1303 J Street, Suite 600, Sacramento, CA 95814-2939 T: 916/438-4400 F: 916/441-5756

February 09, 2009

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

Re: Docket No. R-1340 (Regulation Z)

Dear Ms. Johnson:

The California Bankers Association ("CBA") is a non-profit organization established in 1891 that represents most of the FDIC-insured depository financial institutions in the state of California. CBA frequently provides comment letters on regulatory proposals that significantly affect banking. CBA understands that the Federal Reserve Board ("Board") is required under the Mortgage Disclosure and Improvement Act of 2008 ("MDIA"), amended, to issue implementing regulations, and we generally concur with the Board's proposal. CBA has reviewed the American Bankers Association's letter to the Board and concurs with its comments.

General Comments

Because of the mortgage crisis, the banking industry is facing a barrage of new regulations and restrictions, some helpful and some not. As in other states, the California state legislature, the Governor, and even local municipalities are introducing and seeking to enact a host of mortgage-related restrictions. We expect to see more from Congress, the Administration, and federal banking agencies. CBA urges the Board, as it carries out its own duties, to be mindful of the need to work closely with other agencies such as the Department of Housing and Urban Development to ensure that new regulatory burdens placed on the industry are minimized without compromising regulatory goals.

Where new rules affect or conflict with other rules administered by other agencies, banks rely on the Board and other agencies to coordinate. Disclosures applicable to mortgages are governed by the Truth in Lending Act and Regulation Z and also by the Real Estate Settlement Procedures Act (RESPA), the rules to which were recently amended by HUD. When one regulation is amended, the other is always affected. Any rule that is difficult to comply with because they are inconsistent are unduly burdensome and less likely to achieve their purpose. Almost without exception, any new or changed rule requires new programming, training, and other compliance costs. We look forward to working with the Board in these challenging times to help ensure that the costs and benefits of regulation are properly balanced.

Comments

Bona fide personal emergency. The intent of MDIA §2502(F)(i) is to give consumers the opportunity to waive the timing requirements for early disclosures if the consumer determines that the extension of credit is needed to meet a *bona fide* personal financial emergency. With such a provision that involves nebulous concepts such as "*bona fide*" and "personal financial emergency" it is vitally important that uncertainty is removed from any guidance in order to reduce conflict and potential litigation. Therefore, we ask that the proposed official staff commentary clarifies as much as possible that the consumer decides whether an emergency exists, and creditors are entitled to rely on the consumer's assertion. Lenders should not be in a position to have to review, or be expected to judge, whether an assertion meets the standard.

Moreover, we ask that the Board provide additional clarification that there will be a presumption that a lender has met this standard if it relies on the borrower's assertion in good faith. This would go far to help banks avoid frivolous legal challenges. Banks would be very reluctant to rely on a consumer's assertion if the lender, when challenged, is obligated to substantiate the actual existence of the emergency. The purpose of the provision is to insert flexibility in favor of the borrower, and this Congressional purpose would be destroyed if the wording of the rule hinders the availability of the waiver because of the fear of litigation.

Timing of disclosures. The proposed rule determines that disclosures must be timely made and are deemed to be received by the consumer three days after mailing. However, the Board does not address the timing disclosures provided by other means, such as in person and electronically. Disclosures furnished through means that are instantaneous should not be subject to the 3-day presumption. We ask that the Board consider adopting a specific presumption rule applicable to electronic disclosures, where the consumer will be deemed to receive the disclosure one day after delivery. Such a rule adds flexibility and is consistent with the intent of the MDIA.

Redisclosure requirements. CBA asks that the re-disclosure requirement in the event that the APR at consummation varies beyond allowable tolerances does not apply where the initial disclosure *overstates* the APR rather than understates it. In such instances, the lender should be required to accurately reflect the final APR on the closing documents, but the additional three-day waiting period should be waived as the consumer experiences no detriment.

CBA appreciates this opportunity to offer comments to the Board's proposed rule. Aside from the comments provided, we believe that the proposal is largely consistent with the MDIA. If you have any questions, please contact me.

Sincerely,

Leland Chan
General Counsel