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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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Comments:
Dear Regulators, Hello and thank you for taking the time to read this and I hope it will make a difference as the changes proposed do not make any sense as banks make the equivalent of Yield Spread Premium... it is called Service Release Premium, but does not ahve to be disclosed. We are already in the most regulated indusrtry there is and the proposed changes will only hurt consumers. When you take away the ability that consumers have to think for themselves you are taking away your own rights as individuals as well and will drive up the cost of doing mortgages on all levels. Not just on brokers which we have never written one mortgage product. That is the banks that you need to address the problems with. You are only trying to fix the "last symptom" not the root of the problem. So, this change will create no cure. With the changes that are being made the cycle at the banks will just continue and we will see this again in 20 years just like the S• scandals in the 80s. The proposed amendment requires that the lender must execute a compensation agreement with the mortgage broker before any compensation can be paid to the latter from a source other the borrower's own funds. Compensation is defined as any fee retained by the broker (non-3rd party fees.) Generally speaking, the non-borrower source is lender paid sums that represents the additional present value of a loan with an above par rate commonly known as a yield spread premium ("YSP".) The Board claims its authority for this type of regulation under TILA: "PROHIBITIONS.--The Board, by regulation or order, shall prohibit acts or practices in connection with-- (A) mortgage loans that the Board finds to be unfair, deceptive, or designed to evade the provisions of this section..."(TILA Section 129(l)) This is definitely a strecth of a vague rule to try and take away something that it seems that the board may be lacking a full understanding of. YSP is used to help consumers, and just because a consumer doesn't thouroughly understand a single working part of a mortgage does not mean that it is misleading. I am not a mechanic and I don't know

every working part of a car, but I trust a good mechanic whom I research before taking my car too to help me out and do the job right. 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 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: Should this complex interplay between mandatory compensation agreements and anti-steering language be adopted, there are 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. 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. 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. 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. This will translate into increased costs for lenders who produce TPO lans, 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. BETTER ALTERNATIVE: 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." 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. 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. PLEASE place this portion of the proposed rule on hold until the impact of the new GFE is known. Also, please reassess the real potential for steering the proposed rule creates, as well as the negative impacts that would flow from enforcement through civil liability.