From: "John Burke" <jburke@burkemortgage.com> on 04/03/2008 05:30:03 PM

Subject: Regulation Z

Dear Board of Governors of the Federal Reserve System,

My comments on the approved Fed rule can be read below. If you have any questions or comments for me, do no hesitate to call.

Sincerely,

John Burke

Thursday, April 03, 2008

Dear Board of Governors of the Federal Reserve System,

My name is John Burke of Burke Mortgage in Manchester, CT. I am writing you in support for the consumer protection goals of the Federal Reserve Board's proposed amendments to Regulation Z but respectfully oppose the proposal to restrict compensation for mortgage brokers. In particular, the proposed Fed rule which would require brokers, but not other mortgage originators, to disclose the specific dollar amount which the broker would earn from a transaction, including yield spread premiums before submitting an application. In order to understand my objections, particularly in regard to yield spread premium, we need to understand the mortgage playing field and the uses of yield spread premium.

With all due respect, as a broker I act as an intermediary between borrowers and lenders; I serve both parties but represent neither. As a broker, I compete with other brokers and direct lenders. We all offer many of the same products; in fact, as a broker I can often offer more products as I have relationships with numerous lenders! I shop market opportunities to discover favorable loan programs, rates and / or combinations of loans and rates between lenders for my client. (Lenders in fact now do this as well.) My relationship with a lender often competes with their retail operations but they choose to create a wholesale relationship with me, the broker, to bring them more business with no overhead. That is also why I may have better rates with a lender than their own retail operations. Lenders do not pay me until a loan closes successfully based on their criteria or as set forth by Fannie Mae and Freddie Mac if the loan is conforming and is to be resold in the secondary market. In a certain way, yield spread premium is my compensation for producing a successful loan. An in-house loan originator is paid in hourly wages, benefits and premiums they receive for charging a higher rate as well, which results in a more profitable loan for the lender. As you can see, there is little to distinguish between a loan originator working for a licensed broker and a loan originator working for a lender in-house, particularly as in-house originators can now create combinations between lenders as well. The biggest difference is lenders do not have to cover my overhead, particularly when I am not producing for them. A lender pays me yield spread premium as determined by that lender for a given rate and loan program.

Consequently, I place my borrower's loans with lenders who offer favorable terms and rates while trying to maximize my compensation. The best way to explain this is as follows: As a broker, I shop market opportunities between lenders in order to try to minimize the rate or rates my clients pay on their mortgages while trying to maximize the compensation I receive at the same time. If Lender A is offering more yield spread premium at 6% than Lender B, I would place the loan with Lender A, all other things being equal. However, if Lender C sees the market differently and is offering the same yield spread premium as Lender A at an even more favorable rate, I would place the loan with Lender C and both the client and I have been able to take advantage of market opportunities! Working relationships with lenders and knowing that I will be able to get a loan closed successfully within the locked time frame all comes into play. Time is money and delivering a loan and satisfying conditions on time all determine loan placement and success of delivery.

Presently, HUD already requires that final yield spread premium be revealed on the HUD-1 and the potential for yield spread premium to be revealed on the Good Faith Estimate. But, until a loan is locked and all qualifications conditions are known, what a broker may receive in yield spread is less than certain; especially in today's volatile rate market where rates can change momentarily and pending loan adjustments via Fannie Mae and Freddie Mac, in our tightening credit market, change often as well. As Yogi Berra once said, "It is not over, until it is over." Yield spread premium is necessarily a broker's compensation paid by the lender plus any and all fees that a broker charges directly. (Lender fees vary by lender and are often not known until the end as which lender is chosen is not a static proposition and can change mid stream.)

Furthermore, yield spread premium is a tool which can also be used to offset loan fees as set forth by Fannie Mae and Freddie Mac for conforming loans. As these fees are escalating at a tremendous rate, particularly for people with less than perfect credit, a broker can charge a higher interest rate and use additional yield spread premium to pay for the fees a loan may require for the client. This allows the consumer to get the loan without having to bring money to the table or makes the loan possible at all due to loan to value constraints. When I pay for fees out of the yield spread premium I earn, I settle for less compensation. But in the end, the loan works and home ownership becomes reality or maintains being a reality. Yield spread premium gives the customer options and possibilities; taking it away will not serve the consumer and will be a barrier to home ownership when additional funds are not available to pay for applicable fees.

Another more positive example of yield spread premium and the options it affords a customer is as follows. A recent client of mine was buying a relatively inexpensive condominium for $92k. To get him a favorable rate, I had to take into account that the lender was charging him fees due to the small loan size of $72.8k. (The fact of the matter is, it is no less costly for the lender to service a small loan versus a larger loan and therefore they often charge fees for loan sizes that fall below a certain amount. This fee can also vary by lender). I could have charged him that fee directly or increased his rate. I also could have charged him origination points and received no yield spread premium from the lender. We discussed all options at length and in the end, my client chose to accept a higher rate for his mortgage. He knew that I would receive yield spread premium from the lender and be compensated for my efforts. This cost the customer $30 a month more in payment but saved him $2160.00 in closing costs which would have taken 72 months to pay off. If this was not a good option, I do not know what is? (I would be happy to supply more details of this transaction!)

Concerning the public's distinction between a broker and a direct lender, I ask you to watch Senator Chris Dodd's interview on CPTV this winter. He refers to almost all parties as "Brokers" and he is the head of the Banking Commission.

With that being said, how a consumer can distinguish between a loan originator from a mortgage broker's office and a loan originator working for adirect lender is unknown to me. This is exacerbated with internet transactions and the fact that a consumer often chooses not to even come into an office. The rules, programs and criteria are the same for a given loan product. We advertise in similar ways and more often than not refer to ourselves in the same manner…mortgage originators or loan officers. If regulations and disclosures are to change and or be redressed, we should all be held to the same standard. If not, a consumer could be swayed to go with one party over another, just because one party has to disclose potential compensation that another does not. The originator who does not have to disclose compensation could necessarily pretend that they are doing a loan for less or no money and play purely to the consumers emotions. As noted by behavioral economist, Dan Airely in his recent comments on CNN Money, April 1, 2007:

Behavioral economist Dan Ariely says there's no cure-all for overcoming consumer irrationality.

Question: What's one of our biggest, most illogical weaknesses as consumers?

A. **"Free" offers**. When the price of something is said to be zero, it blinds us. We get so excited; we fail to realize that we'll end up paying in some way.

Question: For instance?

A. When I bought a car a few years ago, I debated between two choices. One was less practical but had a special deal going for it: free oil changes for three years. This sealed the decision for me. Later I realized that since I don't drive much, it was only $150 to $200 in savings. And in the end I was left with a less practical car.

Also, one Halloween I gave a bunch of trick-or-treaters two Hershey's Kisses, then told them they could have a small Snickers for free or a huge Snickers for the price of one chocolate kiss. The bigger bar was a better deal, an 8-to-1 return on chocolate. But most chose the smaller one; the idea of getting something for nothing was too tempting.

Question: How else do we act against our best interests?

A. By comparing prices on similar items.

Question: Wait, I thought that was smart to do.

A. It is, but only if you compare everything with everything. If you just compare items near one another, you open yourself up to being influenced. When you open a menu at a restaurant, you may not realize that the prices you see affect what you're willing to pay.

If the most expensive entrée is $45, you might decide $30 is an acceptable price. Should the restaurant add a $60 dish, you may be willing to pay $45. The same issue comes up when shopping for real estate. Letting a broker show you a house above the top of your range can be costly.

Question: So how do we overcome irrationality?

> A. There's no cure-all. But when I see the word free, I now ask myself, "What's the seller trying to do here?" Also, it sounds strange, but try not to look at price, not at first. Decide what you want and what you're willing to pay without being influenced by outside factors. ■

Let's face it; we all are being compensated to close mortgages; we are all in business to make money or we will not be able to sustain operations. But if one originator has to reveal fees and compensation in a manner that another loan originator does not, irrational decision making by the consumer will inevitably come into play. Furthermore, what difference does it make if I, the broker, receive more compensation at a given rate than a competitor? Should I not be attuned to market opportunities and lender competition which can offer my client a better rate and myself more compensation? Is not that the meaning of capitalism? Does not Lending Tree exclaim "When lenders compete, you win!" Do these loan originators who work for direct lenders compete on compensation or the rate they offer? Should the client not take the lower rate because he begrudges the loan originator who is making more money? Should a more efficient lender not receive a higher rate of profit and be willing to pay a broker more who brings their business to them? Why should lenders who have retail operations be given any advantage over lenders who only have wholesale operations? It is not competitive.

One way or another, a bias against brokers will be created if it appears to the consumer that a loan originator, who works for a broker, is making more compensation than a loan originator who works for direct lender. A loan officer working for a direct lender will be able to more easily mask their compensation and appear to be doing the loan for "free" or for less compensation. The consumer will want to choose the person who is making less money as they appear to be less aggressive as efficiency and competition are not the concern of the consumer in this instance. That is human nature.

Furthermore and as explained earlier, if this legislation is to be put in place, it must be understood that it is nearly impossible to reveal precise dollar estimates of all fees and subsequent yield spread premiums before all factors involved within a loan are known. This includes: proof of income and subsequent debt to income ratios which are not known until credit is pulled and income is verified. Credit worthiness or lack thereof, necessarily affects fees charged by Fannie Mae and Freddie Mac in today's market. Actual appraised value versus a client's suggested appraised value (with refinances in particular) necessarily affects quoted loan to value and combined loan to value. Risk adjusters for both the positive and negative can come into play. (A list of loan adjustments follows this commentary; by the way, they can vary between lenders.)

Ultimately, until all factors are known and accepted, yield spread premium in particular hangs in the balance. Furthermore, closing a loan within the lock period, changing the loan amount and or loan program at a customers request all change subsequent yield spread premiums. Having the final yield spread premium be what a broker stated in the beginning stages of the loan process is a tight rope act indeed.

As a mortgage broker whose clients are nearly all referred, I have always wondered why mortgage originators have sub classifications. Are we not all selling money and is it not still green? The playing field should be level for all participants for the benefit of the customer. We should all compete equally on rate and service! If one competitor can make more money at a given or lower rate, should they be penalized? Is that what the consumer should be concerned with or getting a good product at a fair rate? A consumer should understand the rate they are being charged and the program they are enrolling into.

I suggest and I believe that all loan originators should have to reveal any higher "hard" costs which may be charged as a loan matures. This could include appraisal fees, lenders fees, fees associated with a loan's risk characteristics if the parameters change. I believe that any subsequent increase in rate quoted should be revealed and agreed to in writing before a loan gets to the closing table. (A higher rate could offset fees charged as discussed earlier if that is chosen to be more agreeable to the client.) All loan originators should be held to the same standards and I believe a client should be more concerned with their program and rate than the compensation I may receive. We want to encourage competition; not deny or hinder it!

Finally, as we redress the mortgage industry, is there any discussion at the present time concerning title company or attorney fees and the compensation that they receive from mortgage transactions? Should they not have to provide their compensation upfront if a loan originator has to? If their fees change due to transaction characteristics, should they not have to disclose any changes in fees prior to closing? Do attorneys not get compensated when they sell title insurance? Is this revealed by them to their clients at all? Just something I feel is worth pondering.

Thank you for your consideration and please contact me directly if you care to discuss my opinions.

Respectfully submitted,

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