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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:
Board of Governors of the Federal Reserve System Ben S. Bernanke, Chairman Donald L. Kohn Kevin M. Warsh Elizabeth A. Duke Daniel K. Tarullo Sirs and Madam, Please accept this response regarding: Part II Federal Reserve System 12 CFR Part 226 Truth in Lending; Proposed Rule. There is no debate that consumers must be provided complete and proper disclosure of all pertinent information when obtaining mortgage financing. To this end, I support the Federal Reserve in its efforts to effectively and comprehensively clarify disclosure of information, terms, and conditions borrowers must consider to make an educated and appropriate financing decision. Certainly, a well informed consumer is a successful consumer and enhancing the transparency and understanding of the mortgage process, with all of its commitments and obligations, should assist all mortgage industry professionals in guiding consumers to a fair and equitable mortgage transaction. While I have moderate concerns regarding some language in the Proposed Rule, I generally support the spirit of the underlying intentions. I do, however, have major objections pertaining to the issue of yield spread premium (YSP), and for the purpose of these comments, I would include service release premium (SRP) in the discussion as well. While YSP and SRP are not synonymous by definition, to the consumer there is no discernable difference. To insure every consumer is provided the same protections, all loan originators must be governed by the same set of rules and regulations. The current language in the aforementioned Proposed Rule fails in this regard. Currently, the rules for disclosure of YSP create an inequitable platform for competition within the mortgage lending industry and creates confusion not transparency and understanding. Banks, or those that fund their own loans, are exempt from disclosing YSP or SRP. Brokers, however, are not affored this same "opportunity". This issue alone obfuscates the borrowering process. When one understands that YSP has a direct correlation to a corresponding interest rate, the presence or lack of disclosure creates an anomaly that a consumer cannot independently resolve when

comparing two essentially identical transactions. The net result is the perception that the broker is "gouging" the consumer, when in fact the non-broker, competing lender has received essentially the same compensation either through YSP or SRP, but is not required to disclose all sources of revenue received. This disparate treatment of two otherwise equal mortgage providers prohibits the consumer from making an "apple to apples" comparison. Simply put, a banker is not required to disclose ancillary revenue as a result of loan orgination activity, while a broker must. The current substance and composition of YSP disclosure and the systemic inequity that results is antithetical to the goal of the TIL Act of providing clear, concise, and informative disclosure to consumers. I am concerned that the Proposed Rule language consistently supports disparity in the treatment of two fundamentally similar providers of mortgage product. This is no more evident than in the language intended to eliminate YSP. Therefore, I do not support the curtailment or elimination of compensation based on the terms and conditions of the mortgage. The language presented in the Proposed Rule defines a "creditor" as essentially any entity that funds and closes the loan in their own name, i.e. a bank or large non-bank entity that has access to warehouse financing. A "loan originator" is defined as the rank-and-file employee of said instituions or any mortgage broker that performs the task of orginating a loan. As it is presented in the Proposed Rule language, "creditors" are exempt from the prohibition of YSP compensation while the "loan originator" is not. Even though the creditor is precluded from compensating their employees via the creditor's receipt of YSP, the fact that a mortgage broker-owner cannot receive this same revenue stream puts the broker at a decided disadvantage. The language goes so far as to propose that if a "loan originator" receives compensation directly from the borrower, they are barred from receiving compensation from any other source altogether. The obvious inequity in this language is very concering to mortgage brokers throughout the industry. I understand that the trepidation about YSP, stated within the Proposed Rule language, stems from the desire to eliminate the opportunity for unscupulous loan officers from directing a consumer to a particular loan or interest rate solely for the benefit of the loan officer. I agree with this premise. It is certainly not desirable for a loan officer to act in such a manner and I do not condone lending behavior or practices driven by self serving motivations that take unfair advantage of the consumer. The language phohibiting YSP might seem, on the surace, to aptly apply to all "loan officers" thereby satisfying the desire to adequately protect the consumer. However, due to definitional distinctions, this language - once again - negatively impacts the broker-lender to an even greater degree than in our previously identified example of YSP disclosure. It is one thing to impose inequitable disclosure requirements on like participants in the mortgage lending process, and quite another to handicap mortgage brokers forcing them to compete with disproportionate revenue sources. By eliminating YSP as a revenue source for one industry participant - the "loan originator", and not the other - the "creditor"; the balance of competition will be so severely tilted that the mortgage broker will be effectively eliminated from the community of mortgage providers. I maintain that unintended consequences from this language will inevitably result in costlier financing for consumers and the loss of an entire productive segment of the mortgage industry along with thousands of corresponding jobs. To illustrate the practical implications of this issue, it is important to stress that YSP is a critical element in structuring mortgage loan financing. In fact, borrowers and lenders, in concert with each other, strategize on how best to utilize YSP. Traditionally, borrowers have a desire to limit their cash requirement for mortgage financing. Concurrently, mortgage lenders have a need to generate sufficient revenue to stay in business. This relationship has been appropriately supported by the presence of YSP. This alternative source of compensation allows the lender to augment its revenue thereby minimizing the impact on the borrower's cash requirement. While there are many specific and detailed strategies for utilizing YSP to the consumer's benefit, one simple yet practical impact of YSP utilization is when a borrower wisely, and often necessarily, elects to accept a slightly higher interest rate as a "trade-off" for minimizing out of pocket expenses when closing their loan. The critics of this practice assume the borrower is unaware of the presence or impact of YSP. This assumption may certainly be true in the instance of a mortgage loan that involves a "creditor" due to their disclosure exemption, but is clearly incorrect for a transaction involving a mortgage broker. Mortgage brokers must disclose (YSP/SRP) compensation on the Good Faith Estimate (GFE) at the time of origination and again at the closing on the HUD-1 settlement statement. YSP provides the means for reducing the borrower's loan fees; it helps offset agency pricing adjustments; and it provides revenue allowing mortgage brokers to operate and be profitable. Without this revenue source the consumer will be put in the untenable position of paying more for financing, not less. I maintain that the cooperative utilization of YSP has allowed millions of consumers to obtain a home mortgage. Without the capacity provided by YSP, borrowers would be burdened by even greater cash requirements for financing certainly putting a strain on a very tenuous housing recovery. In summary, I believe the Federal Reserve should adopt an "all originator" approach to any and all regulation of our industry. To do this, however, their needs to be an acknowledgement that from the consumer's perspective the impact of how a lender packages and sells their loan is secondary to the terms and conditions within the financing structure chosen. All lenders, be they banks or brokers, have the option of providing mortgage loan options with or without the yield spread or service release premium component. It is blatantly unfair for one competitor for mortgage origination business to use the disclosure exemption as a means of portraying the other competitor as predatory or fraudulent. Because the presence of YSP or SRP can have direct impact on the interest rate a consumer obtains, it is certainly necessary to shed light on its presence and provide disclosure of its purpose and effect, but that light should shine equally bright on all providers of mortgage loans. In regards to the segregated elimination of YSP and the application thereof, I maintain that the consequences of such a decision would be ruinous to the mortgage industry as well as having the result of imposing decidedly negative consequences on the consumer. The mortgage broker may well be abolished by this language - a mortgage industry participant that has provided access, competition, and liquidity to millions of consumers. Competition within the mortgage industry would concentrate among only a few large lenders. Consumer's financing costs would undoubtedly increase as a result of having fewer options. The advances and efficiencies the mortgage industry has accomplished over the past decades would be extinguished resulting in significantly longer transaction timelines. The final result of the proposed changes regarding YSP wil be detrimental. The consumer will have fewer alternatives for mortgage financing which will lead to higher transaction costs. The economy's fragile condition requires deft attention to any proposed regulatory alterations within the mortgage industry due. The Proposed Rule changes relating to YSP, combined with the existing inquitable environment for mortgage lending competitors, will be an unwelcome impediment to efforts designed to correct the housing malaise. For the housing industry to rebound, we should be supporting consumers, not constraining and hindering them. Thank you for considering our comments on this very critical issue.

Sincerely,

Dan Peinovich
Prestige Mortgage, LLC