



May 2, 2011

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

Re: Docket No. R-1406 / RIN No. 7100-AD 65

VIA ELECTRONIC MAIL: regs.comments@federalreserve.gov

Dear Ms. Johnson,

The Michigan Credit Union League (MCUL) appreciates the opportunity to comment on the Federal Reserve Board's (the Board's) proposed regulation to implement the mortgage escrow account requirements of Truth in Lending Act (TILA) as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). MCUL is a statewide trade association representing 95% of the credit unions located in Michigan.

MCUL understands that the proposed changes requiring escrow accounts for "higher-priced mortgage loans," as well as the disclosure requirements for the escrow accounts, are mandated by the Dodd-Frank Act, and that the opportunity for significant change is unlikely. However, MCUL urges the Board to take the points addressed in this letter into serious consideration when deliberating the passage of a final rule.

Discussion

Certain Transactions Secured by Real Property or Dwelling

For a closed-end transaction secured by a first-lien on real property or a dwelling, the proposed rule would require creditors to disclose the information about escrow accounts when an escrow account is and is not established in connection with the consummation for transactions secured by a first lien (regardless of whether the property is a principal residence). Such a definition would include unimproved land, mobile homes, boats and trailers.

MCUL does not understand the need for an escrow account for boats, trailers and mobile homes, as loans for these items are generally much less than, for example, jumbo mortgage loans. Given the costs associated with opening and maintaining an escrow account, having to do so, detracts from the benefit of offering them. The end result may likely be less credit options for consumers.

Waiting Period for Disclosures

The proposed rule would require creditors to provide the escrow disclosures regarding the establishment or non-establishment of an escrow account, as applicable, so that the consumer

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receives them no later than three (3) business days prior to consummation. MCUL believes this requirement may serve to delay the loan closing unnecessarily, and that the waiver of this notice requiring a “bona fide personal financial emergency” sets too high of a standard.

In the alternative, MCUL believes that consumers should be given the option at the outset to opt out of an escrow account, based on the type and amount of the loan, as well as certain credit criteria. Many consumers choose to deposit funds dedicated to paying property taxes and homeowners insurance into an interest-bearing account devoted to that purpose. Those who have a track record of strong credit performance and the financial ability to repay the loan to which they have applied should not be forced into the alternative of having to place these funds in an escrow account, or having to delay a loan consummation in order to be provided unnecessary disclosures.

MCUL also believes this rationale applies to the required three (3) day waiting period for the escrow cancellation notice.

Exemptions

The proposed rule would provide that the escrow requirement would not apply to a higher-priced mortgage loan extended by a creditor that makes most of its first lien higher-priced mortgage loans in counties designated by the FRB as “rural or underserved,” together, with its affiliates, originates and retains the servicing rights to 100 or fewer first-lien mortgage loans during either of the preceding two calendar years, and together, with its affiliates, does not escrow for any mortgage loan it services.

Underserved Areas

MCUL believes that the proposed definition of “underserved” (i.e. counties where only one creditor makes five or more mortgages a year) is too narrowly tailored and should be expanded to include areas determined to be “underserved” by other federal financial institution regulators, which will avoid the negative consequence of having multiple definitions of the same word. Specifically, MCUL urges the Board to expand the exemption’s definition of “underserved” to mirror that of National Credit Union Administration Board (NCUA Board) pursuant to 12 U.S.C. §1759(c)(2), as well as areas served by institutions under the U.S. Department of the Treasury’s Community Development Financial Institutions Fund (CDFI Fund) program. Undoubtedly, some counties are objectively “underserved” even when two or more financial institutions each originate five or more mortgages per year.

Rural Areas

The proposed definition of “rural” would be those areas most likely to have only limited sources of mortgage credit, based on the “urban influence codes” maintained by the Economic Research Service (ERS) of the United States Department of Agriculture.

Rather than base the term “rural” on various codes, MCUL urges the Board to expand the definition to include areas determined to be “rural” by other federal financial institution regulators. Specifically, the NCUA Board has recently re-defined the term “rural” in its amended

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Chartering and Field of Membership Manual for Federal Credit Unions (RIN 3133-AD65) as follows:

“Rural District—

- The district has well-defined, contiguous geographic boundaries;
- More than 50% of the district’s population resides in census blocks or other geographic areas that are designated as rural by the United States Census Bureau; and
- The total population of the district does not exceed 200,000 people; *or*
- The district has well-defined, contiguous geographic boundaries;
- The district does not have a population density in excess of 100 people per square mile; and
- The total population of the district does not exceed 200,000 people.”

Originating and Retaining the Servicing Rights to 100 or Fewer First-Lien Mortgages During Either of the Preceding Two Calendar Years

Given that unimproved land, mobile homes, boats and trailers would be included in this 100 or fewer first-lien mortgages during a two-year look-back period, this exemption provision will have the effect of limiting access to mortgage credit, not only in otherwise objectively “underserved” and “rural areas,” but to consumers in general, as lenders may not feel it would be worth the costs associated with having to establish escrow accounts.

MCUL urges the Board to increase the proposed exemption’s 100 mortgages during either of the preceding two calendar year limitation to at least 200 mortgages a year.

Additional Exemptions

MCUL strongly urges the Board to consider additional exemptions for the required establishment of escrow accounts.

First, as previously stated herein, consumers who have a track record of strong credit performance and the financial ability to repay the loan to which they have applied should be given the option to forgo an escrow account without incurring a delay in a loan’s consummation.

Second, MCUL believes that there should be an exception for financial institutions that hold mortgages in their respective portfolios. Many small credit unions operating in underserved and rural areas that hold their mortgages in portfolio do not offer escrow accounts, and do not have the staff resources necessary to service mortgage escrow accounts. These credit unions that make mortgages held in portfolio (as opposed to selling them on the secondary market) are acting in their own best interests to ensure that their respective members are able to afford the mortgage payment, in addition to the taxes and insurance, as the credit unions would be directly exposed to any loss on the mortgage for the duration of the loan.

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Third, escrow accounts should not be required for unimproved land, mobile homes, boats and trailers. As stated previously herein, the costs associated with establishing and maintaining escrow accounts will be too burdensome. As a result, credit options for consumers will be increasingly limited. In the event that the proposed rule is finalized as written (to include these types of "real property" and "dwellings"), MCUL believes that escrow accounts should only be required for loans involving these types of collateral that are over a certain dollar amount. For example, establishing and maintaining an escrow account for a \$25,000 boat loan does not make financial sense for a credit union or a consumer.

Evasion

The proposed rule would provide that, in connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit, a creditor could not structure a home-secured loan as an open-end plan to evade the requirements of the escrow requirements for higher-priced mortgage loans.

MCUL is concerned that many credit unions that offer home equity lines of credit will be deemed to be attempting to evade the requirements of this rule by offering these products, and believes this rule should in no way discourage financial institutions from offering open-end credit secured by a consumer's principal dwelling.

Conclusion

Overall, MCUL believes this rule will have the negative effect of increasing costs, reducing credit availability, discouraging some consumers from engaging in perhaps more responsible fiscal management by not establishing an escrow account, and robbing other consumers (i.e., those with "higher-priced mortgage loans") of their individual choice.

MCUL appreciates the opportunity to provide comment on this proposed rule.

Sincerely,



Michael J. DeFors
VP Regulatory Affairs