

From: First Cherokee State Bank, Renita Alder
Subject: Reg Z - Truth in Lending

Comments:

December 10, 2009

Re: Docket Number R-1366

Ladies and Gentlemen:

I have been a banking professional for 18 years. I have worked in all areas of banking including commercial and consumer lending, retail branch management, training and development and for the last 6 years in mortgage origination. This letter highlights my concerns in relation to the above referenced Docket Number.

Personally I applaud the Board's efforts at reforming the mortgage process so as to better protect consumers; as a professional banker I have longed for the mortgage industry to become a professional field known for its integrity. However I believe the Board's revised rules go too far. It is my position that many of the motivating factors for the Board's proposal have been addressed due to increased consumer awareness, recently enacted statutes and regulations and changes in the secondary market and available loan products. In some cases consumers have been harmed by the very same statutes and regulations intended to protect them, for instance due to new waiting periods. In many instances the mortgage industry has fleshed itself out over the past 24 months and now the originators who remain are very good and honest at what they do.

Imposing new disclosures and a revised annual percentage rate ("APR") calculation will result in substantial implementation costs which would be borne by consumers as well as lenders. At a time when many mortgage lenders are struggling to stay afloat, I fear that yet another major change in regulatory disclosure and calculation requirements will reduce the pool of professional mortgage lenders. As a professional in this business I recognize that a pool of qualified mortgage originators and lenders is essential for this industry to remain healthy. Further a reduction of lenders is likely to result in increased costs to consumers. I understand that the Board is unlikely to respond to requests to withdraw the proposed rules in their entirety, would be my preference. Therefore, I respectfully request that the Board consider my concerns regarding specific portions of the proposed revisions. In response to the Board's request for comments concerning an implementation timeline, I strongly suggest that the Board not enact a new regulation before 2011 and that any regulatory changes not be effective until at least 2012.

Disclosures at Application

I do not object to providing the new "Key Questions" disclosure; however, I urge the Board to require such disclosure at the earlier of the time of application or payment of a non-refundable fee (instead of before the consumer applies for a loan). Such an approach provides creditors with a clearly defined time to make the disclosure, is consistent with the Truth in Lending Act ("TILA") and would still afford consumers adequate time to shop for and consider the appropriate loan product.

Revised APR Calculation

I favor simplification of the calculation of the APR, I believe that the proposed change must not occur without a corresponding change in the calculation and definition of "Section 32" high-cost mortgage loans.

Including the proposed additional fees in the APR will result in fewer loans to consumers seeking relatively small loan amounts because such loans would constitute high-cost loans not made by my nor many other institutions.

MBAG believes that the Board's proposed analysis estimating a 0.6 percent increase in high-cost loans is conservative. Many MBAG members are confirming the impact that the new APR definition would have on their portfolios. We expect that they will comment on their own with estimates of the fractional increase of loans that will meet the federal and Georgia high-cost loan thresholds under the proposed revised APR definition. I remind the Board that many states use the federal definition of finance charge and APR in implementing anti-predatory lending legislation. Georgia is one such state. Georgia's "high-cost" mortgage loan threshold is even lower than that set forth under HOEPA. Therefore, the proposed changes will have an even greater impact on low income consumers in Georgia.

Disclosures Required Within Three Days After Application

The duplicative but not identical summary of terms required by the proposed regulation and Regulation X is frustrating. I believe that the Board and HUD should work together to formulate one set of disclosures to be given at application. Not only is it frustrating to originators it is confusing to consumers and makes them much more likely to not read any of the disclosures - thereby defeating the very purpose of the disclosures.

I agree that consumers are confused about the definition of "finance charges" and that the words "interest and settlement charges" will be more meaningful to consumers. I believe that consumers want and need to know the total amount of their monthly payment, including escrows. It is unclear, however, whether lenders will have the requisite information to provide the information required by the new form within three days of application.

Disclosures Required Three Days Before Consummation

I believe that the recent Regulation Z changes effective July 30, 2009, pursuant to the Mortgage Disclosure Improvement Act ensure that consumers will not arrive at the closing table to discover an impermissible increase in their APR. Moreover, the new RESPA regulatory changes ensure that even non-finance charges will not increase beyond specific tolerances. Therefore, I urge the Board not to require an additional disclosure and waiting period absent an APR change outside of the tolerances. The challenges in the mortgage industry have already increased consumer frustration with the loan process due to the extended time period from application to closing. To impose yet another delay is unwarranted absent a change to the APR outside of the permitted tolerances.

For those of us who have worked to provide full disclosure with meaningful numbers on the initial disclosures without being regulated to do so through step after step of waiting periods this is simply a slowdown in my

ability to get the borrower to the closing table on time.

While not set forth in the proposed rules, I encourage the Board to revise Regulation Z to provide that any over disclosure of the APR will constitute a permitted tolerance so that creditors need not issue a revised disclosure due to a decrease in the APR. Over disclosure of the APR does not result in consumers being overcharged at the closing table, and in many cases the additional waiting period harms the consumer. For instance, it could impact the consumer's performance under a purchase and sale agreement or result in additional interest and charges for debts to be paid as part of a refinance transaction. The added delay also impacts interest rate locks resulting in a higher interest rate or additional costs to the consumer.

Loan Originator Compensation

Of most concern to me is the Board's proposed prohibition on payments to loan originators based upon terms and conditions of the loan, including the interest rate.

I am confident that implementation of the rule in its proposed form would be severely detrimental to consumers. First, it would discourage loan originators from working with those consumers needing the most protection: first time home buyers, credit-challenged consumers and consumers seeking low loan amounts. Because of the time required to assist these consumers with the loan process, I fear that these consumers would be underserved.

Additionally this change in the loan originator compensation structure would cause me to think long and hard about continuing to work in this industry. As a banking professional I bring over 18 years of experience to the table for my clients. I am not a fly by night mortgage originator who thought this sounded like a great way to make a few bucks. But rather a highly educated, trained professional who serves my clients with the utmost integrity. Because of the way I conduct business over 90% of the mortgages I originate come from referrals from past clients.

Allowing some variance in loan originator compensation would allow consumers to pay more for additional service. Because of the way I am compensated I have the time to devote to each client. Although some take less time than others this compensation affords me the ability to continue serving those consumers who bring challenging, time consuming loan opportunities.

I believe that the abuses in the market leading the Board to propose the prohibition on loan originator compensation based on loan terms have been corrected by the market, thus rendering the Board's proposal unnecessary. Nevertheless, I understand the Board's desire to protect consumers. Therefore, I support the following alternatives to the Board's proposal presented by MBAG. MBAG presents the alternatives below in lieu of compensation based on the principal amount of the loan because MBAG's members advise that the principal loan amount generally does not determine loan originator compensation.

One alternative would be to limit the amount of loan originator compensation, such as to 200 basis points. For fair lending reasons among others, many lenders already limit variances in loan originator compensation based on rate in such a manner.

A second alternative would be to limit loan originator compensation based on loan terms only for all "high-cost" or "higher priced" mortgage loans as well as those loans with the following features:

Interest only payments;
Negative amortization;
Prepayment penalty; or
Balloon payment.

A third alternative would be to permit variable loan originator compensation in connection with the following loans: FHA, VA or USDA. The reason for allowing variable loan originator compensation in connection with such products is that agency guidelines already afford special protections to consumers.

A fourth alternative would be to allow loan originator compensation to vary based upon:

Initial principal loan amount;
Loan volume; and
Secondary market compensation.

Of course, the Board may consider each of these alternatives individually or cumulatively.

Steering

Again I support MBAG's position relative to steering. MBAG strongly encourages the Board to abandon its proposed rule relative to steering. MBAG finds the proposal inappropriately paternalistic. It is and should be for the consumer, not the loan originator, to shop and determine which loan is in the consumer's interest. Many of the terms in the proposed Section 226.36(e) are vague or too imprecise to interpret with certainty. While MBAG's members strive to act in the consumer's interest, such a vague standard is difficult to interpret. Even language in the "safe harbor" is vague, such as what is in a "significant" number of the creditors with which the originator "regularly" does business; the consumer's expression of interest and "fees." Finally, the information to be presented to consumers under proposed Section 226.36(e)(3)(i)(C) would require countless options and is not a meaningful comparison.

Conclusion

I appreciate the Board's efforts and the consideration it has expressed as implementation issues raised by the proposed rules. Thank you in advance for your continued consideration of the professionals in the mortgage industry.

Renita Alder
First Cherokee State Bank