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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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On March 27, 2008, Federal Reserve Board Governor Randall S. Kroszner stated in his speech at the National Association of Hispanic Real Estate Professionals Legislative Conference in Washington, D.C. that: "yield spread premium" is the present dollar value of the difference between the lowest interest rate the wholesale lender would have accepted on a particular transaction and the interest rate the broker actually obtained for the lender. This dollar amount is usually paid to the mortgage broker. It may also be applied to other loan-related costs, but the Board's proposal concerns only the amount paid to the broker The growth of the market for brokerage services has no doubt increased competition in the market for mortgage loans, to the benefit of consumers. Moreover, the yield spread premium, a payment from a lender to a broker based on the loan's interest rate, is sometimes the best way for a consumer to fund the cost of a broker's services. This conflict is problematic if the consumer does not know it exists or assumes, incorrectly, that the broker is obligated to put the consumer's interests first. In such cases, the consumer cannot protect his or her own interests, and competition for loans and for brokerage services does not work effectively." The Board is soliciting comment on whether it should adopt a rule that seeks to prohibit loan originators from directing or 'steering' consumers to loans based on the fact that the originator will receive additional compensation, unless that loan is in the consumer's interest. The Board is expressly soliciting comment on whether the rule would be effective in achieving the stated purpose. Comment is also solicited on the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects the rule might have. With the emergence of independent mortgage brokers and originators, lenders gained access to a large, efficient and competitive variable expense based third party distribution channel to market and originate the lenders' loan products. In response, lenders created "rate sheets" which are functionally similar to any other product manufacturer's price sheets. The rate sheets facilitate the lenders' need to communicate the amount they are willing to pay the third party for the performance of its services based on the revenue the lender expects to

receive from the loan at any given price. In this case the lender's price is represented in the interest rate. In its simplest form, the consumer pays the lender in some combination of front end costs plus interest and the lender must pay for all expenses associated with marketing, originating and servicing from those consumer payments. While it goes without saying that if the lender receives more revenue, e.g. from a higher interest rate, everything else being equal that loan offers more value and the lender may reward the originator for that value in the form of a higher payment for the services provided. That in no way "hides" anything from the borrower that facilitates comparison shopping. Referring to this lender payment for services rendered as "indirect compensation" as has been done previously and as continues in the FRB proposed changes to Regulation Z is a misnomer. Rather, it is simply a payment made by someone other than the consumer for services rendered during the loan process or when the asset or its servicing is sold to the secondary markets. Whether it is called "Yield Spread Premium" which represents lender compensation to a third party for services rendered through the origination and funding of the loan, or "Service Release Premium" which represents the secondary market's calculated present value of the future revenue flow negotiated for purchasing either the asset or the servicing rights; disclosing the amount of such so-called "indirect compensation" provides no relevant additional information to improve the consumer's ability to comparison shop. Employing a cost effective third party marketing and origination function, instead of building and maintaining this capability internally, is simply a lender's business decision. Restricting the lender's ability to decide whether to "build" or "buy" services will damage lender access to a valuable alternative distribution channel, will result in an overall reduction in competition, will drive a derivative increase in consumer front end costs and will create access issues for home buyers and homeowners attempting to refinance. All lender and originator compensation is included in the front end costs and in the periodic loan payments derived from the stated interest rate. The interest rate is disclosed to the borrower. Further disclosure of the portion of the lender's revenue used to pay for services rendered is irrelevant to the consumer's ability to comparison shop. More recently, on March 11, 2009, Sandra F. Braunstein, Director, Division of Consumer and Community Affairs spoe about mortgage lending reform before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, U.S House of Representatives, Washington, D.C. In her testimony, Sandra said, "Based on the results of consumer testing, the Board did not adopt a proposed rule that would have prohibited a creditor from paying a mortgage broker more in compensation than the consumer agreed in advance the broker would receive. Under the proposal, brokers would have to disclose to consumers their total compensation, including any portion paid directly by a creditor as a "yield spread premium" before obtaining the consumer's written agreement. Brokers would also have to disclose that a creditor payment to the broker could influence the broker to offer the consumer loan terms that would not be in the consumer's interest or the most favorable terms the consumer could obtain. The proposed rule was intended to limit the potential for unfairness, deception, and abuse while preserving the ability of consumers to cover their payments to brokers through rate increases. The Board also anticipated that the proposal would increase transparency and increase competition in the market for brokerage services. The withdrawal of this portion of the proposal was based on the results of the Board's one-on-one interviews with several dozen consumers which demonstrated that the proposed agreement and disclosures would confuse consumers and undermine their decision making rather than improve it. The Board is continuing to explore options for addressing potential unfairness associated

with originator compensation arrangements such as yield spread premiums." If the Board desires to make loan comparison shopping easier for the consumer then the consumer will need to be provided with simplified disclosures which provide the correct information required to make an informed decision. I'd like to suggests that the Board would better serve consumers and the objectives of Regulation Z by abandoning the unproductive debate about "indirect compensation" and instead, by directing their effort to working with HUD to integrate the requirements of Regulation X to produce one set of disclosures that are easily understood and useful to consumers. In conclusion: The changes proposed to Regulation Z by Section 226.36(d), Prohibited Payments to Loan Originators will negatively impact consumers through the reduction of choice and through the unnecessary restriction of the options they would otherwise enjoy. These options are the very essence of "Consumer Choice" which allows home owners to manage the various costs associated with obtaining or refinancing a mortgage. The changes the Board is proposing must not be overly prescriptive, so as to preserve access to responsible credit while amply protecting consumers. Thank you for considering my comments, Paul Lebowitz Owner/Broker Westport Mortgage LLC Westport, CT