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Subject: Reg Z - Truth in Lending

Comments:

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Proposal: Regulation Z - Truth in Lending - Closed-end Mortgages
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As indicated above, the proposed rule would encourage brokers to create compensation agreements with many different lenders. There could be a different "flat-fees" associated with each of these agreements. A higher flat-fee would require a greater rate bump, ergo a higher final rate to the consumer. The proposed plan would create an environment where loan originators have a financial incentive to send the loan to the lender who will pay them the highest flat fee (regardless of loan product.) If not further regulated, this scenario would inevitably result in higher borrower interest rates - one of the enumerated occurrences the Board is trying to curtail. In recognition of the steering incentive the proposed rule would create, the Board requests comment on enlarging the rule to include an anti-steering clause:

"2. Prohibited conduct. Under § 226.36(e)(1), a loan originator may not direct or steer a consumer to a lan to increase the amount of compensation that the originator will receive for the transaction unless the loan is in the consumer's interest." (Federal Register / Vol. 74, No. 164 / Wednesday, August 26, 2009 / Proposed Rules, 43409.) In order for the broker to determine if a loan is in the consumer's best interest, it must compare (and defensively paper-trail) the loan offered to the consumer with other possible loans offered by the broker. To be included in this comparison, the broker must have a good faith belief the consumer was likely to qualify for the loan.

To complete this process, multiple loans from multiple lenders must be compared in complex mixture of interest rate contexts: "3. Lowest interest rate. To qualify under the safe harbor in § 226.36(e)(2), for each type of transaction in which the consumer has expressed an interest, the loan originator must present the consumer with at least three loans that include the loan with the lowest interest rate, the loan with the second lowest rate, and the loan with the lowest total dollar

amount for discount points and origination points." (Federal Register / Vol. 74, No. 164 / Wednesday, August 26, 2009 / Proposed Rules, 43410.) Should this complex interplay between mandatory compensation agreements and anti-steering language be adopted, CAMP envisions two outcomes - the "bad" broker will cash-in while the "good" broker will be driven away. The unscrupulous broker for whom these rules continue to be devised will use compensation agreements to their advantage without too much fear of repercussions. Consumers will not have any information that a compensation agreement exists, let alone that several other more advantageous ones also exist. Who is in a position to monitor the unscrupulous broker? Funding lenders will not be privy to other compensation agreements the broker may have with other lenders. As such, they cannot be called upon to police and theoretically they cannot be later indicted in a steering scheme. How can the new steering regulation be enforced?
The Truth in Lending Act provides for three methods of enforcement: administrative agency enforcement, criminal penalties, and private civil liability, which has become the dominant mode at least as measured by the number of lawsuits. Criminal sanctions have been rarely invoked, and for the most part administrative enforcement has been sporadic. (See Truth in Lending, Rohner, 2000 American Bar Association pgs 885,886.) Under the proposed rule, private attorney generals who seek the attorney's fees awards allowed by Truth in Lending will attack brokers who use YSP as part of their "forensic review" process, hoping to get lucky. The Board's proposed rule will be enforced after-the-fact through private lawsuits. Honest brokers will become targets while the unscrupulous minority will work the unsupervised system until targeted by a civil lawsuit, at which time they will disappear. B. Less Competition Because Broker's Liability Skyrockets The great majority of brokers who currently use
YSP to their customer's advantage will find the complex process through which the Board requires brokers to defend and paper-trail their loan offerings too expensive and too risky. Query: under the rule would it be appropriate for a broker to choose a lender who can fund in 10 days and who pays a higher compensation instead of a second who will take 30 days to fund but pays a few hundred dollars less? If the broker determines the former is in "the consumer' s best interest" should they risk their business to an expensive lawsuit? In practice, brokers will need to restrict their product offerings to their customer's disadvantage or close up shop. C. Less Competition Because Lenders Choose Not to Participate Because of the steering opportunity created for the small minority of unscrupulous brokers, and the subsequent legal actions described above and their unknown outcomes, third party originations (TPO) will become less attractive to investors. Thiwill translate into increased costs for lenders who produce TPO loans, who, if they stay loyal to the channel, will then need to raise prices or punitively clamp down on all their broker relationships. This clamp down will likely include substantial reductions in YSP loan offerings, resulting in less and less competition in the marketplace. The reduction in competition will be further exacerbated as lenders choose to avoid a multitude of complex compensation agreements that may carry liability that will remain unforeseen until private attorney generals motivated by attorney fee clauses begin the process of peeling the onion.
IV. Better Alternatives As mentioned earlier, the Boards' stated goal in developing its compensation related rules is "to eradicate incentives to provide consumer's loans with higher interest rates or other less favorable terms." As the above illustrates, this proposal will effectively do the opposite. Unscrupulous steering that cannot be monitored except through civil lawsuits will be
promoted. The majority of brokers who perform a tremendous service in communities where others won't visit will at best be able to offer a

substantially curtailed product line, as they seek to avoid liability and as lenders withhold product options due to complexity, cost, and unknown future liability. At worst, these small business owners will themselves become victims. The Board is familiar with HUD's attempt to address these same issues in Regulation X. Per the Board: "Although HUD recently adopted disclosures in Regulation X, implementing RESPA, that could enhance some consumers' understanding of mortgage broker compensation, the details of the compensation arrangements are complex and the disclosures are limited. A creditor may show the yield spread premium as a credit to the borrower that is applied to cover upfront costs, but is also permitted to add the amount of the yield spread to the total origination charges being disclosed. This would not necessarily inform the
consumer that the rate has been increased by the originator and that a lower rate with a smaller origination charge was also available. In addition, the Regulation X disclosure concerning yield spread premiums would not apply to overages occurring when the loan originator is employed by the creditor. Thus, the Regulation X disclosure, while perhaps an improvement over previous rules, is not likely by itself to prevent consumers from incurring substantial injury from the practice." (Federal Register / Vol. 74, No. 164 / Wednesday, August 26, 2009 / Proposed Rules, 43281.) CAMP agrees with the Board that it is problematic that the Regulation X disclosure concerning yield spread premiums would not apply to overages occurring when the loan originator is employed by the creditor. A simple fix would be to make it apply (a position CAMP has always maintained regarding this issue.) This would make all originators equally transparent to the benefit of the consumer. However, with all due respect, some might find it perplexing that the Board seems to completely discount the batteries of testing HUD performed to validate the impact of its new Good faith estimate on consumers. HUD's approach, although arguably less than perfect, is more in line with our fair market system where two parties are free to negotiate in good faith. The new GFE demands that every dollar from all sources be disclosed, and that the broker declare its compensation clearly in a dollar amount. This good faith disclosure of personal compensation is well beyond that required of almost any other party to a business transaction in this country. If the retail loan officer was required to do the same, the consumer would be armed with all available information; there could be no secret retail overages. Yet the Board instead chooses to press forward with a much more complex system of multi-faceted agreements and remedies instead of giving the much simpler GFE a chance, as if there were a clear and present danger that the GFE cannot address. This emergency preemption might be understandable if there was evidence that loan originators were today steering consumers into the time-bomb products like those that existed a few years ago, such as option ARMs, simply to line their own pockets. But no such emergency exists today - no such products exist today. Granted, the new GFE will not insure that a loan originator will not charge an overage, but, at least in the case of the broker, it will insure the consumer sees the fee and is in the position to decide if the transaction in question warrants it. The Board has not offered any evidence that there is such an exigent need for a rule change that the Board cannot wait to measure the impact of the new GFE. CAMP requests the Board place this portion of the proposed rule on hold until the impact of the new GFE is known. Furthermore, CAMP requests that in its review, the Board reassess the real ptential for steering the proposed
rule creates, as well as the negative impacts that would flow from enforcement through civil liability.