

SHB 2770 Rulemaking - "Disclosure Summary" Comments

Name: Jeffrey Lorsch

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Comments:

Re:

- A. DFI's Proposed Rule Making CR-102 Dated September 3,2008
- B. 208-600-200 Proposed Rules
- C. Disclosure Summary - Proposed Draft No. 6

Thank you for allowing me to make comments here today. Like you, I wish we were done with these rules and drafts; but we're not. I trust that after hearing and discussing my concerns you too will agree that these proposed rules and drafts should not become final.

My comments today will cover the following key points -

- A. Under Proposed Rules -
 - 1. Definitions, including YSP
 - 2. Disclosure and Calculation of YSP
 - 3. Inclusion of SB 6381 as it relates to "interests"
- B. Under Proposed Draft Disclosure Summaries -
 - 1. How fees are presented and calculated
 - 2. Prepayment penalty
 - 3. YSP
 - 4. The "After Speaking With..." clause
- C. WAMP's position with respect to YSP and the "After Speaking With..." clause
- D. Time permitting, I would also like to address a few housekeeping measures

Some of my comments may sound familiar as I've voiced them during previous hearings. Others will be new now that I've had the opportunity to -

- 1. Issue, analyze and obtain feedback on the proposed draft summary disclosure forms from various parties including customers and fellow mortgage professionals (brokers, bankers, lenders, originators and processors), and
- 2. Witness first hand the disparity of interpretations from lenders

With that, may I proceed?

A. 208-600-200 Proposed Rules

1. Under definitions, Item (2) (j) - "Yield spread premium" - It's been previously noted that a definition of YSP is not required under the act. Nonetheless, I understand and respect DFI's desire to include a definition in the rules and disclosures. However, mortgage brokers are not using the DFI proposed definition. Some because it is not a requirement of the act, but most because the definition is inaccurate. To have spent as much time as we have on these rules and disclosures and not have the largest and most applicable provider of mortgages use the draft definition would tell any observer that there still remains large disagreement and confusion between what the legislature enacted and how that is being interpreted and applied by us here today. (In recent years the mortgage broker community has originated between 50% and 70% of all mortgage loans nationwide.) To encourage full participation by all mortgage providers, I make the following request -

A. Either adopt the same language used by HUD, being "a payment made by a lender to a mortgage broker for goods and services performed not otherwise paid by the borrower," or

B. Eliminate the definition altogether.

C. (A third option which because it falls outside of the Proposed Rules will be presented later in my statements)

2. Under definitions, Item (2) (j) - "Yield spread premium" - How is the broker / loan originator to calculate YSP?

A. Best estimate -

1. Is it the best estimate of the gross compensation from a lender at closing?

2. Is it the best estimate of the net compensation (net after any costs paid or credits given by the mortgage broker) from a lender at closing?

B. Maximum -

1. Is it the maximum gross compensation from a lender at closing?

2. Is it the maximum net compensation (net after any costs paid or credits given by the mortgage broker) from a lender at closing?

C. SB 6381 - YSP versus SRP (Service Release Premiums)

1. How will SB 6381 affect what the mortgage broker must disclose, specifically with Sec 1. (1) (a) "A mortgage broker shall disclose any and all interests to the borrower including, but not limited to, interests that may lie with the lender that are used to facilitate a borrower's request."

- a. What is meant by "all interests?"
- b. Does that include SRP's?
- c. Does it apply only to the origination portion of the transaction (loan closing), or does it also include any secondary market compensation (loan delivery)?
- d. If it is to include any secondary market compensation, then does a correspondent lender which is licensed and operating as a mortgage broker who receives SRP need to disclose it to the borrower?
- e. What needs to occur should the SRP change after loan closing?
- f. Like comments A.4.i. and ii, above, best estimate, maximum, gross and net compensation.
- g. Clarification please -
 - i. This only affects parties operating under the Mortgage Broker Practices Act?
 - ii. This does not affect parties operating under the Consumer Loan Act?
 - iii. What happens if you are licensed under both acts?

2. SB 6381 goes on to read "A mortgage broker shall not accept, provide or charge any undisclosed compensation or realize any undisclosed remuneration that inures to the benefit of the mortgage broker on an expenditure made for the borrower."

- a. There are a number of interpretations that will apply depending upon how you apply the word "or." Is it saying anything more than mortgage brokers' cannot markup third party charges?

B. Disclosure Summary - Proposed Draft No. 6

1. Under the section headed "Originator/Broker/Discount Fees"

A. Please combine Loan Origination Fee and Broker Fee into one heading "Loan Originator / Broker Fee." This will eliminate unnecessary borrower confusion and gain simplification. Furthermore, given current HUD guidelines, even a mortgage broker offering a FHA and conventional loan would, as per the proposed draft, have to list their origination fees differently (as an origination fee on the FHA loan and as a mortgage broker fee on the conventional loan). Avoid the confusion and a consumer's misnomer that the mere presence of a broker fee makes the loan more expensive than what the consumer would be paying if obtained from a lender directly. Previous DFI draft/s had these as one line item.

B. To help assist the originator / broker complete and borrower understand the 'Other Fees" line, --

1. Please revert to a previous draft when it stated "Other Originator / Broker Fees." This will avoid preparer and consumer confusion as to the content of this line item. It further will bring to light any party saying they have a no point (no origination / broker fee) when for example they merely are disguising it as an extremely high processing, administrative or underwriting fee.

2. Guidance is required from DFI as to how to disclose when some or all closing costs are paid by the originator (lender or broker) at closing. Should the originator net their fees and credit?

2. Under the section headed "Other conditions of your loan"

A. Re: prepayment penalty: The current language may be confusing to the consumer and originator / broker.

1. All FHA loans have a prepayment penalty if closed (paid-off) before the end of a month. Therefore, do FHA loans all require a 'Yes?' Your guidance is requested. Recommendation to include in the rules - For purposes of the disclosure summary, on government loans unearned interest covering the period from loan payoff to the end of that month is not considered a prepayment penalty.

2. Just because the loan has a prepayment penalty clause, does not in and of itself cause the borrower to incur such penalty.

3. Prepayment penalty disclosures detailing the trigger points and timetables of a prepayment penalty are already required under current guidelines.

4. Accordingly, I propose the following language be used - "You may have to pay a penalty if you pay off your mortgage early."

B. Re: yield spread premium - The current language runs counter to previous guidance given mortgage brokers and originators by DFI and HUD, where a dollar range is acceptable. Absent of a range the maximum dollar amount should be stated. Accordingly, the statement should read as "Your broker may receive a "yield spread premium" of up to \$_____." Another alternative may be "Your broker may receive a "yield spread premium" not to exceed \$_____."

3. YSP definition - Please refer to the rules section above. I therefore request the following -

A. Either adopt the same language used by HUD, being "a payment made by a lender to a mortgage broker for goods and services performed not otherwise paid by the borrower," or

B. Eliminate the definition altogether.

C. (A third option which because it falls outside of the Proposed Rules will be presented later in my statements)

4. "After Speaking With..." clause - As this link enables the consumer to access the Washington State Housing Finance Commission's Premier Lenders, I request this link be removed. DFI is to be an impartial regulator and not director or referral source of lenders or brokers. This had previously been confirmed by an attorney at DFI.

C. WAMP's position with respect to YSP.

1. Absent of DFI's modification to the proposed drafts with respect to the (i) YSP definition and (ii) "After Speaking With..." clause, the Washington Association of Mortgage Professionals (formerly WAMB), will request DFI's acceptance of draft disclosure summaries to be used by our members that meet the act. The purpose of such request will be to obtain the much desired 'blessing' by DFI that the disclosure summary used by licensed third party originators adheres to the legislation enacted by the Washington state legislature pursuant to the Washington state task force on homeowner security. Though we would hope that the disclosure summary forms used by mortgage brokers (which in years past has accounted for up to 70% of all mortgage loans originated nationwide) would be the same as those used by other mortgage providers, we are unable to recommend or persuade our members to use the forms as presented thus far.

D. House Keeping -

1. CR-102 - Small Business Economic Impact Statement -

a. Until such time as loan origination software companies make templates available for use, implementation is a burden and ought to be so stated and considered.

2. 208-600-200 Proposed Rules

a. Under definitions, Item (2) (g) - Without understanding the reason for mentioning the term "default rate," I am unsure as to why this sentence is included.

b. Under definitions, Item (2) (h) (i) - Concerned as to how the loan originator, mortgage broker, banker or lender, will know borrower's intentions or what occurs if they change. Suggest guidelines be issued or the words "or intended to be constructed" be deleted.

c. Under when must I provide the disclosure summary, Item (6) (c) - Please include fax and email delivery as acceptable forms of providing the disclosure

d. Under what type of change in a material term triggers redisclosure, Item (7) (d) -

1. Suggest we remain consistent with the MBPA, WAC 208-660-430, (12) (b) (iii) and replace "five hundred dollars" with "seven hundred fifty dollars."

2. Suggest we remain consistent and include the words from item (7) (a) "from the most recent disclosure"

To summarize, I hope the above points covering -

- A. Under Proposed Rules -
 - 1. Definitions, including YSP
 - 2. Disclosure and Calculation of YSP
 - 3. Inclusion of SB 6381 as it relates to "interests"

- B. Under Proposed Draft Disclosure Summaries -
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- D. Housekeeping measures

demonstrate the need that there still is much to do with respect to the proposed rules and drafts. To reiterate, the proposed rules and disclosures should not be allowed to become final in their current forms.

Thank you and best regards,

Jeffrey Lorsch
Designated Broker and President
Evergreen State Mortgage