

**From:** "Allan Daniels" <allan@drdanielsandson.com> on 04/08/2008 10:00:10 AM

**Subject:** Regulation Z

My name is Allan Daniels, and I past president the Michigan Mortgage Brokers Association. I also am a past Board Member of the National Association of Mortgage Brokers and have been a licensed Mortgage Broker/Lender/Servicer since 1989, serving as President of American Acceptance Mortgage Corporation, based in Bloomfield Hills, Michigan.

I believe that those of us in the industry who play by the rules and do not take advantage of vulnerable consumers are well served by efforts to stop the minority of those lenders who do otherwise. Although I believe the incidence of abuse is very small relative to the whole industry, I believe that any abuse committed against mortgage consumers is too much. I strongly support efforts to address the bad acts of our unfair competitors.

With regard to the issue of predatory lending, we believe the solution is twofold: increased enforcement of existing laws that prohibit abusive practices and increased consumer education.

I strongly believe that one cannot define any loan as "predatory" or abusive based simply on the rate, points, or fees involved, or because the loan includes a feature such as a balloon, a prepayment penalty, negative amortization, or financing of closing costs. Rather, the abuse comes from the lender fraudulently deceiving the consumer through providing misleading or inaccurate disclosures, failing to accurately describe the loan terms, unfairly pressuring the consumer to take a loan, and/or failing to highlight the consumer's right of rescission. In many of these cases, the consumer has also failed to fully understand the terms and details of the loan or shop for a better deal.

Abusive practices occur in all areas of mortgage lending, although the most attention today is being given to those occurring in the subprime market. I believe that only a very small percentage of subprime loans made are abusive. The great majority of subprime lending today results in benefits to consumers at reasonable, appropriate risk-based prices. Subprime lending has expanded affordable credit for many people who otherwise would have none. Consumers with blemished credit who cannot qualify for conventional, "prime" market loans still deserve the opportunity to borrow, own a home, and restore their credit standing to an "A" credit grade. In most cases, consumers choose loan terms and features they want after examining the options and, often, receiving the advice of knowledgeable loan originators.

Some loan terms may be abusive in some cases, but beneficial in others. For example, a balloon term in a given loan could be abusive because the borrower has not been advised that the loan contains such a feature and is not prepared for the ramifications.

Further, it may be that the borrower's situation does not make such a feature appropriate. Yet, very often, a balloon is a valuable tool to help a borrower obtain a lower interest rate and lower monthly payments. Many reputable, mainstream lenders offer balloon loans to consumers in all credit grades, because they are good options for consumers in many cases.

The same is true for other loan terms or conditions frequently cited as abusive, including negative amortization, prepayment penalties, financing of closing costs, and even arbitration clauses. In certain circumstances, each of these may be abusive, but in the majority of cases they provide the consumer with a feature that fits his or her unique circumstances, such as a reduced interest rate or lower monthly payment.

Whether a loan is abusive is a question that turns on context and circumstances, from case to case. In fact, almost any loan term that is offered in the market today can be beneficial to some consumer.

The mortgage industry is already regulated by many laws and regulations enforced by several agencies. With regard to subprime loans, the federal Home Ownership Equity Protection Act expressly regulates both balloon loans and prepayment penalties, extends rescission rights, and makes investors liable for violations of originators. Michigan licensing laws provide further regulation and enforcement at the state level. I believe these existing protections are adequate, but could be better enforced at all levels. Enforcement actions that are widely publicized will have a chilling effect on abusive lenders.

I am also concerned about the proliferation of state and local initiatives that purport to address predatory lending. Mortgage lending has become largely a nationwide industry, with a number of lenders operating in all 50 states. It will be incredibly burdensome and confusing to lenders if they have to begin complying with 50 different sets of state restrictions and several local ones as well. The likely result will be that many mainstream lenders will simply stop offering any subprime loans that might possibly run afoul of any of these laws. They will make a rational business decision that offering these products is not worth the potential cost of litigation and damage to their reputations by being labeled "predatory." The result will be fewer mainstream lenders involved in subprime lending, fewer choices for consumers, and higher costs.

For the reasons discussed above, I do not believe that new restrictions are necessarily the best solution to the problem of abusive lending practices. Rather, I urge increased enforcement of existing laws, and increased consumer education.

With regard to the specific proposed regulation, I believe the following should be considered by the Board of Governors:

The current "mortgage meltdown" was caused by consumers choosing loans that had multiple layers of risk. These layers included high loan to value ratios, adjustable rates, and piggyback 2<sup>nd</sup> mortgages. Accordingly, any new restrictions should be limited to

loans with multiple risk layers.

I suggest that the Board consider adding exemptions from income verification for loans with Loan to Value ratios under 80% and fixed rates.

Additionally, the pattern or practice language should be retained in HOEPA and the new regulation.

An exemption from all restrictions should be allowed for a bona-fide financial emergency of the borrower.

The Board should allow a lender to accept as income verification a letter from the borrower's attorney or accountant attesting that the borrower understands the terms of the loan and accepts its responsibilities and consequences for default.

Income to be used from verification should be allowed to be non-traditional such as cash-flow assistance from family members, boarders, inventory, collectables, ebay sales, etc.

With regard to the issue of late charges, please consider that late charges are imposed to compensate for the extra work, phone calls, letters, bookkeeping etc caused by late payment. This extra work, overhead and bookkeeping applies in instances when a borrower is late in meeting any obligation, including paying a late fee. Accordingly, a late fee that is fully disclosed and agreed to by the borrower should be applicable in situations where the prior months' late fee was not paid.

**Expanding consumer awareness and consumer power, rather than restricting consumer choice, should be the goal of any new regulation affecting the mortgage process.**

**I have also included the statement of one of my customers:**

#### Statement of Sandra Jewell

My name is Sandra Jewell, and I am a homeowner in Rochester Hills, and a self-employed business owner of junk yard in Shelby Twp. As you probably noticed, I am a woman, and I am Native American.

I want to talk to you today about the need for credit. I recently refinanced my free and clear home to pay property taxes so I wouldn't lose it. I also had to pay property taxes on my business property so I wouldn't lose that too.

Because I am self-employed, and my business was not profitable the last few years due to compliance issues with the DNR and other red tape, I did not qualify for a conventional mortgage.

I was, however, able to obtain a sub-prime or non-conforming mortgage loan with payments I can afford in order to save my home and my business.

I view this sub-prime mortgage loan as a life-line. It is as if someone threw me a rope to keep me from falling off a cliff. I am here today to try to convince you not to pass restrictive new laws that would shorten or eliminate that life-line to homeowners in need.

When I spoke to my mortgage company about obtaining this loan, I was given the choice of a 5 year balloon loan or a fully amortizing loan. I chose the balloon, because it offered me lower payments, and I am confident that I can clear up my situation long before the balloon. I was able to make this choice myself, without government restricting or "censoring" my choices. I believe people should be able to read the books they want without government censorship, and also make financial decisions without government censorship too.

I also want to tell you that the terms of my loan were completely disclosed. I signed forms with print so big I had to laugh telling me I had a balloon payment in five years and that I would lose my house if I didn't make my payments. Same deal the state has with property taxes. My lender was also concerned that I did not borrow more than I needed. He urged me to keep my loan amount down even though I knew he earns more with a bigger loan.

Additionally, you must understand that as a businesswoman, I understand supply and demand. If government restricts the ability of reputable licensed mortgage companies to help consumers like me, I, and others like me, will still need money. We would just be forced to find it on the street from an unlicensed source, sell our homes, or lose them.

Now you may hear from others today who have been defrauded, but in the junk business, or any business, fraud is already a crime and can be punished. I want the government to punish the bad guys. But prices and terms on loans should be left to the marketplace for a consumer to shop for the best fit and the best service to meet their needs. Big Brother should not take our freedom to choose away from us.

Thank you for your time.

Respectfully Submitted.

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