From: "Harlan Cooper" <hcooper@TransNetLoans.com> on 04/08/2008 06:05:03 PM

Subject: Regulation Z

To the Board of Governors of the Federal Reserve System:

Thank you for giving me the opportunity to comment on the proposed rule amending regulations of the Truth-in-Lending Act. Let me begin by saying that I support the consumer protection goals of the Federal Reserve. The current mortgage credit crisis is harming consumers, the mortgage industry, the banking and financial system system, and our economy. Strong consumer protections and regulation of the credit markets that provide for a transparent and competitive environment foster a system that encourages growth and prosperity. But it is easy to react to the current events with proposals that in the end may do more harm than good.

For several years now a problem has been brewing in our real estate and credit markets and it seems like no one was paying attention. That problem was unsustainable increases in property values. It seemed like a great problem to have. These increases have kept consumers spending and the economy growing at this time in our nations history where we have seen events that could have been devastating to our economy. I remember standing out in my yard at night shortly after September 11 and where once I would have seen the lights from a long line of aircraft lined up on the flight path to the airport a few miles away, the sky was empty. Like many citizens I was concerned about what consequences this tragic event might have on our economy. Along with the trepidation I felt regarding international events that seemed I had little control over, I was also concerned about my family and employees since I had recently become licensed as a mortgage broker and had started my own company to broker residential mortgage loans.

Little did I know at the time that over the next few years property values would show an unprecedented increase in some parts of the country. On the coasts and in Nevada property values doubled, almost tripled in some parts of the country. Lending standards decreased and homeowners started using their homes as ATM machines. Credit was inexpensive and plentiful. If there was a time for regulators to step in and waive the caution flag, this was it. In my part of the country our company helped many people take advantage of the market that existed. Even though property values were not increasing as fast in Texas as some other parts of the country, credit was cheap and easy. We helped first time homebuyers purchase homes with little or no money out-of-pocket even if they had damaged credit. We helped homeowners refinance at historically low interest rates. Mortgage brokers became a major conduit for consumers looking for residential loans.

This phenomena of consumers flocking to mortgage brokers did not come about because mortgage brokers had large advertising budgets or nationwide brand recognition. The factor that lead the public to look to mortgage brokers for their lending needs was two fold. On the whole mortgage brokers were a less expensive source of financing and provided better, more personalized service than larger institutions. How were mortgage brokers able to deliver a less expensive product to the borrowing public? By taking wholesale loan rates, marking them up and making those marked-up loan products available to the public. The lenders were willing to pay mortgage brokers to originate loans due to the fact that the yield spread paid to mortgage brokers was less expensive than the cost of providing the retail outlets necessary to reach all of the borrowing public. Consumers preferred using mortgage brokers because when they compared rates between retail lenders and mortgage brokers they more often found the mortgage broker was able to deliver them a loan at a lower cost. While many of our customers throughout the years found us to be "trusted advisors," I cannot remember one that said "oh, we don't care about the cost, we know that you are looking out for our best interest."

This brings me to the specific rule change I would like to address. The proposed rule changes essentially establish different rules for mortgage brokers and mortgage lenders. The proposed rule change would have mortgage brokers disclose their compensation to customers before they even take an application. How can compensation and the cost of a loan be determined before a borrower's credit and financial profile is determined? Many times our company determines an applicant's ability to borrow through the GSE's or other automated underwriting systems. This often happens before we choose the lender we think is most appropriate for that borrower's situation. At this point we often do not know how much a lender is willing to pay for that borrower's loan. Without that knowledge we are unable to price that loan to the borrower or to know precisely how much compensation is possible on the loan. With the proposed rule mortgage brokers will be at a distinct disadvantage to retail lenders. What this does is turn the borrower's attention to the compensation of the mortgage broker rather than the cost of the loan. The FTC did extensive testing that showed that his approach to consumer disclosure resulted in consumer confusion and often led consumers to erroneous conclusions when trying to evaluate the cost of mortgage loans.

From the FTC study on the disclosure of yield spread premiums:

"The study finds, however, that YSP disclosures reduce significantly the proportion of respondents correctly identifying the less expensive loan and the proportion stating they would choose that loan if they were shopping for a mortgage. The findings indicate that YSP disclosures, if noticed and read by consumers, are likely to lead a significant proportion of consumers to choose more expensive loans."

"The mistaken loan choices induced by the compensation disclosures could impose significant costs on consumers, both individually and as a whole. If the disclosure requirement has an impact similar to the magnitude found in one of the hypothetical loan cost scenarios examined in the study, **the disclosures would lead mortgage customers to incur additional costs of hundreds of millions of dollars per year.**"

...."The study also finds that YSP disclosures will result in a significant consumer bias against broker loans, even when the broker loans cost the same or less than direct lender loans. The bias may have anticompetitive effects that reduce competition for mortgage originations and increase costs to consumers. The increased costs could affect all mortgage customers, not just those confused by the disclosures."

I am sure that the purpose of the Federal Reserve Board's proposal is not to increase the cost to consumers. But this is very likely the unintended consequence of this part of the proposed rule change. Has the Federal Reserve studied the potential cost to the consumer if this rule is enacted? The Federal Reserve even admits in the Federal Register to the unequal results of this part of the proposed rule:

"The Board is aware of concerns that a rule restricting, and encouraging disclosure of, lender payments to brokers but not lender payments to their employees could create an ``uneven playing field'' between brokers and lenders. Creditors sometimes pay their employed loan officers on a basis similar to their payment of yield spread premiums to independent brokers. To the extent a loan originated through an employee exceeds the creditor's ``par'' rate, the creditor may realize a gain from selling the loan on the secondary market and it may share some of this gain with the employee. Such payments give employees an incentive to increase the interest rate."

"The Board does not propose, however, to restrict creditor payments to their own employees."

The Board admits that this puts brokers at a competitive disadvantage and that retail lenders will be able to price loans differently than mortgage brokers. Considering that mortgage brokers have lowered the cost of borrowing for consumers how will putting them at a competitive disadvantage help lower costs to consumers? What is important to consumers is not how much a mortgage broker makes on the transaction, but how much the consumer pays. This provision to require mortgage brokers to disclose their compensation prior to even taking an application is onerous to mortgage brokers, by the Board's own discussion creates an "uneven playing field," and doesn't help to lower costs to the consumer.

Thank you for your consideration

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