will add that most of the few "opportunists" who came in for easy money as Brokers during this period are not only gone but that the Proposed Regulations now unfairly target the individual Mortgage Broker, which is one of the most productive and useful and competitive tools of Lenders to individual citizens trying to find their way through the maze of Financial products and instruments available in the marketplace. The temptation of easy and plentiful money had little to do with Brokers or Consumers and a lot more to do with a dramatic growth of derivative instruments without Regulatory Involvement and the resulting loosening of Underwriting Standards promulgated, again, by the apparent lack of due diligence on Wall Street. There are Regulatory Bodies in place that could and should have sounded the bell on these excesses. With these historical facts and 35 year historical viewpoint, I therefore offer the following reasoned considerations after studying the proposed Regulations.

Points of Consideration - We do need Regulatory change, however, the Proposed Regulations restrict competition to the detriment of consumers as follows: 1) Price Control by regulation of fees. For one example, by dictating the fee structure, the proposed regs fail to consider that small consumer transactions will be avoided as unprofitable. Reasonable disclosure is the key, not the differentiation of fee types or disclosure prior to knowledge of transaction requirements. 2) The Regs reduce competition by creating an impractical level of disclosure whereby fees are set before the full measure of the task is known. 3) Creation of a discriminatory (and I would say unfair) playing field by applying differing disclosure & fee standards to the competitive parties in the Industry will not only be confusing to the Public but act as an incentive toward one type of Lender over another, damaging the public via reduced competition. 4) Lenders rely on a healthy Broker community which will be damaged by discriminatory Regulatory burdens. FTC studies prove that too much regulation leads to confusion and corresponding harm to the Public.

Explanations
1) Price Controls: The history of specific price controls does not have a good history in our financial system, the gas shortage crisis of 1977 (and resulting price shock) being just one of the plethora of examples that comes to mind. Our financial markets are structured with an entrepreneurial free market philosophy which is the essence of capitalism and they will not function in the Public's best interest otherwise, in the long run. Further, it is well understood by anyone in the business that small transactions take as much, or more, work than larger ones. The arbitrary dictation of fees structure will, for all practical purposes, make working with the small consumer unprofitable and therefore probably reduce their access to the most favorable Mortgage situation. The Public does not care whether the fees are on the front/back but wants full disclosure without confusion. In fact, most consumers do not know or care, where the fees are or came from but want reasonably timely full disclosure. Regulation of where the fees come from or what they are is not the focus, the Public wants to know the full amount of fees and the rate, with enough time to study and understand them. Most States now have disclosure requirements, I suppose a reasonable standard would be effective. Making various different different standards for different types of Lenders is simply confusing to most borrowers and it will be counterproductive to the Public to do so. A fee should be a fee whether it is front or back, the simpler the better, ie., the total fees against the total interest rate. Most can figure out the difference, further, it is not the franchise of the Federal Government, in any form, to dictate transaction details of private commerce.
2) Reduced Competition: Proposed Disclosure Rules for Brokers only: By treating Independent Mortgage Brokers by a different standard of Disclosure, the Regulation in effect, discriminates as to who may be competitive and who may not. Practically speaking, when the loan application is taken, total details of the job that will become necessary are yet unknown, making the process of locking all fees at that point impossible. More than likely, those transactions that are not effectively estimated up front will be dropped, resulting in a loss of time and money to both the Independent Broker and the Consumer.
3) Discriminatory & Differing Disclosure and Fee Standards/Regulations: This will inherently result in confusion to the Public and an unfair advantage by one party resulting in reduced competition and damage to the Public by way of the resulting higher prices.
4) Lenders depend heavily on a healthy Independent Broker Industry: Without a health Broker community, the fact is that Lenders would require much higher level of consistent staffing, making it impossible to adjust to rapidly changing market conditions. With Brokers, they can effectively eliminate much of the ongoing expense of a large salaried staff and associated costs, making it possible to offer more competitive loan products to the Public in the long run. As proof, most Lenders have a "retail" staff of in-house originators they encourage the Broker Industry to compete with during the fluctuating market periods. Loans will be more, not less,

expensive if Independent Mortgage Brokers are driven from business by heavy handed and discriminatory Regulations and the Public Interests will not have been best served.

Conclusion:

In general, since I have been following both Monetary & Fiscal, as well as Regulatory actions heavily since about 1979 and thus have many opinions which I will utilize only, at this point, to suggest that less, rather than more, regulation be considered when it comes to individual transaction details wherein it affects the details of the well-informed bargain as struck in the marketplace. The history of a "knee-jerk" regulatory action is not good in terms of the net effect on Public Policy. Instead, the useful function of Regulatory action in this genre is best limited to structural framework within which the marketplace functions as if otherwise unencumbered by the Regulations. Protection of the Consumer does not mean micro-managing individual transaction details is required, indeed, setting framework boundaries such as simple Disclosure rules including, say, 3 days to decide - total compensation - actual rate at that compensation - another disclosure if rate/compensation change would be effective. On the level of Loan Origination, the same rules must apply to everyone/anyone originating a loan for a Consumer. What we don't need is someone telling us how much we can/can't make and what loans we must do for what borrowers. That is for well-informed adults in an open, competitive marketplace with good Underwriting implementation to decide, not Government. It is a large step away from free markets otherwise.
With regard to the Regulatory failure that has taken place within the current System, I will suffice it to say that some simple changes should take place, including an inter-regulatory control wherein new financial instruments are studied including their crossover effects across financial markets, the various industries, and require new disclosures to the Public as necessary prior to their use. If this simple rule were in place, Mortgage Derivatives would not have spiraled completely out of control worldwide as they did. Without regard to various Political interests, such as they are, I don't see this as the huge mess as described by many, only as a combination of some dereliction of duty on the part of the existing Regulators together with a lack of Disclosure with regard to the derivative instrument values. May I suggest we just fix that instead of possibly destroying our markets while we're at it. An unwelcome intrusion into the inner workings of private enterprise by Government and surrogates will have more negative unintended consequences against the very core of American private enterprise, especially small business, which is the smallest but most energetic engine of commerce.
Therefore, I urge a more simplified, easy-going approach, in that we do not destroy an Industry currently instrumental in pulling us out of the Real Estate depression. A disruption of the Mortgage Origination Industry with unnecessary "knee jerk" Regulations will most certainly put severe pressure on the Real Estate markets for an extended normalization period. On the other hand, most Mortgage Professionals are on board with Standards and Ethics within the Industry together with standardization of Licensing, Continuing Education, and Disclosure Rules, which is where the most effective use of Regulatory assistance to the Industry lies.

Thank you for your consideration.

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