



April 8, 2008

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.,
Washington, DC 20551
regs.comments@federalreserve.gov
Docket No. R-1305

Re: Truth in Lending Act and Home Ownership and Equity Protection Act Proposed Rule, Docket No. R-1305.

Dear Ms. Johnson:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the proposed rule regarding amendments to Regulation Z, which implements the Truth and Lending Act (TILA) and Home Ownership and Equity Protection Act (HOEPA). Regulation Z requires financial institutions, among other things, to provide disclosures to consumers and prohibits certain acts or practices in connection with certain credit secured by a consumer's principal dwelling.

The Board of Governors of the Federal Reserve System (FRB) has proposed amendments to current Regulation Z requirements in an attempt to further protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices, while preserving responsible lending and sustainable homeownership. The proposed amendments include: (1) additional requirements for "higher-priced" mortgage loans; (2) early consumer disclosures for all home-secured, closed-end loans; and (3) new and revised advertising requirements intended to ensure that advertisements for mortgage loans provide accurate and balanced information and do not contain misleading or deceptive representations. To assist FRB in implementing its proposal, WBA offers the following comments on select amendments.

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Summary

Pursuant to TILA, Regulation Z currently requires financial institutions to provide consumers with disclosures regarding the loan transaction for which they have applied. Besides requiring certain consumer disclosures, Regulation Z also prescribes the timing of when such disclosures must be given and which disclosures must appear in oral and written advertisements. In 1994, HOEPA was enacted which resulted in the revision of Regulation Z to incorporate additional HOEPA specific pre-closing disclosures and other substantive restrictions on particularly high-cost refinancings and home equity loans with rates or fees above a certain percentage or amount. These restrictions include limitations on prepayment penalties and "balloon payment" loans, prohibition of negative amortization and of engaging in a pattern or practice of lending based on the collateral without regard to repayment ability.

Originally, a loan would be covered by HOEPA if the APR exceeded by more than ten (10) percentage points the rate for Treasury securities with a comparable maturity. This original requirement was then broadened in December 2001 when FRB lowered the rate-based trigger for first lien loans to eight (8) percentage points and included in the fee-based trigger premiums paid at closing for optional credit insurance and other debt protection products. Now FRB has proposed to create a new category of "higher-priced mortgages," as more fully discussed later. If finalized, financial institutions would be prohibited from making an individual higher-priced mortgage loan without: verifying the consumer assets; requiring the establishment of an escrow account for taxes and insurance; and prohibiting a prepayment penalty, except under certain conditions.

More recently FRB has issued proposals which, if finalized, would amend Regulation Z further by: requiring new disclosures found within periodic statements for open-end (revolving) credit and within credit card applications and solicitations relating to changes brought by the Bankruptcy Abuse Prevention and Consumer Protection Act (Docket No. R-1217); and extensively revising the format and content of disclosures required for open-end (revolving) credit that is not home-secured (Docket No. R-1286). In addition, FRB (together with other banking regulatory agencies) has issued not only a Statement on Subprime Mortgage Lending but also four new illustrations intended to assist financial institutions in providing further information to consumers regarding the impact of selecting an adjustable rate mortgage or a loan product with a unique repayment structure. FRB claims the need for all of the proposed revisions, new disclosures, and illustrations is driven by the concern that consumers are not aware of the impact of their loan product selections due to alleged deceptive tactics, inaccurate advertising and incomplete disclosure processes by those in the mortgage lending industry. FRB believes this has resulted in the current unsettled mortgage market condition.

WBA shares FRB's concerns that consumers need be given accurate, thorough and timely disclosures regarding the loan product applied for, and believes traditional financial institutions go to great lengths to ensure consumers receive such disclosures. These institutions are not the culprits of the current mortgage debacle. WBA generally supports FRB's and the other federal banking agencies' efforts to review and revise consumer disclosures when it has been found such revisions are meaningful and not duplicative, and acknowledges there may be instances when revisions are necessary. However, we believe that until all sectors of the mortgage lending industry are required to comply with existing federal requirements, no amount of new disclosures, illustrations or broadening of loans subject to consumer disclosure requirements will solve the problem. What would help is the establishment of an enforcement mechanism similar to the system for traditional financial institutions which would oversee non-bank mortgage lenders. WBA believes the until this gap is closed and all lenders are required to comply with existing consumer disclosure requirements, opportunistic scams by those currently unregulated or unsupervised will continue.

Additionally, WBA is concerned this proposal, like others recently issued, merely duplicates existing consumer disclosures and adds costs and further regulatory burden to financial institutions. Requiring financial institutions to disclose the same information repeatedly is not an effective solution and would cause confusion. WBA is frustrated with proposals which require heavily regulated financial institutions to disclose the same information (but in a different format) from other regulations, and recommends FRB work very closely with other agencies when proposing revisions to consumer disclosures to ensure they are meaningful rather than duplicative and confusing. WBA understands a consumer test is planned focusing on disclosures and suggests that until such testing is complete and the results thoroughly reviewed, the proposed revisions should be tabled. This will prevent financial institutions from duplicating efforts and costs that would otherwise result from development and implementation of processes, procedures, and disclosures under this proposal, and then later revising such provisions based upon the results of the test.

Proposal

Higher-Priced Mortgage Loan Definition

FRB has proposed to extend certain consumer protections to a new subset of consumer residential mortgage loans referred to as "higher-priced mortgage loans." The term would be defined as consumer credit transactions secured by the consumer's principal dwelling for which the APR on the loan exceeds the yield on comparable Treasury securities by at least three (3) percentage points for first-lien loans, or five (5) percentage points for subordinate lien loans. The

proposed definition would include home purchase loans, as well as refinancings of mortgage loans and home equity loans. The proposed definition would exclude home equity lines of credit, reverse mortgages, construction-only loans and bridge loans.

Loans that meet the definition of “higher-priced mortgage loan” would be subject to restrictions and requirements in proposed new section 226.35(b) concerning repayment ability, income verification, prepayment penalties, escrows, and evasion, except that subordinate lien higher-priced mortgage loans would not be subject to the escrow provision. The proposed rule would also: (1) prohibit creditors from engaging in a pattern or practice of extending credit without regard to the borrower’s ability to repay from sources other than the collateral itself; (2) require creditors to verify income and assets they rely upon in making loans; (3) prohibit prepayment penalties unless certain conditions are met; and (4) require creditors to establish escrow accounts for taxes and insurance, but permit creditors to allow borrowers to opt-out of escrows twelve months after loan consummation. In addition, the proposal would prohibit creditors from structuring closed-end mortgage loans as open-end lines of credit for the purpose of evading the proposed rules.

WBA is concerned that the proposed definition of “higher-priced mortgage loan” is too broad and will impact a much larger category of applicants than those within the subprime market that FRB has repeatedly stated is the reason for such proposal. FRB acknowledges within the proposal that the definition has been structured in such a fashion to be broad enough to touch on some applicants otherwise on the fringe of the subprime market category; however, WBA believes that this overly broad definition will undoubtedly have a chilling affect on many traditional financial institutions’ willingness or ability to extend credit to otherwise creditworthy borrowers. This would result in either higher costs to consumers or limited product choices. WBA believes the oppressive and redundant proposed disclosures that will be triggered by the proposed definition could also result in fewer loan requests or a run by consumers to find the easiest, less paper intensive solution to getting their loan transaction approved, despite deceptive and unfair lending schemes to entice the consumer—the very danger FRB was hoping the proposal would diminish.

WBA does not believe traditional financial institutions have been acting in a predatory manner or engaging in bad lending practices. Nor do we believe that such institutions are the culprit behind the current lending conditions. WBA renews its prior comment that until regulatory agencies level the playing field requiring all mortgage lenders to be governed by the same requirements, any additional or duplicative disclosure requirements will not resolve the root of the problem—that unregulated lenders are still permitted to conduct unsafe, deceptive lending practices without ramifications. WBA believes that the problem is solved not by a broader definition or additional disclosures, but

instead by creating an enforcement mechanism that will impose current regulatory requirements on non-bank mortgage lenders.

Proposal to Give Consumer Disclosures Early

FRB has proposed that transaction-specific disclosures be delivered to the consumer early enough for use while shopping for mortgage loans. The proposed early disclosures would include the APR and payment schedule for *all* home-secured, closed-end loans. These disclosures would have to be provided to the consumer no later than three days after application, and before the consumer pays any fee except a reasonable fee for the originator's review of the consumer's credit history.

FRB further rationalized that the need for the proposed changes stems from subprime mortgage loans and loosened underwriting standards. Subprime mortgage loans are made to borrowers who are perceived to have high credit risk. In addition, FRB believes that the rising delinquencies have been caused largely by a combination of a decline in house price appreciation—and in some areas slower economic growth—and a loosening of underwriting standards.

WBA vehemently opposes FRB's proposal to broaden early disclosure requirements to all home-secured, closed-end loan transactions. WBA adamantly believes financial institutions clearly discuss with their consumers all of the lending options when the consumer applies for an extension of credit. Relationships between consumers and their local financial institution's lenders are not transactions which are conducted at arms' length; rather, WBA believes traditional financial institutions work extremely hard to ensure consumers have the right loan product for their needs and can remain in their homes long-term. In addition, WBA believes financial institutions already have underwriting procedures which accurately review a consumer's ability to repay his/her outstanding loan obligations. WBA strongly believes that the broadening of early disclosure requirements to all home-secured, closed-end loan transactions extensively increases the cost of such loan transactions and places heightened regulatory burdens upon financial institutions. Such costs and burdens will surely be passed on to consumers.

WBA is very frustrated that as a result of unregulated non-bank mortgage lending activities, traditional financial institutions may now be saddled with further requirements and costs while those unregulated are permitted to remain unaffected. WBA repeats its prior comment that until the regulatory enforcement playing field is leveled for all those conducting mortgage lending, the root problem will not be solved.

Advertising

FRB has proposed that advertisements for both open-end and closed-end mortgage loans provide accurate and balanced information, in a clear and conspicuous manner, about rates, monthly payments, and other loan features. FRB has proposed a prohibition on the following seven deceptive or misleading practices in advertisements for closed-end mortgage loans: (1) advertising "fixed" rates or payments for loans whose rates or payments can vary without adequately disclosing that the interest rate or payments amounts are "fixed" only for a limited period of time, rather than for the full term of the loan; (2) comparing an actual or hypothetical consumer's current rate or payment obligations and the rates or payments that would apply if the consumer obtained the advertised product, unless the advertisement states the rates or payments that will apply over the full term of the loan; (3) advertisements that characterize the products offered as "government loan programs," "government-supported loans," or otherwise endorsed or sponsored by a federal or state government entity even though the advertised products are not government-supported or –sponsored loans; (4) advertisements, such as solicitation letters, that display the name of the consumer's current mortgage lender, unless the advertisement also prominently discloses that the advertisement is from a mortgage lender not affiliated with the consumer's current lender; (5) advertising claims of debt elimination if the product advertised would merely replace one debt obligation with another; (6) advertisements that create a false impression that the mortgage broker or lender has a fiduciary relationship with the consumer; and (7) foreign-language advertisements in which certain information, such as a low introductory "teaser rate", is provided in a foreign language, while required disclosures are provided only in English.

In addition, FRB has proposed that oral advertisements, such as by radio or television, must provide disclosures at a speed and volume sufficient for a consumer to hear and comprehend them. In this context, FRB states that "comprehend" means that the disclosures must be intelligible to consumers. FRB has also proposed to allow the use of a toll-free telephone number as an alternative to certain oral disclosures in television or radio advertisements. In addition, FRB has proposed several new comments regarding how the "clear and conspicuous" standards would apply.

WBA actively supports the need to ensure all lending product advertisements accurately reflect the terms and features of the loan product being advertised and generally supports FRB's proposal regarding the seven deceptive or misleading practices in advertisements for closed-end mortgage loans. While Wisconsin law already prohibits many items identified within the itemized list, WBA supports FRB's efforts to prohibit advertisement tactics in the same manner. However, we are disappointed by the burdensome requirements regarding certain oral disclosures in television and radio. These additional

requirements will only make advertisements more costly to underwrite, a result WBA does not believe is intended by FRB. WBA argues that advertisements serve a purpose—to catch a consumer’s eyes or ears—but by no means is the advertisement meant to replace any disclosure requirement or act as a substitution for loan officers to further discuss lending options with consumers. WBA supports the use of a toll-free number as an alternative means to the proposed oral disclosures.

As financial institutions are actively working to ensure compliance with FRB’s recently issued final rules regarding electronic disclosures required to be implemented by this October, WBA requests that FRB provide guidance in its official staff commentary regarding website and disclosures. Specifically, FRB should include a comment which states that a financial institution’s website containing a link for the consumer to click on to obtain required disclosures meets FRB’s clear and conspicuous standards, as required for advertisements. WBA understands that such mechanisms are used by financial institutions to monitor and document that consumers have received required disclosures, and that many website programs currently function in this manner.

Once again, all of these additional advertisement requirements are ineffective if not all who offer loan products are required to comply with FRB’s requirements and such requirements are enforced. WBA renews its prior comment that until the regulatory enforcement playing field is leveled in this regard, any additional or duplicative disclosure requirements will not resolve the root problem—that unregulated lenders are still permitted to create deceptive or misleading advertisements with little ramification.

Conclusion

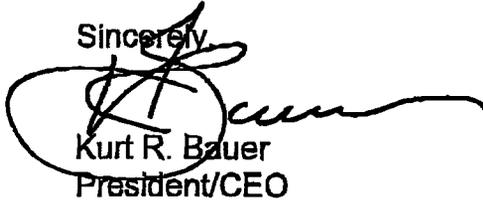
WBA shares FRB’s concerns to ensure consumers have accurate and timely disclosures to assist them in making a determination about which loan product best fits their particular needs, while also making them aware of costs associated with their loan product selection. WBA also supports FRB’s efforts to ensure advertisements are not misleading or deceptive. WBA strongly believes, however, that traditional financial institutions currently provide this level of assistance and are routinely monitored to ensure compliance with all that FRB and other banking regulatory agencies require. WBA does not believe the proposed duplicative and burdensome disclosures help accomplish FRB’s goals. Instead, we believe the proposal will result in additional costs and regulatory oversight for already heavily regulated traditional financial institutions, and does nothing to truly address the root of the problem.

WBA strongly recommends FRB work closely with other agencies to ensure less duplicative disclosure requirements and to level the playing field among all mortgage lenders by creating an enforcement mechanism that will impose

on non-bank lenders the same regulatory requirements as those imposed on traditional financial institutions. WBA believes that until such is accomplished, those engaging in predatory and unfair lending will continue to do so.

Once again, WBA appreciates the opportunity to comment on the proposed amendments.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Bauer', written over the printed name and title.

Kurt R. Bauer
President/CEO