From: Freedom Financial, Joel Stein

Subject: Reg Z - Truth in Lending

Comments:

Date: Dec 19, 2009

Proposal: Regulation Z - Truth in Lending - Closed-end Mortgages
Document ID: R-1366
Document Version: 1
Release Date: 07/23/2009
Name: Joel Stein
Affiliation: Freedom Financial
Category of Affiliation:
Address:
City:
State:
Country:
Zip:
PostalCode:

Comments:

Gentlemen; My company is a mortgage banking company; however, from time-to-time we find it necessary and beneficial to our clients to broker a transaction to another lender. I write you in opposition to the proposal which proposes to regulate loan originator compensation. It appears that the Federal Reserve Board ("Fed") is concerned about the integrity of mortgage originators as it relates to the "steering" of consumers to loan products which may generate more income for the originator at the expense of the "best" loan for the consumer. Although this may have been a valid concern during the past decade leading up to the current housing crisis we find ourselves in, we must evaluate recent changes already enacted as well as the causes that brought about the possibility for originators to "steer" loans in the past decade. RECENT REGULATORY CHANGES 1. Secure and Fair Enforcement (SAFE) Mortgage Licensing Act The SAFE Act requires all originators of federally-related loans on 1-4 family residences to obtain an individual originator license. This individual originator license number, together with the company's originator license number must be placed on each loan application. State and Federal regulators will have an easier way to supervise the companies and individuals who are responsible for dealing with the public and guiding and advising consumers about their choices related to residential real estate financing. The Nationwide Mortgage Licensing System has been developed by two industry groups, the Conference of State Bank Supervisors and the American Association of Residential Mortgage Lenders. The system will accept and process license applications and renewal forms online. The system will help standardize licensing requirements across the nation. It should also make it easier for regulators to identify and punish fraudulent or unqualified lenders. 2. Real Estate Settlement Procedures Act (RESPA) Reform HUD recently reformed RESPA disclosures to more fully disclose to borrowers the compensation of mortgage originators. The compensation of mortgage originators (brokers) will be prominently displayed within the new Good Faith Estimate disclosure. In the past, originators had to disclose their full compensation; however, the borrower had to know exactly where to look on the Good Faith Estimate and final

Settlement Statement in order to determine an originator's total compensation. It is now prominently displayed in total at the top of the new Good Faith Estimate disclosure. YIELD SPREAD PREMIUM The proposed amendment to Regulation Z will require that a loan originator obtain a compensation agreement from a lender before any compensation can be paid to the loan originator from a source other than the borrower's funds. Specifically, the non-borrower source of compensation would be lender-paid sums that represent additional present value of a loan with an interest rate which is above the "par" rate. The present value of a loan with an interest rate which is above the "par" rate is known as a yield spread premium ("YSP"). Does the payment of YSP by a lender to a loan originator mean that the loan originator has "steered" the borrower into a more costly or otherwise inappropriate loan? Today, almost all lenders operating in the wholesale lending arena (those dealing with loan brokers) are capping loan originator compensation. Those caps include borrower-paid and lender-paid (YSP) compensation. Currently, most lenders are limiting total fees paid to a loan originator/broker to an amount not exceeding 3.5 to 4.0 percent of the loan amount, and this includes all points and fees. If the Fed were looking for a way to limit loan broker/originator compensation and to avoid "steering", it would be more effective and more beneficial to the consumer for the Fed to approach the rule change by capping loan originator compensation in this manner. It will give borrowers/consumers the choice of the most flexible terms and
combinations of terms available for their transaction. This benefits borrowers/consumers over-and-above the loan originator/broker. COMPENSATION AGREEMENTS Under the proposed amendment, loan originators/brokers would be required to have a compensation agreement with any lender that would be accepting loan applications on the basis of a direct payment from that lender in lieu of a payment to the loan originator/broker from the borrower. This would require a loan originator/broker to have separate compensation agreements with every lender that the broker wishes to receive lender-paid compensation (YSP). Based on the proposed amendment, these agreements would necessarily have a fixed payment amount from each different lender for different loan sizes, types, rates, terms, etc. An unscrupulous loan originator/broker will probably steer the borrower to the lender who pays the most YSP under their compensation agreement. Consumers will have no access ta loan originator/broker's compensation agreements. The loan originator/broker's various lenders will not have any knowledge of the agreements that the loan originator/broker has arranged with any other lenders. As a result, the only method of true enforcement will be private or public lawsuits. Lawsuit hungry attorneys will target loan originator/broker's that have ANY type of compensation agreement with any lender, regardless of whether the loan originator/broker accepts compensation from a lender under a compensation agreement. The argument can be made either way: (1) did the loan originator/broker steer the borrower to a loan that the borrower had to pay up-front fees for when they could have had a "better" deal under a compensation agreement, or (2) did the loan originator/broker steer the borrower to a loan because the compensation agreement under which they were paid was the most lucrative. By setting-up a system in this manner, the Fed will create a situation that opens even the most ethical of loan originator/brokers to frivolous lawsuits. Although some lenders advertise they can close a loan within a certain time frame or that they allow a certain credit score, it is my experience that some of these lenders are either exaggerating what they can do or are simply lying about it. If a loan originator chooses a different lender to send a transaction to due to knowledge about what a lender's history is (as opposed to what they say they can do), they can be accused of steering. If this becomes reality, the loan originator/broker's liability will skyrocket, and

this will drive people out of this business and lessen competition with banks and other mortgage providers. Less competition will ultimately drive up the final price of mortgage financing provided to the consumer, which is the opposite of what this proposed change desires. LENDERS MAY CHOOSE TO ELIMINATE BROKERED TRANSACTIONS Because of the possibility of lawsuits due to the INCREASED OPPORTUNITY for unscrupulous loan originator/brokers to steer business, the ultimate investors in loans as well as the funding lenders may find it less desirable to conduct business in this manner. These lawsuits will undoubtedly cost the investors and funding lenders money to either defend or to handle research and discovery requests. As stated above, if you lessen the numbers within the loan origination/broker community, you will drive up the final price of mortgage financing provided to the consumer, which is the opposite of what the proposed change desires. SUMMARY The Fed's approach is a very complex creation of agreements that lenders and loan originator/brokers must navigate in order to keep competition vibrant. If the Fed's approach becomes reality, the Fed will likely create a result that is the opposite of what they are attempting. The Fed should wait and allow the new RESPA reforms and the new SAFE Act reforms to have a chance to work. Both of these reforms are designed to make lending and mortgage
brokerage more transparent.