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Proposal: Regulation Z - Truth in Lending - Closed-end Mortgages
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There are huge problems with additional legislation when trying to simplifying the already complex issue of ysp and how to disclose it. First we need ysp in some form or all lenders would have to charge points and that would not allow some borrowers to obtain financing. Second The new HUD gfe seems to me to be a good start as 1) it has been trial based to some extent and 2) the new HUD does state fees in terms of dollars instead of percentage of total loan amounts which consumers really do better understand in terms expressed in dollars. To better illustrate what I mean by consumer choice and understanding ysp, I will relay a brief story here. Over the years, I have tried to explain to clients that they could buy down the rate or take a higher rate to have less closing costs, but these concepts are typically too obtuse for the average client to grasp as they just don't understand the concepts to begin with which makes them either take a leap of faith to try something that you recommend that they don't really know what it is or the coverse they feel like they may be getting taken advantage of if they don't truly understand why it is that they have to pay points to get a loan that "you" recommended to them when their friend didn't have to or on the other hand if they have lower fees associated with their loan that you told them was better but now they have a higher rate than their neighbor does so they feel like they got taken advantage of there too. Hmmm. And then some ask you what would you do? Well I am not going to make the choice for them, but these are your options because I don't have a crystal ball and I can't tell you what the future is going to be. Let me put it back on you all. Do you wise and educated people of the legislature really know what the consumer should do? Should they all buy down now because rates are going up and housing prices are going up again soon or should they all do zero closing cost loans because rates are going down even more and so are home values? What should they do? Anyone credible in the loan industry for a long time has heard these or similar stories before. Moreover these low and high

end ysp concepts usually don't really benefit the client unless the client is FOR SURE staying in the property for a very long or a very short period of time, and now a days what we are finding is that not much out there is for sure anymore with these clients. So although in theory I always do investigate the possibility of better products with more and less ysp to benefit the client, I really don't feel that this should be unduly legislated into practice because as I just mentioned and illustrated even the legislature can't predict with any accuracy if these ysp new mandated proposed concepts can really be of any benefit to the borrower what so ever or that they in fact might even be a detriment. So in my opinion regulating by higher or lower ysp in itself is a practice that should not be the main approach here to solve the potential issues involving ysp especially in the uncertain market place we have today. For example if you offer a client a higher rate with very low or no costs and he takes it but then can't keep his or her job or can't sell their house later on and is trapped with the loan for whatever reason, that client will be singing the blues of a different tune because his monthly payment was higher and he paid a lot more in interest over time. Similar end result but opposite circumstances for the borrowers who thought they were going to be in his or her house for the loooooooong term and paid a lot of points up front to the lender for the lowest rate only to find in the very near future that he or she was transferred from one of their jobs or that they had to relocate for another reason. So even though you can try to play the ysp for the best market product for the client if you go to the extremes it may very well backfire and not help but actually may hurt the client. So with that said the same goes with this new proposed legislation here. Our main objective is to help the client choose the best financing alternative in a relatively brief period. And I would say that most of the time the best choice for the client is to not out think themselves and to just shop the garden variety 30 year, 20 year or 15 fixed rate with zero points and comparison shop both the lowest rates and the lowest fees associated with that rate. If this is done then ysp is simply not an issue, and the client gets the best deal that is available as this levels the playing field between lenders Not only that, this simple strategy has worked for years before lending got all sorts of crazy products like option arms and ysp then became an issue. Now the product line is so narrow that there really aren't any choices to be made as the choices are actually very simple. Most buyers now a days are going to go with an FHA or VA purchase with a 30 year fixed rat. Most refinances will use a regular conventional 30 year fixed rate if they are below 80% loan to value, or an FHA loan if they are above 80% loan to value, or maybe either will take a 15 year fixed rate if they have a low loan to value and want to take advantage of paying off the loan a lot sooner and saving a lot of money in interest due to the acceleration of payment above and beyond the half point to rate saved from the 30 year fixed rate. That is the vast majority of lending today. There are exceptions, but they just that they are exceptions. Maybe you would find someone with an appetite for risk who would prefer a 5/1 arm at about 1% lower than the 30 year fixed rate. Maybe you could buy down the rate for someone who also had a huge appetite for risk and would pay 4 points to get down to that same rate on a 30 year fixed rate. But importantly it is not the ysp it is probably more significant to tell the client the number of years that it will take for him to stay in the home to break even with the huge amount of equity he has just put into paying down 4 points to lower his rate that is important. So I would advocate both expressing this ysp in terms of dollars and years in time to show the client what it was he was buying - a payment. The greater the risk sometimes not the greater reward, most loans are refinanced so often now a days that it most likely won't benefit the client to pay so many points, so why try and show every client these numbers if it is proven by loan servicing figures

that these loans just won't stay on the books that long to save the clients the money they paid out in points to do them? Why would we want to send that message to try and legitimize a loan that was of negative benefit to the client? Nothing on the menu makes any more sense than a regular 30 year fixed rate now a days especially as rates are so low. If the client has more of an appetite for risk then you could explain that he might be better off with a 5 year arm with a 1% lower rate, than the regular 30 year fixed rate, but only if he feels he will be in the house for less than 5 years. And he doesn't know, believe me I have asked hundreds and thousands of people and they really don't know what they are going to be doing in 5 years from now. And then it turns into an arm, oh my and what about the spectre of inflation?!?!?! Do we need a signed disclosure to indicate that inflation could and may likely hit rates as they are being held down artificially by the Fed just for right now, but if they get this product and the value of the dollar falls that the price of goods will most likely go up and that is called inflation and then the Fed will raise rates to keep up with inflation and to try to slow down the economy, so that 30 year fixed rate with zero points doesn't look so bad now does it? If one shops these products in dollar amounts, with an eye on both lowest rate and closing costs, and typically with zero points (with some very limited exceptions for special circumstances) the vast majority of customers will find the best deal pretty easily. So why go to extremes now with complicated and expensive legislation that may actually limit the consumer's choices and provide consumers with potentially detrimental choices on their menus which they may perceive as legitimate government endorsed options for them to take advantage of if they are "on the menu". And why make even complicated agreements between brokers and banks instead of ysp that works just fine in most all cases because a whole system filled with new agreements is going to have a huge potential to backfire and allow brokers to either go out of business or chose the worst scenario for the client because their pay structure is better to go to that bank or for any number of reasons that these separate agreements bring into play. In other words the new ysp system could by its very nature help to perpetuate the same problem that it is trying to resolve having the borrower paying higher fees and costs for loans, so instead address the real issue - how to get the better deal for the client. And here education is always better than legislation. You can not legislate equality into the marketplace, only fair business practices will do that. Laws do not in themselves make people honest or look out for their client's best interest. Smarter shoppers do. Simpler programs do. So when we can educate and use common sense with providing information like that to potential clients that will be most helpful.
In this post Option arm world there just aren't that many choices and while the legislation proposed here may have been much more useful before option arm hit and died 3 to 10 years ago, I hate to be the one to bring this to their attention, but the horse has been let out of the barn already. And the option arms were a huge problem, but they are extinct and no longer exist so let's put in legislation (or no more legislation wahtever the case mabe) that has some bearing on the present state of lending. Now a days a 5 year arm is about as exciting as things get. So then if the client really really wants a 5 year arm anyway because the rate is lower than the 30 year fixed rate by one point, and so they elect a zero point 5 year arm if they really, really feel they will not be there in 5 years, then make the consumer sign a disclosure that he feels that way and assumes the risk of the product. Now you could show the client the same buy down philosophy to get down a half a point more and charge him 4 points to do so on the new proposed ysp rule, but if you actually had a client stupid enough to do that deal or a legislature stupid enough to force a broker or a bank for that matter to show that garbage loan to that client, then they would deserve each other, but I would not write that loan for that client, and

no bank with any sanity would let the borrower do that loan either, but the legislature would endorse it. Hmmm, it makes you think. Taxpayers dollars at work? That would be a horrible deal worse than some of the option arms. No the only time that I can think of that would make sense for a disclosure of ysp that would appear fairly regularly in business would be when a person buys a house with an FHA loan and needs to have a broker contribution instead of a seller contribution pay for closing costs in order for them to get into the house. Usually the seller will contribute up to 6% of the purchase price to make sure the buyer has enough money for closing costs and prepaid items to get into or purchase the house from the seller. In the event however that the house does not appraise and the seller can not contribute enough money for the buyer to consumate the purchase, then a broker or a bank can raise the rate and either contribute ysp to the buyer to pay for closing costs on the HUD in order for the buyer to close. This is fairly rare and I have not seen one of these in years, but it could be necessary in theory. The reason why you don't see them that often even though there are plenty of appraisal issues is that most borrowers find it hard enough to qualify now a days without having their rate raised and that it is not effective for the borrower to have a higher rate for the long term, so it is not advantageous for the borrower to do so, so they don't do it unless there is no other choice. Like a zero closing cost loan would make sense for a very small amount of people who wanted a lower rate but knew they would be in the house for only about 3 or 4 years and that had a higher rate now and equity in their homes to refinance at present. These types of deals exist but are few and far between. More realistic of a scenario would be if all of these crazy disclosures and new laws and regulations drove good brokers out of business and forced the few good borrowers that were left to only be able to go to banks who did not have to disclose their ysp and just ripped them off by giving them a higher rate because there was not more real competition and everything was more expensive in general because there was no money supply because of all of the new regulations stifling the lending world. The Bottom line is that some good old fashioned common sense shopping by the consumer doesn't hurt to solve potential issues with ysp either. My smartest clients were not always so smart but they knew these basic rules of thumb to shop for mortgages - "I want a 30 year fixed rate with the lowest possible closing costs and rate", and it meant all the world to them. Everyone knew that they had to qualify for a loan well before all of the no income and no doc loans appeared, and that was always the loan of choice for a reason it was the usually the best loan that was available for the client until the lenders started introducing all sorts of new products which no longer exist today. So let's please put some burden and responsibility back on the consumer and rightfully so
because no matter how much you legislate the issue, the consumer is the one that benefits the most from getting the best loan they can get, and not the banks because the banks want to profit on the loan at the borrowers expense. If not then why not have the government set prices for tires and bread and make sure that the price of a loaf of bread has a flat fee attached to it for the baker and that the buyer has to be disclosed the flat fee in an agreement between the baker and the grocer. Ridiculous. If someone wants to shop for the lowest price of bread or price of a car or a mortgage they can do so. We should just give them prices in real dollars to make their shopping clear for them to make a good decision. Another way to solve the potential issue that present ysp makes it harder for a client to get a better deal on a mortgage is to simply put all of the loan originators on the same level playing field and force everyone to disclose their ysp in dollar terms as HUD advoates.
So in that way banks, mortgage brokers, all lenders alike must disclose similarly, and then the client can also decide who has the best deal in similar

"apples to apples" terms. So take HUDs dollar amount lead to show the way to the client as it is a good simple idea with the same good intentions to make it easier for the borrower to get a better loan, so the new HUD rules share the same end goal as the proposed ysp rules and are much much easier for everyone to implement and easier for the borrower to see who got what for what rate and who got what fees for services, so the borrower is not confused by percentages of yield. In the big picture and talking to thousands of borrowers - Dollars rather than percentages of loan amounts are something that lay people and most consumers can really understand. To that same end, the new proposed ysp legislation would just make things even more complicated and would require more regulations, expense and additional paperwork which very well could curtail choices for consumers in this credit starved desert of a market we have today which would be against the intention of the proposed ysp rules and raise the cost of their money even further. So it is my suggestion that we need to simplify here with ysp, educate the consumer and also level the playing field for everyone to make both the originator's and the consumer's task of getting a mortgage easier and not harder, so we could allow for the lender, whoever that might be, to educate themselves to the clients needs and for the client to take the time not deciphering obtuse figures and forms but spending the proper time they need to analyze their finances and choices that the various banks and lenders can provide them. Simply put give the client the best choices available to the client in the simplest possible terms possible, so that an educated consumer can make the best decision possible without being a mathematician. It never hurts to look at old reliable when making a decision like setting a compass to the north star, and quote the old mantra of "zero points, 30 year fixed rate with the lowest possible closing costs and rate" when shopping a loan. That is and has been a pretty stable loan for as long as it has been available. And right now it is a great deal at all time historic low rates.