

Department of Financial Institutions  
Consumer Services Division  
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Thank you for the opportunity to provide further comments on the rulemaking regarding SHB 2770. As a Certified Financial Planner<sup>®</sup> practitioner, I am a practicing fiduciary. I have provided mortgage loan origination services as an adjunct to my financial planning business for the past 13 years and have wrestled with the issues of pricing mortgage loan origination services in a manner consistent with my fiduciary responsibility as a financial planner. I have reviewed the most recent versions of the draft disclosure document and the disclosure rules and offer the following comments for your consideration.

1. The draft disclosure statement and the draft disclosure rules define YSP to mean, “a payment to a broker by a lender for originating a loan at a higher interest rate.” This definition is not only technically wrong, but it defines YSP in a manner that is absolutely in contradiction with RESPA as clarified in HUD Statement of Policy 2001-1. RESPA, particularly as clarified by HUD Statement of Policy 2001-1, prohibits the payment of fees which are charged or paid solely on the basis of interest rate. One simply may not, under RESPA, state or suggest that the lender compensates the broker for originating a loan at a higher interest rate. One simply may not, under RESPA, pay or receive a fee that is based solely on the interest rate of the loan. Although prohibited, the fact that this has become the standard practice in the industry is the elephant in the room. This practice creates a huge conflict of interest leading to abusive practices and has contributed significantly to the mess so many homeowners find themselves in today. In addition, defining and treating YSP in this manner is absolutely inconsistent with fiduciary responsibility imposed on mortgage brokers by SB 6381.
2. The statement that the broker “*may*” be paid YSP “*up to \$\_\_\_\_\_*” is the equivalent of expressing YSP as a range – “*may be paid...up to \$\_\_\_\_\_*” has the same meaning as “*from \$0 to \$\_\_\_\_\_*”. SHB 2770 did not intend that YSP, or any other component of broker compensation, be expressed as a range of possible charges. The intent of SHB 2770, particularly in light of SB 6381 passed in the same session, is to provide the borrower with a clear, concise, and unambiguous statement of charges accruing to the broker for rendering services to the borrower. The draft disclosure fails on this point.
3. The statement that YSP “*should*” reduce other broker fees does not assist the borrower. The world is full of “*shoulds*”. The statement that YSP *should* reduce other charges is tantamount to saying that the payment of YSP “*may not*” reduce other charges. As a fiduciary, the broker has an obligation to justify his total fee, however paid, in terms of the service to the borrower’s best interests. If part of his fee is to be paid by way of YSP, that fact and the extent to which it reduces other fees is something that the fiduciary must make clear. Failure to provide clarity, particularly where such a strong conflict of interest exists, is contrary to the duty owed the borrower by the broker under his fiduciary responsibility.

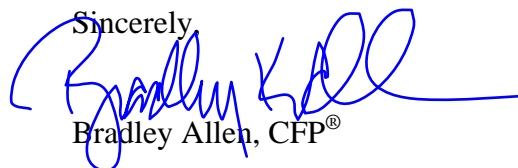
4. SB 6381, which took effect June 12, 2008, applies fiduciary responsibility to mortgage brokers in the state of Washington. Fiduciaries owe their clients clear and unambiguous explanation of the charges to be paid for the services to be provided. Fiduciaries have an obligation to eliminate conflicts of interest. Fiduciaries owe their clients an explanation of those conflicts of interest that cannot be eliminated and an explanation of how those conflicts will be managed to ensure that the services provided to the client serve the clients best interests. This cannot be accomplished through fragmented and poorly defined disclosures of fees to be charged for origination services.

As fiduciaries, brokers owe their clients a clear, simple, unambiguous explanation of the compensation that will accrue to the broker for providing services to the borrower. I suggest the following simple, clear, unambiguous statement: “I charge \$\_\_\_\_\_ for providing origination services to you.” Once the amount of the charge is disclosed and agreed to, the fiduciary may certainly explain that this fee is broken down into components such as “origination fee” and “processing fee”, and “broker fee”. And it is certainly consistent with fiduciary responsibility to advise the borrower that some or all of this entire fee can be paid by YSP if the borrower desires and agrees to a loan at a higher than par interest rate.

In summary, the proposed disclosure fails to give the borrower a clear picture of the total cost to him or of his options for paying this cost. The form provides no single disclosure of the total compensation to the broker. The cost disclosure is subdivided among less than clear components. The YSP is not equated to options that are or should be at the discretion of the borrower as a means of managing up front costs. Furthermore, the YSP is disclosed in a separate part of the form as though it is unrelated to the costs to the borrower – this is misleading. The proposed disclosure form does not do any more than the existing Good Faith Estimate to help the borrower understand what he is paying for the origination services nor does it help the borrower understand the options that are available to him to pay those costs, nor does it serve to eliminate or at least clarify conflicts of interest on the part of the broker. Fiduciaries simply may not conduct themselves in this manner and the draft form is inadequate as a disclosure format for fiduciaries.

Thank you again for the opportunity to comment on these rules. If you have any questions, please do not hesitate to contact me at (360)710-7557 or [bradleyallen@earthlink.net](mailto:bradleyallen@earthlink.net)

Sincerely,



Bradley Allen, CFP®