February 9, 2009

Jennifer J. Johnson,
Secretary, Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551

Re: Proposed Changes to Regulation Z (Truth in Lending) - Docket No. R–1340

Dear Ms. Johnson:

The American Financial Services Association ("AFSA") appreciates the opportunity to comment on the proposal to revise the disclosure requirements for mortgage loans under Regulation Z (Truth in Lending). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA has a broad membership, ranging from large international financial services firms to single office, independently owned consumer finance companies. The association represents financial services companies that hold a leadership position in their markets and conform to the highest standards of customer service and ethical business practices. AFSA has provided services to its members for more than 90 years. The association's officers, board, and staff are dedicated to continuing this legacy of commitment through the addition of new members and programs, and increasing the quality of existing services.

AFSA understands that the Federal Reserve Board ("Board") is constricted in its rulemaking ability by the Mortgage Disclosure Improvement Act of 2008 ("MDIA"). Nonetheless, AFSA offers several suggestions that would improve the effectiveness of the rule.

Definition of "Business Day" – § 226.2(a)(6)

The Board has proposed to use Regulation Z's general definition of "business day" in § 226.19(a)(1)(i) and its precise definition in § 226.19(a)(2). The primary difference between these two definitions is whether the creditor will consistently treat Saturday as a business day. In the general definition, Saturday counts as a business day only if the creditor's offices are open to the public for carrying on substantially all of its business functions. In the precise definition, creditors always treat Saturday as a business day.

AFSA believes that the Board should use the precise definition of "business day" in § 226.19(a)(1)(i) to include all calendar days except Sundays and specified federal legal public holidays.

Section 226.19(a)(1)(i) uses the term "business day" as a way to measure time for two purposes. First, this section will require the creditor to send the early disclosures to the consumer within three "business days" of receiving the consumer's application. Regulation Z currently follows this timing requirement for residential mortgage transactions. For residential mortgage transactions, Truth in Lending Act ("TILA") uses the general definition of "business day," which is the same timing requirement for the early Real Estate Settlement Procedures Act ("RESPA") disclosures.[1] AFSA members report that they generally mail both the early TILA disclosures for residential mortgage transactions and the early RESPA disclosures earlier than this required timeframe. For this reason, AFSA does not object if the Board wants to use either definition of "business day" for this requirement. However, § 226.19(a)(1)(i) also will add a completely new timing requirement that makes the creditor and consumer wait seven "business days" after the disclosures are mailed or delivered before loan consummation. The use of the general definition of "business day" for this requirement is troublesome.

Unlike most bank branches, finance company branches (which make up a large portion of the AFSA membership) have more flexible hours. Depending on location, some branches of a finance company may always be closed on Saturday, while others will always be open. During certain times or the year, or during certain promotions, some branches usually closed may be open on Saturday. This flexibility may lead to doubt as to whether a creditor should count Saturday for any particular transaction. AFSA urges the Board to eliminate any doubt with regard to compliance by adopting the precise definition for § 226.19(a)(1)(i), or at least for the second timing rule in § 226.19(a)(1)(i). We also note that the use of the more precise definition for the second timing provision in § 226.19(a)(1)(i) is consistent with the decision the Board made this summer to use the precise definition in § 226.19(a)(1)(ii) with regard to measuring when a creditor could assume that a consumer has received his or her early disclosures when they are mailed.

Do Not Require Three Business Day Waiting Period if the Initial APR Becomes Overstated – § 226.19(a)(2)

§ 226.19(a)(2) of the proposed rule could be construed as requiring a corrected disclosure and three business day waiting period not only if the annual percentage rate ("APR") is understated by more than the applicable tolerance, but also if it is overstated. We recommend that the three business day waiting period not be triggered by an overstatement of the APR.

Proposed § 226.19(a)(2) requires the corrected disclosure if the APR provided in the early disclosures "becomes inaccurate" under § 226.22. § 226.22(a)(2) and (a)(3) indicate that the APR is considered accurate if it is not "above or below" the actual APR by more

[1] The Board notes that it adopts the general definition for §226.19(a)(1), in part, to be consistent with the timing rules under RESPA for providing disclosures following the receipt of an application. However, given that the pending new RESPA rules will now define two different types of "application" – a "GFE Application" and a "Mortgage Application" – it is not certain that the proposed TILA rule would meet this objective. We also note that the new RESPA rule uses "calendar days," a precise definition, when measuring the time period over which a creditor may assume a consumer received mailed disclosures.

than the applicable tolerance. § 226.22(a)(4) and (a)(5) provide additional tolerances for mortgage loans, including where the APR is overstated. However, the additional tolerances for overstated APRs may be limited to situations where the overstatement of the APR is due to an overstatement of the finance charge.

The APR stated in the early disclosures may become inaccurate and overstated if lower rates and/or fees are negotiated by the consumer or are provided by the creditor. It would not be beneficial to consumers to impose the three business day waiting period and delay consummation because the APR decreases from the APR contained in the early disclosures.

When the APR is inaccurate due to an overstatement, instead of requiring a corrected disclosure three business days before to consummation, the regulation should permit the creditor to provide a final disclosure with an accurate APR at any time before consummation.

Consumer's Waiver of Waiting Period Before Consummation – § 226.19(a)(3)

AFSA asks that the Board consider making the proposed modification or waiver procedures more flexible. The Board has adopted a waiver rule similar to the rule that, theoretically, lets a consumer waive the rescission period. It has been the experience of AFSA members that they rarely, if ever accept such waivers due to the risk that a court will not identify the reason for the waiver as a "*bona fide* personal financial emergency." One way the Board could make the proposed procedures more flexible would be to increase the number of examples of a "bona fide personal emergency." There are several examples of bona fide personal finance emergencies that the Board could provide. Real examples from AFSA members include the following: (1) Consumer needed access to refinance funds to repair a roof when insurance dispute arose about cause of damage and refused coverage; (2) Consumer needed access to equity to travel out of state for advanced medical treatments unavailable in the consumer's home state and time was of the essence; (3) Consumer needed funds for heating and cooling contracts when an existing unit has failed; and (4) Consumer needed access to funds to pay for child's tuition expenses when student lender from whom they obtained a loan suddenly closed days before funding tuition to their child's college for the upcoming semester.

AFSA also requests that the Board give additional guidance to creditors on the modification or waiver procedures. If creditors do not have more detail, they will not be able to use the waivers because of fears of increased litigation.

Notice – § 226.19(a)(4)

AFSA believes that it would be helpful to have additional guidance regarding the format of the early disclosures. For example, the Board should revise footnote 38 to § 226.17(a)(1) to specify that the statement, "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application," may be made together with or separately from other required disclosures.

Because creditors have such a short time to comply with these additional disclosure requirements, AFSA asks that the Board consider providing examples in Appendix H of the disclosures that creditors could use or modifying model form H-13 or H-15 to include these disclosures. Because the MDIA stated that this disclosure should be provided "in conspicuous type size and format," we recommend that the Board clarify that this disclosure is subject to the requirements of § 226.17(a)(1) to make disclosures clearly and conspicuously, and that as provided in Comment 17(a)(1)-1, no minimum type size is required. Because many creditors use the same form for early disclosures as for final disclosures, it would help if the Board noted that it would be acceptable to have the statement on the final disclosures as well as the earlier ones.

Also, the phrase "this mortgage transaction" would more accurately represent the consummation of the loan process than "this agreement." Creditors will likely include this phrase on the early TILA disclosures, which creditors generally provide separately from other documents not part of any "agreement." Thus, AFSA believes that the Board should change the phrase to, "You are not required to complete this mortgage transaction merely because you have received these disclosures or signed a loan application." AFSA believes that consumers will understand this revised phrase more readily than the proposed language.[2]

Timing of Disclosures for Home Equity Lines of Credit

AFSA strongly believes that it is not necessary or appropriate to change the timing of home equity lines of credit ("HELOC") disclosures. The Board should not require transaction-specific disclosures. The cost of developing new disclosure systems would not outweigh the small benefit that consumers may obtain from them. AFSA members have different systems for HELOCs than closed-end lines of credit, and it would be difficult, expensive and time-consuming to develop a new disclosure system for HELOCs. Developing these disclosures at this time – when companies are trying to control expenses due to the difficult economy – would be particularly burdensome. By necessity, creditors would have to pass these costs on to the consumer. Because of the current credit crunch, it would harm consumers and the economy as a whole to raise the cost of credit.

Effective Date

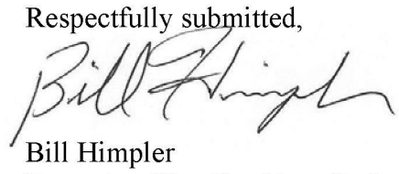
AFSA respectfully requests that the Board clarify that the amendments will be effective for all applications received on or after July 30, 2009 and will not apply to applications received by creditors before July 30, 2009. AFSA does not believe the rule as proposed addresses applications in process on July 30, 2009. To not specify that these amendments are effective for applications received on or after July 30, 2009 would require creditors to have to delay processing applications already pending prior to July 30, 2009 to provide

[2] AFSA notes that the proposed language mirrors the language required for the early Home Ownership Equity Protection Act ("HOEPA") or Section 32 disclosures. AFSA members do not generally make loans subject to HOEPA and therefore cannot comment on whether the similar language required by HOEPA has caused any customer confusion.

the disclosures (and in some instances to re-disclose) and start the seven business day waiting period, resulting in harm to consumers desiring to close mortgage transactions initiated prior to July 30, 2009.

AFSA appreciates the opportunity to comment on the proposed rule. Please feel free to contact me with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.

Respectfully submitted,



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