

From: Lester W. Firstenberger

Subject: Truth in Lending

Date: Mar 29, 2005

Proposal: Regulation Z - Truth In Lending
Document ID: R-1217
Press Release Date: 12/03/2004
Name: Lester W Firstenberger
Affiliation: Clayton Services, Inc.
Category of Affiliation: Commercial
Address1: 2 Corporate Drive
Address2:
City: Shelton
State: CT
Country: UNITED STATES
Country Code: 840
Zip: 06484
PostalCode: n/a

Comments:

@@@Lester Wm. Firstenberger

Counsel

Inc

Chief Regulatory

Clayton Services,

2 Corporate Drive
Shelton, CT 06484

28 March 2005

Board of Governors of the Federal Reserve System
20th and C Streets, N.W.
Washington, D.C.

Dear Governors:

The Clayton Group is the premier provider of mortgage loan due diligence, compliance consulting, loan portfolio information, and analysis and support services in the United States. To date, the firm has supported over 60,000 secondary market mortgage portfolio transactions representing over \$1.5 trillion in principal value for the top fifty investment banks in the world. Other clients include the top one hundred mortgage loan originators in the US, banks and thrifts, insurance companies, rating agencies, mortgage insurance companies and bond insurers. Clayton will evaluate over one million loan files this year alone and is considered the compliance standard for Wall Street and large mortgage originators.

In light of Clayton's position in the mortgage finance chain and the importance to the American economy of an efficient mortgage market, it is in Clayton's and the primary and secondary market participant's interest that the highest degree of clarity be provided in the regulation of that market.

Q 1. This comment focuses on the scope and direction of the review of Regulation Z and is critical of it. Clayton believes that the review should:

- A. Address Home Equity Lines of Credit (HELOCs);
- B. Review larger segments of the regulation at one time and in a more fundamental way, and
- C. Consider how and when the implementation of the product of the review will occur.

HELOCS:

HELOCs represent the most rapidly growing and changing market encompassed by the regulation. The size and importance of the HELOC market can not be overstated and is the product of several market and regulatory conditions. As many may recall, the original Truth in Lending Act required a three-day right to rescind each advance on HELOCs. This made such plans very impractical and virtually unworkable and consequently inhibited their development. This requirement was eliminated in 1980 by the Truth in Lending Simplification and Reform Act, and the result was freeing up enormous amounts of equity people had in their homes. The market has seen the maturation of the HELOC consumer to include all home owning consumers including subprime borrowers. In the past five years, the secondary market has borne witness to an enormous increase in liquidity, size and sophistication. The securitization of HELOC loans coupled with rising real estate values and more recently, historically low interest rates, has resulted in an increase in 2004 home equity lending of 62.5% to almost \$80 billion.

Not only have HELOCs grown in prevalence, but also the uses to which they are put have expanded. This has given rise to a multitude of new questions. For example, the wide spread use of HELOCs to purchase real estate give rise to numerous questions regarding the right to rescind transactions. A wrong step here would have a significant negative impact on the securitization funding process.

Another significant concern is that HELOCs are offered not only by federally regulated depository institutions but also by a multitude of large and small state regulated lenders who need as much direction as possible. By comparison, the top ten credit card issuers have 93% of the credit card market* and count among their ranks the most sophisticated management and counsel in the country.

SCOPE OF THE REVIEW:

The Board has apparently has determined it is necessary to review the regulation in pieces. Anytime this is done, the threat of unintended consequences from unforeseen ramifications of any given policy decision is present and this is of particular concern in this instance. Reviewing only unsecured open-end credit, mainly credit cards, is not only too narrow an approach, but also it focuses on the wrong topic.

A credit card is merely an access device. It provides some measure of identification of the holder and contains information that assists in accomplishing the transaction. The Board takes note of this in Q44 where it requests information on developments of accounts accessed only by numbers rather than by a credit card. Similarly, the Board requests comments on convenience checks used to access a credit card account. These requests emphasize the lesser importance of the access device and should lead the Board to direct its attention to more fundamental aspects of the regulation and a better demarcation line from which to begin its review.

The first and most obvious problem arises from the exclusion of HELOCs accessed by a credit card. Are these lines to be governed by different rules? Obviously not. But this illustrates the difficulty of taking too narrow a slice.

Another example is the approach to the treatment of finance charge. Q19 of the ANPR asks if HELOCs are different in this respect. In fact, the questions regarding HELOCs are more like those arising in other real estate secured transactions.

Clayton recommends that the basic building blocks of the regulation be reviewed as they relate to the entire regulation. As noted in the ANPR, this has not been done since 1981. Finance Charge should be reviewed for HELOCs due to the unique treatment afforded them in the HELOC context. This is where most of the difficulties arise. A comprehensive review could result in a consistent theory, principles and guidelines that would give creditors greater certainty in classifying finance and other charges in the future.

In summation as to the review, Clayton strongly recommends that open-end credit be reviewed in its entirety. The access device and type of security are important and have distinctive legal ramifications, but these aspects should not be considered determinative. They often overlap and disparate treatment creates confusion and inadvertent error, even among the most sophisticated HELOC originator. In order to achieve a complete and integrated result, all forms of open-end credit should be reviewed simultaneously.

TIMING:

If the Board proceeds with unsecured open-end credit as it now proposes in the ANPR, time will be needed to analyze the comments and draft a proposal. Presumably this would be followed by another comment period. What would come next? A final amendment? Another ANPR on another segment of the regulation? The HELOC market is growing too quickly for the Board to segment the Regulatory review in the manner proposed.

The ANPR indicates the Board plans to review:

- Predatory mortgage lending;
- Closed-end mortgage lending; and
- Home-equity lines of credit and adjustable-rate mortgage loans.

These clearly all need to be reviewed but not seriatim. They should be reviewed as parts of a comprehensive review of the entire regulation. Otherwise, this project will be years in completion and implementation - hardly a desirable result from a regulatory, compliance or efficient market viewpoint.

Clayton appreciates this opportunity to submit its views.

Very truly yours,

Lester Wm. Firstenberger
Chief Regulatory Counsel

*Richard D. Fairbank, CEO of Capital One. Quoted in the Washington Post March 7, 2005

IP:

65.175.185.113

User Agent:
Windows NT 5.1; SV1; (R1 1.3))

Mozilla/4.0 (compatible; MSIE 6.0;