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Proposal: 1417 (RIN 7100-AD75) Reg Z - Mortgage Repayment Standards

Subject: Reg. Z

Comments:

Comments on the Dodd-Frank Act related to seller-financing

Regulation Z; Truth in Lending [R-1417]

The Dodd-Frank Act pertaining to seller-financed transactions is flawed. I'd like to comment on the most serious problems as I see them.

In a seller-financed transaction the Dodd-Frank Act would require a property seller to determine if a buyer has a reasonable ability to repay the extension of credit.

How can an average citizen be expected to do this? And if they make a mistake the buyer has three years to rescind the transaction? This has not been thought through. Even if a seller hired a lawyer or loan originator to handle the transaction for them, what seller would be comfortable that everything was done correctly enough to prevent future challenge?

One of the major uses of seller financing has been for people who cannot qualify for a loan to be able to purchase property. What other choice do they have? While lenders look only at credit scores, debt ratios and the like, a seller can look beyond just the numbers. Many buyers don't fit into the loan qualifying boxes lenders places them into; however, these people still need a place to live and work. Others may have had problems in the past and need a fresh start. Seller financing has been the only way these people can quickly get back on their feet -- and it requires no government program to do it. Requiring a seller to qualify a buyer the way a lender must do destroys opportunity for people and kills real estate sale's activity in the country.

No balloon payments allowed in seller-financing.

Balloon payments are very important for both a buyer and seller in seller financing. On the seller's side, a balloon payment means they won't have to wait thirty years for the remainder of the sales price to be received. It's quick and easy: They sell their property, collect payments for some agreed upon time and then get paid off. Typical seller-financed terms for a residential property have been a thirty year amortization with a five year balloon. These are simple, easy to understand, comfortable terms for both buyer and seller. Sellers also can be comfortable with their investment. They will earn a safe and usually higher yielding return than they could get anywhere else. However, if a seller some time after closing wanted to or needed to sell his/her note into the secondary market, early return of principal given the balloon payment requirement results in a far better price

than if the note still had twenty-five or more remaining years of payments. In other words
restricting balloon payments destroys the cash value of seller-held real estate notes.

On the buyer's side, the balloon timing is negotiated specifically to give a buyer enough time to repair credit, get a job, or have more time on a job to qualify for a take-out loan. Also, offering early payoff to the seller in the form of a balloon is a great inducement to a seller to accept terms. Sellers who are having difficulty selling their property, and who might not have even considered selling on terms, when presented with the option often reason that five years (or whatever they agree to) is not that long and if it gets the property sold, they can live with it.

The bottom line is that historically sellers and buyers have been able to construct the terms of a note to whatever fits both of their situations best. This has been the beauty and power of seller financing. For many people few things have been more satisfying than selling their property on terms they have negotiated with a buyer. Having legislation dictate what a buyer and seller can and cannot agree to stymies these transactions and nullifies the usefulness of this important method of selling real estate.

Using a mortgage loan originator to facilitate a seller financed transaction.

It has been suggested that buyers and sellers could hire a mortgage loan originator to handle their transaction. I cannot believe a typical buyer and seller would ever want to or need to hire an additional person to do what they want to and can do themselves. And who would pay for this person? The buyer? The seller? Who does the loan originator work for? What expertise does a person trained in originating loans have that relates to seller financing? Requiring such a person to meddle into these transactions is exactly what buyers and sellers negotiating their own deal are trying to get away from! This provides no added value, only cost, delays and frustration.

Conclusions

Seller financed transactions are not loans: they are installment sales, extensions of credit from property seller to property buyer. Loan documents (note and deed of trust or note and mortgage) are used only to accomplish the goals of buyer and seller - to transfer the property and secure the terms with the property. Installment sale terms are agreed to by buyer and seller. They are not dictated to buyers by lenders or the government. As stated above, installment sale terms are almost always very simple and easy to understand by both buyer and seller. They have nothing to do with indexed and margined adjustable rates and caps, graduated payments, yield spread premiums, and other ridiculous loan program characteristics that caused so many "qualified" buyers to default in recent years. Lender loan terms are dictated to buyers based on flawed evaluations of income, arbitrary ratios, credit scores, and so on that clearly bear little correlation to "ability to repay" according to
lender terms. Please do not try to convert seller financing terms to the same programs (by requiring sellers to qualify buyers to lender standards and by restricting balloon payments) that caused the housing financing mess we're into

today.

Seller financing did not cause the housing crisis or contribute to the financial meltdown we have experienced. Given the scarcity of bank loans extended to buyers today, seller financing is very often the only way people are able to sell their properties. Why is legislation being passed limiting the one last resort Americans have to sell properties at a time it is needed most?

Please exempt seller financing completely from these regulations. Or, if you must, at least exempt some appropriate number, say, up to 5 (or more) transactions per year. This would serve to restrict abuses, if there have been some, but also allow people enough freedom to make productive use of these transactions and to help the housing market overall.

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