

SHB 2770 Rulemaking - "Disclosure Summary" Comments

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Received: July 02, 2008

Comments:

As the trade association representing Washington's credit unions, the Washington Credit Union League is pleased to have the opportunity to provide input on the Department of Financial Institution's on-going rulemaking process implementing rules relating to the residential mortgage loan disclosure summary required by SHB 2770.

Having attended the July 2nd, hearing it appears as if many of our concerns have already been addressed by the DFI. The model disclosure summary largely seems to convey complex information in a form that can be easily understood by consumers. However, in the interest of clarifying our concerns over the proposal (some of which appear to be under consideration for amendment by the DFI), I've summarized them below.

Proposed Rule

WAC 208-600-200(4)(a) – "Receipt of a loan application" is not defined by the proposed rule, and perhaps it should be. The mortgage loan process includes many different forms and elements and it can take a substantial period of time to complete the loan process. This could create some ambiguity over when a loan application has been received. For example, the DFI may want to define "receipt of a loan application" as receipt of enough information for the lender to make its underwriting decision.

WAC 208-600-200(4)(b) – This section requires re-disclosure of material loan terms to the borrowers within three days of a change. I'd like to see this clarified to require the re-disclosure of material changes that are adverse to the borrower.

Model Disclosure

"The highest interest rate you may have to pay is ___%" – It seems very worthwhile for a lender to disclose the highest interest rate that a borrower may have to pay on a loan (at times this should definitely serve as a red flag to the consumer-borrower). However, many lenders have a default rate associated with loans. This rate is typically much higher than the rate that could be charged under an adjustable rate mortgage. In the interest of giving the borrower an accurate portrayal of what they might be expected to pay on the loan, I'd like to see the DFI clarify that the "highest interest rate" to be disclosed on the form should exclude default rates.

An analogy to this can be found under Truth in Lending. Under Reg. Z, a "finance charge" includes interest, points, and fees that a borrower might be reasonably expected to encounter on a loan. "Finance charge" does not include charges the borrower could have avoided by paying their loan on time (late payment charges, over-limit charges, or default charges). 12 C.F.R. § 226.4(c)(2).

"Your loan is based on your monthly income of...it may cost you more money." – House Bill 2770 required the separate disclosure statement to include information on "whether there is a price added or premium charged because the loan is based on reduced documentation." Although the model disclosure tells the consumer that a reduced documentation loan may cost them additional money, the

model disclosure doesn't really tell the consumer whether they are actually paying more money for a low-doc loan. (Unfortunately, I don't believe I have the operational knowledge to be able to provide the DFI with an alternative that might prove both workable and more illustrative to consumers.)

The DFI may also want to use check boxes in this section, as it has in other sections of the disclosure, as I believe the current language "Your loan is ___ is NOT ___" could be confusing to a borrower.

Signature Line – I strongly urge the DFI to remove the signature line on the model disclosure form, for a number of reasons. The legislation implementing the disclosure statement does not mention the need to have the disclosure signed, having a signed disclosure statement would necessitate the addition of the disclosure to each borrower's loan file, and perhaps most importantly, having the borrower sign the disclosure—which often contains very preliminary numbers—may lead the borrower to rely on the numbers or believe they have reached an agreement with their lender based on the original numbers, which may not be the situation. Unfortunately, I believe these same problems exist if the borrower is asked to acknowledge, rather than sign the disclosure.

Typically a disclosure need not be signed. A signed document implies a meeting of the minds, a contract or agreement. The disclosure summary is simply a disclosure, not a contract between the borrower and the lender.

Finally, I do not believe that the removal of the signature line would be harmful in any way to the borrower. If litigation ensued over whether or not the borrower received the disclosure, the onus would fall upon the lender to prove that providing these disclosures are a part of its standard business procedures and that it has properly trained its staff to provide the disclosures.

The warning provided above the model disclosure statement's current signature line is a valuable one, however, it might be modified to say "IF YOU DO NOT UNDERSTAND THE INFORMATION ON THIS SUMMARY OR NEED HELP UNDERSTANDING IT, ASK THE ADVICE OF A FAMILY MEMBER OR OTHER TRUSTED ADVISOR OR CONTACT THE DEPARTMENT OF FINANCIAL INSTITUTIONS AT 1-877-894-HOME OR www.dfi.wa.gov/consumers/homeownership."

Thank you once again for the continued opportunity to provide input on this rulemaking. If any of these comments require further clarification, please don't hesitate to contact me.

Very truly yours,

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