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Comments:

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Proposal: Regulation Z - Truth in Lending - Closed-end Mortgages
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DISCLOSURES In the race to protect the consumer, government agencies are once again contributing to the problem. Since the collapse of the mortgage markets, regulatory agencies have competed (unknowingly) with each other to come up with more disclosures to protect the consumer. The effect has been to inundate the borrower with more paperwork than they can possibly digest. When I started in this business in 1982 as a loan officer, my loan package contained fewer than 5 pages besides the application. Today my FHA application package has 42 disclosures in 21 pages and a conventional loan has 22 disclosures in 13 pages. In addition to these initial disclosures, there are disclosures sent to the same borrower by the lender, by us and the lender when terms change on the loan, and at closing, most customers are faced with nearly 100 pages of documents to read and sign. I can tell you that as more disclosures are created fewer customers read them. In the last two years, we have added new credit information disclosures, the Mortgage Disclosure Improvement Act has added new language to the good faith estimate, the State of Washington (and may other states) have added mandatory transaction disclosures, and HUD is preparing to implement the new good faith estimate for (a four page document) in January. The goal is to protect the consumer not assure their blind compliance with lender steering because there is so much paperwork they cannot cope with the information overload. While 85% of Americans have graduated from high school, I can assure you that the typical high school graduate cannot understand these disclosures and few college educated persons can. As you read this can you honestly say that you read all of the disclosures you received when obtaining your last mortgage? If you can, you are an exception because I would estimate that less than one in a hundred does read them. Research tells us that to communicate effectively with a general audience in the U.S., we need to write at a 6th-8th grade reading level. This means

using simple terminology and short sentences. Sentence length is the single greatest factor affecting comprehension.   To improve disclosures: Eliminate duplicative disclosures. Have either the broker or lenders send out the disclosure. Currently both brokers and lenders send them to assure they are all in compliance. In addition, the rules require disclosures at application, within 3 days of application, 3 days before closing and after closing. This redundancy, while well intentioned, overwhelms the consumer. Use a nationwide standard form written in simple language. Coordinate disclosures between the various government agencies so they utilize the same forms. Not only TILA and RESPA, but also with FTC, HUD, VA, USDA and any other entity involved in lending of any kind, whether secured or not. Don't expect every minute detail to be given to the borrower up front. Have a summary of loan features in the initial disclosures and highlight any potentially negative aspects of the loan such as pre-payment penalties or balloon features. Provide adequate time for the borrower to review the closing documents. The final documents are far more important than the upfront disclosures. Impose a mandatory 3-day review period on all loans rather than inundate them with multiple disclosures throughout the process. The consumer has an obligation to shop. They should be expected to do so and to take responsibility for their choices. The process is difficult because of the volume of paper thrown at the consumer, not because the loans are too complex. Loan Originator Compensation. I do not favor excessive charging by any loan officer, mortgage company or bank. However, limiting loan officer compensation as a means of protecting the consumer is not only wrong and ineffective, but probably illegal since it represents an unfair restraint of trade. The Supreme Court has always held restraint of trade to be illegal and this proposed legislation falls into that category because: It prevents mortgage brokers from structuring loans to consumers utilizing yield-based pricing to lower the overall closing costs of a loan.
Banks are not required to comply with these rules but provide the same service to consumers that brokers do. Whether a consumer chooses low closing costs and a higher interest rate, or the reverse, should not be the government's decision. Limiting compensation via yield spread premium but not via directly paid points drastically reduces options for the consumer. Other private industries are not required to limit compensation to their employees.
Congress authorized distribution of BILLIONS of dollars in bonus compensation to the very executives that presided over the economic problems that have spawned this legislation, yet failed to impose industry-wide compensation limits on the brokerage firms and banks.   Congress isn't mandating thaa
siding
salesman, roofing contractor, builder, stock broker, or a consultant reduce their price to a specified margin of profit. To do so with mortgage brokers is unfair and a restraint of trade. It should be noted that when subprime loans were available, consumers were easily preyed upon by unscrupulous loan originators. This was because a person with very bad credit, would pay what the originator told them it costs because THEY THOUGHT they had no other option. The fact is, they did have options, and had they compared several subprime lenders they would have found the wide variation in charges as you and I do when we get bids for a remodel, or price work on our cars. Encouraging them to shop is the single most effective means of controlling costs as it is with any product purchase. A loan officer can generate income in excess of the limits proposed in this draft and still offer loan products that cost less than at competing companies. Any consumer can see spreads between banks larger than the anticipated cap in YSP or loan officer compensation.   Take a look at the listing from BankRate.com (below), a nationwide rate comparison service (available to all consumers at no cost) for September 23, 2009. It shows a difference between Bank of America and Mortgage Capital Associates of nearly

2%. It should be noted that Mortgage Capital Associates is a mortgage broker, yet offers loans at a significantly lower cost than Bank of America. Because the Mortgage Capital Associates loan has zero points, it can safely be assumed they are being paid by the lender. Under this legislation it would be illegal for the Mortgage Capital Associates loan officer to charge the consumer EXACTLY what Bank of America is charging, but it would not be illegal for Bank of America to do so. Product Lender APR Disc/Orig pts Rate Fees in APR 30 yr fixed mtg Mortgage 5.033 0.000/0.000 5.000 $950 Capital Associates 30 yr fixed mtg Bank 5.207 1.750/0.000 5.000 $1,400 of America The proposal says: "Consumers reasonably may believe that when they pay a loan originator directly, that amount is the only compensation the originator will receive. " What about banks? They will receive compensation when they sell the loan to Fannie Mae, just as the broker does, when he sells the loan to Bank of America and we should expect them to disclose that if we expect it of the broker. Banks have never been required to disclose yield spread premium even though they receive it in far greater amounts than brokers. Brokers have been required to disclose it for many years making their disclosures already a more accurate representation of a loan's cost than that of a bank. That, in and of itself, is unfair but our industry has dealt with it for many years. In almost every shopping scenario consumers are faced with choosing between more expensive and less expensive products. Providing simple tools to compare options is a more effective way of protecting them. Restricting the lenders ability to earn an income does not contribute to a better marketplace for consumers but encouraging consumers to shop does. Creating uniform disclosures will aid the consumer in shopping for a mortgage. Mortgage brokers who seek out sources of capital that are less expensive than their competition deserve to earn a higher profit for their efforts, just as a cabinet maker who finds less expensive lumber, or a grocer finding lower cost food to sell can earn a higher profit. In the long run, the consumer must simply look at three things - the loan amount, the interest rate, and the closing costs from various companies and compare them to effectively shop. Where interest rates are the same, they can compare closing costs. Where closing costs are similar, they can compare interest rates. Consider these statements in the proposed legislation: "The Board shares concerns, however, that creditors payments to mortgage brokers are not transparent to consumers" "Creditor payments to brokers based on the interest rate give brokers an incentive to provide consumers loans with higher interest rates." "The market often leaves brokers room to act on the incentive should they choose, however, especially as to consumers who are less sophisticated and less likely to shop among either loans or brokers." Using this as a framework for the legislation is unworkable. Higher interest rate loans are more valuable to an investor than low interest rate loans, therefore they pay more. AS WITH ANY PRODUCT IN AMERICA, THERE ARE HIGHER MARGIN PRODUCTS AND LOWER MARGIN PRODUCTS. The consumer's job is to compare and choose. The government's job is to assist in that - not to set the price, margin, or profit of any company. We cannot make consumers shop and congress hasn't even considered regulating the roofing industry, siding industryauto repair, or any other industry selling products consumers are unfamiliar with. Likewise, congress hasn't mandated that Walgreen's, Ford, or Safeway post its wholesale cost of every product and make it transparent to the consumer. To imply that compensation derived from the lender is more detrimental to a consumer than income paid directly to the lender is absurd. This legislation prohibits originators from earning income from both the lender and the borrower. The all-or-nothing approach will harm the consumer by eliminating the continuum that exists between rate and cost. The borrower will either pay a much higher cost up front, or will have a much higher interest rate in order for the lender to generate the same amount of income from a loan that is necessary to profitably operate their business. Not allowing the borrower to choose whether the lender pays some or all of the originator compensation and/or closing costs is a restraint of trade. Please reconsider the intrusion that is being contemplated into the financial services industry. This legislation will only serve to make financing more complicated and expensive for consumers, place unfair restraint of trade on the mortgage brokerage industry and continue to provide an unfair advantage to the banking industry that has been in effect for years. Assist the consumer in shopping, but stay out of interfering in private markets.