Countrywide®

STANLEY D. MABBITT
EXECUTIVE VICE PRESIDENT AND
DEPUTY GENERAL COUNSEL

2555 W. CHANDLER BOULEVARD
C HANDLER, ARIZONA 85224
(480) 224-5825
(480) 224-6355 FAX
STANLEY_MABBITT@COUNTRYWIDE.COM

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VIA E-MAIL

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1217
Truth in Lending – Advance Notice of Proposed Rulemaking

Dear Ms. Johnson:

We appreciate the opportunity to respond to the Board's request for comment on the Advance Notice of Proposed Rulemaking ("ANPR") [1] to commence a review of the open-end provisions of Regulation Z,[2] which implements the Truth in Lending Act.[3]

Countrywide Home Loans, Inc. ("CHL") originates, purchases, securitizes, sells and services home loans. It is the primary subsidiary of Countrywide Financial Corporation ("CFC"), which provides mortgage banking and diversified financial services through its subsidiaries in domestic and international markets. Founded in 1969 and a member of the S&P 500 and Fortune 500, CFC is headquartered in Calabasas, California, and its family of companies has a workforce of more than 40,000 in over 600 offices across the country. Through its mortgage banking segment, CFC funded $317.8 billion in mortgage loans in 2004, of which $30.9 billion were home equity loans.

We recognize that the complexity of the Act and the Regulation make the review process upon which the Board has embarked exceedingly complicated, and we commend the Board and its staff on the effort that it expended to publish such a thorough and detailed ANPR. We also appreciate the balance reflected in the identification of the issues and potential solutions posited in the ANPR. We look forward to actively participating in the review process. Our comments on the ANPR are set forth below.

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[1] 69 Fed. Reg. 70925 (December 8, 2004).
[2] 12 C.F.R. Part 226 (2004) ("Regulation Z" or "Regulation").
[3] 15 U.S.C. § 1601 *et seq.* ("Act").

Q1: Feasibility and advisability of reviewing Regulation Z in stages.

As stated above, we recognize the difficulty of the task before the Board. Nonetheless, we are of the opinion that the review of the Regulation should not be done in stages. We engage in extensive residential property-secured lending through both open-end and closed-end transactions. In our experience, common issues frequently arise that require consistent treatment whether the transaction involves an open-end or a closed-end loan product. For example, the rules regarding the characterization of fees and charges as finance charges impact both open-end and closed-end real estate-secured credit transactions. Moreover, the rules in open-end credit regarding the characterization of fees or charges as "other charges" impact both unsecured credit and home-secured credit. Any effort by the Board to address the issues outlined in the ANPR regarding the characterization of fees will have an impact significantly beyond the unsecured, open-end credit transactions that are addressed in the first stage of the proposed review. Because there are so many issues that arise in the context of both open-end and closed-end credit, secured and unsecured transactions, we believe that reviewing the Regulation in stages, although seemingly less complicated, will add to the complexity and duration of the process and ultimately threatens the efficacy of the endeavor.

First, how does the Board intend to proceed in this "staged review" of the Regulation? It has indicated that a separate review will be initiated in 2005 on closed-end adjustable rate mortgages ("ARMs") together with open-end home equity lines of credit ("HELOCs"). In connection with that review, will the Board revisit the issues set forth in the current ANPR, such as issues relating to finance charges and other charges that are applicable to HELOCs but that are not addressed in this ANPR because of the limitation on its scope? Will the Board conduct the reviews as separate rule-writings? For example, does the Board intend to take comments on the current ANPR, develop and publish a proposal or proposals, implement regulatory changes based on public comments in this stage, and then publish an ANPR for ARMs and HELOCs? Or, will the review process for unsecured open-end credit be conducted simultaneously with the review on ARMs and HELOCs so that, at any one time, there may be proposals outstanding on different types of credit that are in different phases? We see serious drawbacks in either approach.

If the reviews are conducted successively and changes are adopted in one stage before moving to the next, there is a strong likelihood that consideration of the same or similar issues in a different context at a later time might argue for different results. Decisions may be made and changes may be implemented before full consideration is given to the possible impact upon other types of credit products affected. Upon reflection and consideration of different concerns, a modified or completely different result may be elicited. For example, as discussed in greater detail below, the Board states in the ANPR that a fee or charge that is neither a finance charge nor an other charge need not be disclosed initially.[4] That statement is incorrect in the context of certain fees imposed in connection with an open-end real estate-secured transaction. Newly promulgated changes based on comments limited to unsecured open-end credit transactions might require further revision or modification in light of comments received in response to a subsequent ANPR

[4] 69 Fed. Reg. 70930.

on HELOCs. It is clear in connection with HELOC disclosures that certain fees must be itemized and disclosed to exclude them from the finance charge, but the end result is that they are neither a finance charge nor an other charge.

On the other hand, the simultaneous review, in different rule-makings, of open-end unsecured provisions and ARM and HELOC provisions, has great potential for creating confusion, duplication of effort and may foster a lack of participation by those directly impacted. A multiplicity of proposals to amend a single regulation, the provisions of which are overlapping, imposes undue burden on the affected industry and diminishes the likelihood that there will be meaningful participation in any one particular effort. Creditors who initially reviewed the current ANPR who do not extend unsecured open-end credit may have assumed that they will not be affected by this stage of the review and may not participate in the future if proposals for revisions to the Regulation are issued as a result of this ANPR. It may come as a surprise to them that decisions are being made with respect to the definition of "finance charge," for example, which may affect home-secured open-end credit, not to mention secured and unsecured closed-end credit.

We believe that either of the foregoing approaches will lead to confusion, will ultimately be much more time consuming and lengthy, and could create enormous opportunities for oversights and missteps. Although the ANPR states that "the Board will consider the need for consistency across the regulation in proposing revisions," we believe that it is imperative that those who are directly affected by the revisions be provided the opportunity to point out where such consistency is necessary. They are, after all, more likely to have had experience in dealing first-hand with those issues. Reviewing the Regulation in stages impedes that process and deprives the Board of invaluable input from those who are in a better position to identify areas in which consistency is necessary and desirable.

We are of the opinion that the only way to effectively address consistency throughout the Regulation is to consider the Regulation as a whole and propose revisions to the entire Regulation for public comment at one time as was done when the Regulation was rewritten in connection with the amendments to the Act by the Truth in Lending Simplification and Reform Act of 1980.[5] That effort took over two years, and the two major proposals that were published in connection with the revision[6] generated 1,030 comments.[7] There were, of course, specific statutory changes by the Simplification Act that required implementation, but the revision to the Regulation went much farther than the statutory changes. The Board not only implemented the required changes but also reorganized the entire Regulation, making it much simpler to read and to apply. We do not by any means minimize the undertaking faced by the Board; however, it does not appear to us that the task at hand is as comprehensive as the rewrite of the Regulation accomplished by the Board in 1981. In this case, there are no new statutory changes that must be implemented; there are no formal and informal Board and staff interpretations that must be accounted for; and, a

[5] Title VI, Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221 94 Stat.132 (1980)("Simplification Act").
[6] See 45 Fed. Reg. 29702 (May 5, 1980); 45 Fed. Reg. 80648 (December 5, 1980); 46 Fed. Reg. 20848 (April 7, 1981).
[7] 46 Fed. Reg. 2048 (April 7, 1981).

wholesale reorganization of the Regulation is not contemplated. To be sure, there are complex issues that require thoughtful analysis and creative suggestions. We believe that the staged review of the Regulation, however, will needlessly complicate the process, create confusion due to the multiplicity of proposals and their interrelatedness and will ultimately prolong what the Board already contemplates is a years-long process. We strongly urge the Board to abandon the effort to go about the revision of Regulation Z on a piecemeal basis and, instead, address the revision of the Regulation as a whole.

Although we see no need to postpone the review of Regulation Z until further hearings are held under the Home Owner's Protection Act in 2006, we would suggest that the Board consider the postponement of the review until the Department of Housing and Urban Development ("HUD") has issued its revised proposal for regulatory changes.[8] If there is a substantial likelihood of success of such a HUD initiative in the short term, we would suggest that the Board consider postponing the regulatory review contemplated by the ANPR, rather than having to abandon the review process or greatly modify changes already adopted. We believe that multiple changes, especially occurring in short periods of time, place an undue and unwarranted regulatory burden on industry. If there is a real prospect for a reform of Truth in Lending, we urge the Board to consider postponing the regulatory review contemplated by the ANPR until such time as that reform is complete.

In light of the fact that CHL does not issue open-end credit that is not secured by real estate, our comments could theoretically end here because the remainder of the ANPR addresses the first stage of the review of the Regulation which focuses on the rules for open-end credit accounts that are not home-secured.. However, to underscore our prior points and to illustrate the interrelatedness of issues of unsecured and home-secured open-end credit, we address below several of the other questions posed by the Board that are applicable in real-estate secured plans as well as unsecured plans and which, we believe make a strong case for reviewed the Regulation as a whole.

FORMAT OF DISCLOSURES

To the extent that the Board considers general formatting issues raised in this section of the ANPR, those issues should be consistent for both unsecured and real-estate secured open-end lines of credit.

Q2. What formatting rules would enhance consumers' ability to notice and understand account opening disclosures?

While we understand the Board's general concerns about the effectiveness of both the initial and periodic open-end disclosures, we hope the Board will keep in mind the effort that was undertaken after the passage of the Simplification Act to eliminate strict formatting rules and to

[8] See 69 Fed. Reg. 70936.

rely instead on the general rule that disclosures delivered pursuant to the Act and Regulation must be "clear and conspicuous."

At the time of the issuance of the proposed revisions to Regulation Z to implement the Simplification Act, the Board observed that

> [I]t has become increasingly evident that [TILA] has imposed highly complex and technical requirements on creditors, produced disclosures that sometimes obscured the important information to consumers, and generated costly and burdensome litigation over technical interpretations of the regulation.
>
> The revised regulation addresses these concerns in its emphasis on disclosure of essential credit information in a straightforward manner, and *on reduction in the number of technical disclosure burdens placed on creditors.* The regulation's focus on simplified disclosure of material terms should benefit consumers by providing a more useful basis for credit decisions, and creditors by reducing the difficulty of compliance.[9]

The Board recognized that there was a perception that the Regulation dealt with "hypertechnical complications unrelated to any real consumer benefit" and may have hampered acceptance of the goals of Truth in Lending.[10] Part of the catalyst for a simplification of the requirements of the Act and Regulation was the fact that those hypertechnical complications had given rise to over 50 Board interpretations and 1,500 staff interpretations in the 10 years that the Act and Regulation had been in effect.[11] Moreover, the "resulting flood of litigation produced an apparently unending, and inconsistent, stream of judicial interpretations and reinterpretations of [the Act's] requirements."[12]

We believe that the format, required-terminology and type-size requirements that were jettisoned under the revision of the Regulation in 1981 should not be reintroduced.[13] Rather, we would urge the Board to be mindful of the objectives of the simplification effort as the Board embarks upon another major revision of the Regulation and to avoid a return to the pre-Simplification Act technicality and complexity. At that time the staff presented the revised Regulation to the Board for approval, the staff enunciated the following objectives:

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[9] 66 Fed. Reg. 20848 (April 7, 1981)(emphasis added).
[10] 45 Fed. Reg. 80648 (December 5, 1980)(emphasis added).

[11] Id. at 80649.
[12] RALPH J. ROHNER AND FRED H. MILLER, TRUTH IN LENDING 14 (Robert A. Cook, Alvin C. Harrell, Elizabeth Huber eds., 2000)(citing data by the Administrative Office of the U.S. Courts to the effect that more than 2,000 Truth-in-Lending and consumer fraud cases were filed annually in federal courts alone prior to 1981).
[13] Memorandum from Staff of Division of Consumer and Community Affairs to Board of Governors, Issuance of simplified Regulation Z (Truth in Lending), March 12, 1981.

> To reduce substantially – not just marginally – the burden of compliance;
>
> To slice through the snarls of litigation that have produced ever-shifting legal interpretations, constant forms revisions and uncertainties about compliance;
>
> To focus on the material disclosures and the dominant objectives – rather than some of the minor matters that have encrusted the regulation, irritated business, and generated litigation over technicalities;
>
> To reduce the symbolism of Regulation Z as an example of consumer protection gone awry, and thereby decrease antagonism toward consumer legislation generally.[14]

We believe that the reintroduction into the Regulation of hypertechnical formatting rules will only restart the cycle that we had hoped ended with the simplification effort. We have seen no evidence that the current rule, relying as it does on the "clear and conspicuous" standard, is not working effectively. To the contrary, the major concern with respect to disclosures still appears to be the quantity of compelled disclosures versus the amount of information that consumers can understand and utilize in any real or meaningful sense. It seems to us that "information overload" is still the greatest concern with respect to credit cost disclosures and a real impediment to consumer comprehension. In our view, the addition of "executive summaries" or additional "Schumer box"-type disclosures only serves to provide supplemental bulk to already lengthy disclosures that consumers are not likely to read, much less comprehend.

CONTENT OF DISCLOSURES

We are of the opinion that there is no part of the ANPR in which it is more clear that the issues raised affect all types of credit, secured and unsecured, open-end and closed-end, and that unmistakably the Regulation should be reviewed as a whole rather than in stages. The ANPR states that

> [i]f the fee is neither a finance charge nor an "other charge" (for example, returned check fees), [the Act] does not require that it be disclosed initially. If such a fee is charged to the consumer and billed to the account, the fee must be disclosed on the relevant periodic statement just as any other transaction item must be disclosed.[15]

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[14] Memorandum from Division of Consumer and Community Affairs to the Board of Governors 3 (March 12, 1981).
[15] 69 Fed. Reg. 70930.

The foregoing statement may be true with respect to open-end unsecured credit. The Board's statement is not correct, however, in the context of home-secured open-end credit. In such a transaction, any taxes or fees prescribed by law that are paid to a public official in connection with filing of the security instrument must be "itemized and disclosed" in order to be excluded from the finance charge pursuant to section 226.4(e) of the Regulation ("4(e) fees"). Thus, the 4(e) fees must be itemized and disclosed in the account agreement containing the initial disclosures required by section 226.6 of the Regulation, or they must be treated and disclosed as finance charges. The 4(e) fees are not, however, "other charges" pursuant to Comment 6(b)-2 of the Official Staff Commentary on Regulation Z.[16] The 4(e) fees, because they are assessed in connection with a realestate-secured open-end line of credit, fall into an undesignated category we'll call "other non-other charges" that not contemplated by the Regulation. On the one hand, they must be disclosed to be excluded from the finance charge, but they are not "significant" enough to be treated as "other charges."

We bring this to the attention of the Board not to argue for treatment of section 226.4(e) charges as "other charges," but rather to point out that the discussion of the characterization of fees and charges should not be limited to fees and charges imposed only in connection with unsecured open-end lines of credit. Limitation of the discussion of this issue to unsecured credit transactions necessarily restricts the information the Board will have to review and on which to base any determination. It also begs the question whether the issue will be addressed again when the review of the Regulation turns to HELOCs. The issue likely does not arise in the context of unsecured open-end credit since there are likely no 4(e) fees assessed in connection with that type of credit. The Board will presumably have to reopen the discussion and solicit additional comment in connection with a later stage involving HELOCs. In the worst case, it may have to consider whether any final action it has previously taken must be modified in light of comments received in a later ANPR or proposal. Thus, in order to make rules that are consistent and that will not require duplication, reexamination, or worse revision at a later date, the Board should address the issues relating to finance charges and other charges in the context of both unsecured and secured credit.

Q18. Has the [interpretation of what constitutes an other charge] been effective in furthering the purposes of the statute?

To answer this question effectively, we suggest that the Board should consider that there are many more instances in the context of home-secured open-end credit where the issue of the disclosure of such charges is a closer question and where the existing interpretation provided by the Commentary does not provide adequate guidance. For example, consider real estate taxes that are paid at the time of closing. The current Commentary describes "other charges" as those that are "significant" and "related" to the plan. (Comment 6(b)-1.) The Comment includes in the list of examples of other charges, "charges imposed in connection with real estate transactions such as title, appraisal, and credit-report fees (see section 226.4(c)(7))." Real estate taxes are not, of course, among the charges listed in section 226.4(c)(7). They are "significant," and they are

[16] 12 C.F.R. Part 226, Supp. I (2004) ("Commentary").

often required to be paid at closing and so, arguably, they are paid "in connection with the transaction." We believe, however, that what the Board had in mind with respect to "other charges" is closer to the way those charges were described in a February, 1976 letter in which the staff characterized such fees as "constitut[ing] an ***element of the credit plan*** so as to require its disclosure as an other charge under [226.6(b)]."[17] We believe that that phrase more precisely identifies the nature of an "other charge. The distinction is, of course, that the title, appraisal and credit report fees are all "charges" imposed for various components of the underwriting of the application and assessed either by the creditor or a third party engaged by the creditor to perform the service. Real estate taxes, on the other hand, are assessed by a taxing authority, and are due and payable independent of the credit transaction itself, although they may be paid at the time the transaction is closed. The same could be said of other types of fees such as homeowners' association dues or assessments. Clearly, they are not an element of the credit plan or a component of the underwriting process, but they may be viewed as being assessed in connection with the establishment of the plan.

Again, our point is that by limiting the scope of the review of the Regulation to unsecured lines of credit, decisions may be made regarding broad characterizations or classifications of fees and charges that will likely have to be reexamined when the focus turns to real estate-secured open-end credit and fees imposed in connection with those transactions are considered. The Board appears to acknowledge that this may be an issue in Q19 when it asks "What other issues should the Board consider as it addresses these questions? For instance, in classifying fees for open-end plans generally, do home equity lines of credit present unique issues?" We believe emphatically that they do and, for that reason, the review of the Regulation should not be conducted in stages.

Q31. Is it appropriate for the Board to consider whether Regulation Z should be amended to require . . . [p]eriodic statement disclosures about the effects of making only the minimum payment (such as, disclosing the amortization period for their actual account balance assuming that the consumer makes only the minimum payment . . .)?

It is not clear whether the Board contemplates that the concepts articulated in the context of unsecured open-end credit lines would likewise be applied to home-secured lines of credit. If it does, we believe that, in the consideration of these issues, the Board should take into account that there are distinct disclosure regimens in place in connection with such credit lines that would be duplicative of some of the additional disclosures the Board may contemplate. Under the Act and section 226.5b(d)(5)(iii) of the Regulation, for example, the creditor must provide certain disclosures regarding the payment terms of the plan and an example, based on a $10,000 outstanding balance and recent annual percentage rate, showing the minimum periodic payment, any balloon payment, and the time it would take to repay the $10,000 outstanding balance if the

[17] Letter from Jerauld C. Kluckman, Assistant Director, dated February 19, 1976 (emphasis added).

consumer makes only the minimum payment and obtains no additional extensions of credit. These disclosures are provided at the time an application is provided to the consumer.[18]

The Board originally issued a proposal to require additional early disclosures in connection with home secured open-end lines of credit in 1987.[19] At that time, the Board stated that it believed that

> consumers should receive disclosures about home equity lines at an earlier time in the credit process to facilitate consumer understanding and shopping for this type of credit. The same concerns that prompted early disclosures for closed-end ARMs – credit shopping and risk to the consumer – also support requiring early disclosures for home equity lines. . . . [T]he Board believes consumers should receive disclosures in a timely fashion to better understand the risks and complexities of a particular plan, as well to better shop among plans.[20]

In its proposal, the Board concluded that consumers should be provided with the early disclosures at the time the application form is provided or before a nonrefundable fee were paid by the consumer, whichever were earlier.[21] The Board's proposal was superceded by the Home Equity Loan Consumer Protection Act , Pub. L. No. 100-709 ("HELCPA"), which addressed many of the disclosure issues addressed by the Board's proposal but included the payment example requirement referenced above. *See* 15 U.S.C. § 1637a(a)(9).

Congress apparently determined that consumers should be made aware of the length of time it would take to pay off a home equity line of credit if the consumer made only minimum payments *before* the consumer entered into the transaction. It seems to serve little purpose to disclose that information to a consumer after the fact. If the Board adopted a change to the Regulation requiring such periodic disclosures in the context of a home secured line of credit, it would appear that the assumption is that the consumer either did not understand the disclosure the first time the information was delivered or that the consumer did not appreciate the implications of the disclosure at that time. In either event, the disclosure on the periodic statement of a HELOC would call into question the efficacy of the disclosure delivered with the application under section 226.5b. Any change to that requirement, however, would require legislative action in light of the amendments to the Act under HELCPA.

At the present time, the periodic statement requirements apply to all open-end accounts, secured and unsecured. We submit that whether additional periodic statement disclosures should be mandated for all open-end accounts or whether those requirements should be bifurcated based

[18] 12 C.F.R. § 226.5b(d)(b). In the event the application is received by telephone, through an intermediary agent or broker, or is an application contained in a magazine or other publication, the disclosures required under section 226.5b of the Regulation must be delivered or placed in the mail no later than three business days following receipt of the application.
[19] 52 Fed. Reg. 48702 (December 24, 1987).
[20] Id. at 48702, 48703.
[21] Id. at 48706.

upon the type of credit are questions that should be considered in light of other existing requirements applicable to open-end home secured credit. We are of the opinion that no changes to those requirements should be considered unless the necessity and impact of the changes is analyzed as to all types of open- end credit.

Again, we appreciate the opportunity to comment on the ANPR, and we hope that our comments to the Board are helpful. If the Board or staff have any questions about our comments, we would be happy to entertain them at any time.

Sincerely,

Stanley D. Mabbitt
Executive Vice President and
Deputy General Counsel

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