Bank of America

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April 8, 2008

Ms. Jennifer Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW
Washington, D.C. 20219
ATTN: Docket No. R-1305

Re: Proposed changes to Regulation Z

Dear Ms. Johnson:

Bank of America appreciates the opportunity to comment on the proposed regulations to amend Regulation Z, which implements the Truth in Lending Act. We support the Federal Reserve Board's efforts to protect consumers from abusive lending practices while preserving and enhancing access to credit for qualified borrowers.

Bank of America operates the largest and most diverse banking network in the United States with $1.6 trillion in total assets and over $800 billion in worldwide deposits. We offer full-service consumer and commercial services in 33 states and the District of Columbia with over 6,100 retail branch locations and over 18,700 ATMs.

We are proud to be one of the leading home finance providers in the nation. In 2007, Bank of America served more than 4.3 million households holding mortgage and home equity products. In January, we entered into an agreement to purchase Countrywide Financial Corporation. Subject to regulatory approval and upon completion of this transaction, Bank of America Corporation will be the largest residential mortgage lender and servicer in the United States.

I. Introduction

We strongly agree with the intent of the proposed rule to protect consumers from unfair, abusive, and deceptive lending and servicing practices while preserving responsible lending and sustainable homeownership. We also agree with the Board's goal of covering primarily the subprime market while seeking to generally exclude loans in the prime market.

We have two key concerns about the proposed rule. First, we are concerned with the potential impact of the Board's definition of "higher-priced mortgage loans" on home loan markets. Specifically, we are concerned the extension of coverage will unnecessarily increase liability and lessen the availability of mortgage credit.

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The proposed rule will extend the litigation and reputation risk now associated with HOEPA loans to a new category of "higher-priced mortgage loans." The Board would promulgate the proposed rule pursuant to its rule-writing authority under the HOEPA authority of TILA section 129(l) and apply enhanced liability under TILA section 130(a)(4). Moreover, the expansion of the scope of the disclosure requirements under TILA creates additional assignee liability. This added liability could cause some lenders and investors to avoid "higher-priced mortgage loans," resulting in less availability of credit. Today, for example, there is no market for HOEPA loans, because of lender and investor concerns with liability. The fact that the Board's proposed expanded definition of "higher-priced mortgage loans" includes a considerable percentage of prime mortgages, as discussed in greater detail below, creates added risk that substantial numbers of qualified borrowers will be blocked from homeownership.

The Board could achieve the same policy objectives embodied in the proposed rule without increasing stress on markets, if the Board were to promulgate the new rule pursuant to its general rule-writing authority under TILA section 105(a). The Board should also consider minimizing unintended negative consequences, by adjusting the threshold to capture fewer prime loans, as discussed in greater detail below.

The Board is acting at a time when the country needs to regain confidence in its mortgage markets. The proposed changes to the liability provisions and coverage will help prevent unintended consequences of the rule on these markets.

Second, the Board should take this opportunity to foster uniformity in the mortgage market. Residential mortgage lending and servicing in our country operates on a national level. Today, consumers in one state can choose from lenders operating in virtually any state in the nation. The result has been enhanced competition and innovation, with greater options available to consumers. National lenders, however, must face a myriad of state laws that often conflict with one another and with federal law. This conflict results in disparate lending standards, an ever shifting regulatory landscape, and increased lending costs. The Board has proposed to preempt inconsistent state laws relating to creditor payments to brokers and the establishment of escrows. Uniformity is the most effective means to foster consumer protection, to stabilize risk, and to ensure institutional compliance in mortgage lending. Therefore, we urge the Board to preempt laws that are inconsistent with other sections of the proposed rule.

II. Provisions applicable to "Higher-Priced Mortgage Loans"

Definition of "Higher-Priced Mortgage Loans"

The proposed rule creates a new category of "higher-priced mortgage loans," defined as "a consumer credit transaction secured by the consumer's principal dwelling for which the APR on the loan exceeds the yield on comparable Treasury securities by at least 3 percentage points on first-lien loans, or 5 percentage points on second-lien loans." The proposed definition of "higher-priced mortgage loans" includes purchase-money loans, refinancings and home equity loans and excludes HELOCs, reverse mortgages, construction-only loans, and bridge loans.

A lender would be prohibited from making a "higher-priced mortgage loan" based on the value of the consumer's collateral without regard for the borrower's repayment ability. Further, with regard to such loans, the regulations would:

- Require lender verification of the income and the assets relied upon by the lender to make the loan;
- Require the establishment of an escrow account for taxes and insurance;
- Impose certain restrictions on pre-payment penalties; and
- Prohibit the structuring of a closed-end loan as an open-end line of credit to evade the restrictions on these loans.

Bank of America supports the general approach the Board has established to identify the types of loans to be covered under the proposed rule. As described in greater detail below, our concern is that the APR trigger has been set too low, resulting in a large volume of prime loans being captured, with potential attendant disruptions to the prime market.

A. Loan Types

The proposed rule appropriately exempts HELOCs, reverse mortgages, construction-only loans and bridge loans from the definition. These products serve specialized purposes and provide important credit options to homeowners. They are not the type of loans that are the subject of the current concerns the proposed rule is seeking to remedy, and we support their exclusion.

The proposed rule does not exclude loans administered by the FHA or VA. We urge the Board to exclude these loans as well. Origination and underwriting standards that take into account a borrower's income and assets are currently in place for a borrower to qualify for these loans. A lender that follows FHA and VA requirements should not be put in the position of potentially being subject to liability under TILA, which could happen if the proposed TILA requirements are deemed to be more restrictive.

B. The Proposed APR Trigger for Higher Price Mortgage Loans

Bank of America understands the objective of the proposed rule is to protect consumers while preserving responsible lending and sustainable homeownership. To achieve this goal, the Board has sought to capture as many subprime loans as possible, while minimizing the coverage of prime loans. We believe this latter goal is particularly important. According to our calculations, however, the proposed rule would cover a substantial number of prime loans. Due to differences in the calculations, the proposed rule would cover a greater number of loans than is currently covered under the Home Mortgage Disclosure Act (HMDA), which was designed to cover subprime loans. Bank of America ceased making subprime loans in 2001. In 2006, only 2.97% of Bank of America's total loan portfolio was captured under HMDA; and in 2007 only 4.99% of the portfolio was captured. As proposed, this rule would double these figures to capture approximately eight-to-ten percent of Bank of America's loan portfolio. These figures reflect the impact the proposed rule would have on the overall prime market.

Adjusting the thresholds will better align the proposed rule with the Board's goal. Prime loans have low default risk; they are made to borrowers with good credit; and therefore, they do not carry terms associated with subprime lending. Thus, prime loans do not require the same level of scrutiny as subprime loans might.

Adjusting the thresholds would also reduce the potential for serious unintended consequences from the regulation. As discussed above, the HOEPA threshold has historically been used by counterparties in the secondary market as a guideline for loans that they will not purchase. For example, many investors require a seller to make representations and warranties in the purchase agreement stating that the loans are not HOEPA loans, and diligence is conducted around these, and other, risk issues. These representations and warranties are also required by the rating agencies that provide credit ratings on structured mortgage transactions. Lenders have thus by-and-large ceased making HOEPA loans because of the risks and lack of liquidity associated with them. If the proposed rule is viewed by the market as simply extending HOEPA coverage and the proposed trigger reaches too far into the prime market, the proposed rule may disrupt components of the prime market and alt-A markets.

For the reasons discussed above, we strongly urge the Board to add one point to each threshold level; the resulting higher-priced mortgage loan triggers would be four percentage points for first-lien loans and six percentage points for subordinate-lien loans.

Underwriting Requirements

A. Ability to Make Fully Indexed, Fully Amortizing Payments:

The proposed rule prohibits lenders from relying on unverified income and assets when extending credit for higher-priced loans. Lenders must verify a consumer's income or assets through W-2s, tax returns, payroll receipts, financial institution records or other third-party documents that provide reasonably reliable evidence of the consumer's income and assets. Adding such a verification of income to the pattern or practice standard may unduly limit the standard and cause confusion among lenders seeking to implement it. Additionally, the proposed rule could limit credit to borrowers who have incomes that are not documented in W-2 or like documents, such as those who rely on seasonal income, tips, real estate commissions or other irregularly-paid income streams.

B. Proposed Timeframe:

The proposed rule provides that a creditor does not violate the ability to repay requirement applicable to higher-priced mortgage loans if it has a reasonable basis to believe consumers will be able to make loan payments for at least seven years after consummation of the transaction. If the Board is going to mandate a test of affordability over a specified time period, seven years is too long of a timeframe for such a measure. General underwriting for a loan, whether it is a student loan, a mortgage loan or a car loan, does not extend for this long a period of time; there are simply too many variables affecting repayment ability that could change over a seven-year period. Given these uncertainties, a seven-year horizon by regulation is likely to decrease access to credit for creditworthy borrowers. We respectfully urge the Board to reduce the proposed timeframe to three years in order for it to be more in line with standard, and realistic, underwriting practices.

Prepayment Penalties

A. Borrower Debt-to-Income (DTI) Ratio and Residual Income:

The Board's proposed rule extends the HOEPA restrictions on prepayment penalties to higher-priced mortgage loans. These include the prohibition on prepayment penalties if the borrower's DTI ratio at consummation exceeds 50 percent. The calculation of DTI is not necessarily uniform among lending institutions. As there is the potential for inadvertent errors in the calculation of DTI, we would urge the Board to consider expanding the safe harbor to 55 percent DTI and provide there is no violation if the lender relies on information provided by the borrower that is found to be false or misleading.

B. Definitions

While it is reasonable for the Board to consider restrictions on prepayment penalties, it is critical that the term "prepayment penalty" be defined in a manner to clarify that under TILA a lender's recoupment of certain fees paid by the lender on behalf of the borrower is not a prepayment penalty. For example, if a lender pays closing costs on a mortgage, but seeks to recoup those waived costs if the borrower prepays within a certain time period, such recoupment should not be considered a "prepayment penalty".

Requirement to Escrow

We support the Board's proposal to prohibit a lender from making higher-priced mortgage loans secured by a first lien without establishing an escrow account for property taxes and homeowners insurance. We do not believe, however, that the proposed rule should be changed to provide that lenders be ***required*** to allow borrowers to "opt out" of escrow after twelve months. Any cancellation of escrow for higher-priced loans should only be at the borrower's written request and at the lender/servicer's option. A servicer may seek to continue an escrow account after twelve months for prudent business or risk reasons, such as the borrower's delinquency in making regular payments or probability of default. Other factors on individual loans, such as the presence of private mortgage insurance or high LTV ratios may suggest the need for continuing the escrow arrangements. Lenders should be given the discretion to require escrow in such circumstances.

A. State Laws

In order to promote the smooth functioning of the mortgage market and to ensure uniform standards across the country, Bank of America strongly supports the Board's proposal to preempt inconsistent state escrow laws.

B. Tax and Insurance Estimation

The Board has asked if lenders should be required to disclose an estimate of taxes and insurance as part of the TILA disclosures. Such disclosures are very difficult to make at such an early stage in the mortgage process. Many borrowers, for example, are pre-approved for a loan before a property is even identified. Taxes and insurance cannot be reasonably estimated in such circumstances. Even if a property has been identified, it is difficult for the lender to estimate the cost of insurance at such an early stage, since the lender generally needs to receive hazard insurance information from the borrower. A lender will not know what insurance provider will be used or what additional coverage the borrower will be requesting. If lenders are to be required to make such estimated disclosures, we suggest that lenders who make disclosures in good-faith and in reliance on information available at the time should not be in violation of the rule if estimates later prove to be inaccurate. Further, these disclosures should not be considered part of the payment schedule.

Evasion Through Spurious Open-end Credit

The proposed rule prohibits a lender from structuring a closed-end transaction as open-end credit in order to evade the requirements of Section 226.35. We acknowledge the importance of this provision given that the Board is proposing that HELOCs be excluded from the definition of a higher-priced mortgage loan. However, we believe that the current definition of open-end credit and the liability provisions of TILA that attach if the credit is mischaracterized are sufficient to deal with the issue. Ultimately, it is the intent of the lender that will be the real test for evasion.

VII. Proposed Rules for All Mortgage Loans

The Board has proposed the following provisions to apply to all mortgage loans secured by the borrower's principal residence (other than HELOCs).

A. Lender Payments to Mortgage Brokers and Relationship to Other Laws

Bank of America supports the Board's efforts to provide consumers with the information most relevant to their mortgage transactions. We agree that ensuring that the borrower understands the compensation the broker will receive is vital information. In general, under the Board proposal, borrowers would agree in advance to the total amount of broker compensation they would pay brokers, and lenders would be prohibited from paying mortgage brokers more than that compensation amount.

Bank of America recognizes that one possible way to ensure the consumer has received the relevant information in advance is to condition the actual disbursement of compensation on the consumer's receipt of the information. We are concerned, however, that the proposal places an impractical burden on the lender to police brokers' contractual arrangements with their customers. Under the proposal, the broker and consumer must have entered into the agreement before the consumer has paid a fee to any person or submitted a written application to the broker. While a lender cannot physically confirm when a fee was paid or an agreement signed by a consumer who is dealing through a broker, the lender can reasonably determine, based on a review of the submitted application and agreement, whether the agreement was executed prior to the loan application. In order to ensure appropriate consumer protection while addressing practical considerations of the lending process, we encourage the Board to revise the requirement to ensure that there is a sufficient safe harbor that allows lenders to rely on the documents provided.

The Board should also allow and clearly define the requirements for redisclosure if there is a change in loan amount or loan product after the initial agreement is entered into with the customer. There should be some provision for amendment of the initial agreement even though the consumer may have paid a fee or submitted a written application. Additionally, the Board should make clear that if there is no change to the compensation and the final disbursement complies with the agreement, then no further documentation is necessary.

In developing a model form for disclosures, we encourage the Board to incorporate components necessary to comply with other regulatory requirements relating to broker fees: specifically, the Office of the Comptroller of the Currency's AL 2003-3 and the Department of Housing and Urban Development's recently issued proposed changes to RESPA relating to disclosure of broker's yield spread premiums. We seek to ensure that all disclosure requirements are consistent and provide relevant and easily understandable information to borrowers.

Coercion of Appraisers

Bank of America strongly supports efforts to prevent the coercion of appraisers. We also believe that it is appropriate to establish uniform national standards over the relationship among appraisers, brokers, and lenders rather than to leave it to individual states to regulate this activity. The proposed regulation states that no lender or broker shall "directly or indirectly coerce, influence, or otherwise encourage" an appraiser to misstate or misrepresent the value of a consumer's principal dwelling. The words "influence" and "encourage" are overly subjective, especially when paired with the "indirectly" standard. Rather the regulation should use more concrete words that already have legal meaning. Specifically we suggest that the standard be that no creditor shall 'coerce, extort, bribe or improperly influence.' Without greater specificity, this proposal will likely expose lenders to severe litigation risk. Moreover, liability should attach to a lender only if the lender had direct knowledge of coercion. The promulgation of a rule without explicit definitions and clearly established standards deprives creditors of fair notice as to what is and is not lawful conduct and undermines their compliance efforts.

Servicing Abuses

A. Late Payments:

The proposed rule provides that no servicer shall: (1) fail to credit a consumer's periodic payment, irrespective of the amount, as of the date received; (2) impose a late fee or delinquency charge where the only late fee or delinquency charge is due to a consumer's failure to include in a current payment a delinquency charge imposed on earlier payments; (3) fail to provide a current schedule of servicing fees and charges within a reasonable time of request; or (4) fail to provide an accurate payoff statement within a reasonable time of request, generally defined as three business days.

The proposed rule prohibiting the failure to credit payments as of the date received is similar to the existing provision requiring prompt crediting of payment on open-end transactions. However, it fails to recognize differences in the interest accrual methods used in these two types of loans. The method of calculation of interest on the vast majority of closed-end credit plans is very different from that of open-end credit plans. In open-end credit plans, interest is calculated on the outstanding balance on a periodic basis, whereas, on most closed-end mortgage loans, interest is calculated based on an amortization schedule. Under this amortization schedule method, payments are applied as of their due date regardless of when received. If a payment is late, the only penalty is a late charge; no additional interest accrues, which is a benefit to consumers. Because of this calculation method, only full payments can be applied or credited to an account. To require that less than a full principal and interest payment be credited on the date received, as the proposed rule does, would contradict the structure of uniform first mortgage instruments used by most lenders and would violate the provisions of most, if not all, servicing agreements. It would also require major systems changes without providing any clear benefit to consumers.

When a loan is severely delinquent and default notices have been served on a borrower, many jurisdictions require that the default notices be resent to the borrower and the timing for cure to restart if partial payments are made. This constant mail traffic and variable timetable for remedy burdens the consumer with irregular notices that they are in, and then out of, and then back in, default. Inclusion of a safe harbor cutoff time for receipt and crediting of payments would be beneficial, but it should be recognized that there are circumstances where an earlier cutoff would be acceptable to the Board.

B. Pyramiding of Late Fees

The proposed rule prohibits servicers from imposing any late fee or delinquency charge on the consumer in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period. We believe that pyramiding late charges are already prohibited under the Federal Trade Commission Credit Practices Rule and under Regulation AA, which applies the rule to depository institutions.

C. Schedule of Fees and Charges:

The proposed rule would require a servicer to provide to a consumer a schedule of all specific fees and charges that may be imposed in connection with the servicing of the consumer's account, including a dollar amount and an explanation of each and the circumstances under which it may be imposed. The proposed rule does not exclude loans administered by the FHA or VA; however, we urge the Board to specifically exclude them from the rule in general and this subsection in particular. A robust set of post-origination servicing fee restrictions is currently in place for these loans. Failure to exclude FHA and VA loans from the proposed rule will result in an unnecessary number of fees, and the added complexity of their disclosure, with no resulting benefit to borrowers.

These fee disclosure requirements would be very costly for a servicer since fees vary by state, country, city, investor and even product. Further, the benefit to the consumer would be limited since, as noted in the background discussion of the rule, a consumer is unable to shop for a servicer. If the intent of the Board is to ensure that the borrower gets a full disclosure of the fees that may be added to the loan at payoff and reinstatement, the disclosures should be limited to these circumstances. To ensure the uniform application of this rule to promote consumer awareness, and to provide certainty for servicers, we encourage the Board to develop model forms to be used for payoff quotes and reinstatement to comply with the requirements of this section.

It is possible to post the fee schedule on a website. However, regardless of the form of the disclosure, the fees, particularly third party fees, will change over time, and therefore any schedule provided should be permitted to change from time to time without prior notice. As many fees vary by state or even county, the Board should permit a disclosure of a range of fees. Fees for optional services requested by the borrower should not be required to be included on the schedule. For example, assumption fees, or fees for payment by phone should be excluded.

The Board has sought comment on whether there is a need to apply any or all of the proposed prohibitions to HELOCs. We respectfully submit that HELOCs are already subject to extensive fee disclosures and limits on servicing practices in the open end credit sections of Regulation Z and thus any additional requirements would be overly burdensome and duplicative.

D. Payoff Statements:
The proposed rule prohibits a servicer from failing to provide, within a reasonable time after receiving a consumer request, an accurate statement of the full amount required to pay the obligation in full as of a specified date, *i.e.* the payoff statement. The proposed commentary states that under normal market conditions, three business days would be a reasonable time to provide the payoff statements; however, a reasonable time might be longer than three business days if servicers are experiencing an unusually high volume of refinancing requests.

The Board's proposed time period is shorter than any of the time periods currently required by states that have such provisions. We believe that servicers need additional time for providing payoff statements in many legitimate circumstances. For example, servicers will often need additional time to obtain actual fees from third party providers, such as attorneys, for mortgage loans that are or have been seriously delinquent. Moreover, the proposed rule does not address demands that are received in close proximity to the date of a scheduled foreclosure sale. For example, California's Civil Code Section 2943 (c) provides cut-off dates, after which the servicer is no longer required to provide the payoff statement to the consumer, in order to facilitate an orderly sale. The time period in the final regulation should address these legitimate circumstances. Alternatively, the Commentary should clarify that this requirement does not apply if it conflicts with state law, or, in the absence of applicable law, if the request by the consumer or its agent is not received within a reasonable time prior to the date of any scheduled foreclosure sale. Additionally, the proposed rule should clarify that this requirement does not prohibit a servicer from collecting a reasonable fee for providing multiple statements or expedited statements when otherwise permitted by applicable law and the contract. Finally, If the Board is going to regulate in this area, lenders should be permitted to specify what form and at what location a payoff request must be made.

Advertising Rules for Open-end Home-Equity Plans
The Board's proposed amendments to the advertising requirements for open-end home equity plans appear to further the objective of providing clear and conspicuous information in advertisements. Nevertheless, we believe that the Board's proposal can be improved in two respects.

First, the distinction (if any) between (a) an initial discounted or premium rate and (b) an "introductory rate", and the rules applicable to each, should be clarified. We believe that there is considerable potential for confusion as to whether a particular advertisement involves an "initial rate" or an "introductory rate", and, therefore, whether an initial rate in a variable-rate plan, which would be subject to the provisions of section 226.16(d)(2), would also be an "introductory rate" and also subject to the provisions of section 226.16(d)(6)(iii). Further, proposed Regulation Z § 226.16(d)(6)(iii) should clarify that the additional disclosures under (A), (B) and (C) are triggered only as to an introductory rate or an introductory payment that is actually stated in the advertisement. For example, an advertisement need not disclose an "introductory payment" if it references only an "introductory rate" and makes no mention of a payment amount.

The Board requested comment on whether to extend to home-equity plan advertisements any or all of the prohibitions contained in proposed Regulation Z § 226.24(i). Although we concur with the Board's assessment that most of the misleading acts and practices addressed in Regulation Z § 226.24(i) are not evident in advertisements for home-equity plans, we would encourage the Board to adopt in the home-equity context the prohibition against the misleading use of the lender's name found in proposed Regulation Z § 226.24(i)(4).

A. E-Commerce Implications

The presentation of disclosures online through a hyperlink has become a widely accepted and standard industry practice. This method of presenting important information provides a simple and convenient way for a consumer using a personal computer to view and easily print and retain a document. The document presented through the link can be formatted (for example as a pdf document) to ensure that it can be viewed, saved and printed by the consumer in a consistent manner as intended by the provider, and is therefore particularly useful for disclosures that contain an extensive amount of data or data that must be formatted in a particular way or in a particular font size.

Internet users can easily recognize hyperlinks since they are typically presented conspicuously in colors that contrast with the text in which they are embedded or other portions of the website on which they appear. In addition, hyperlinks (and often the text preceding the links) provide a caption or other description of the information contained in the link.

A prohibition or limitation on the use of hyperlinks for presenting rate and payment disclosures in online advertisements for home equity plans and home secured loans would unnecessarily impede the electronic experience without any demonstrated benefit to consumers. In the past, the Board has, in our view, wisely avoided adopting rules that favor one particular method of providing electronic disclosures over another. We believe this approach has encouraged innovation and facilitated consumer adoption of the online environment as a place to obtain information about and apply for various financial products and services. We believe the Board should maintain a consistent approach here and avoid promulgating a rule that would prohibit or restrict the ability to display the rate and payment disclosures in online advertising for a home equity plan or home secured loan advertising through hyperlinks.

As the Board notes, financial institutions are increasingly offering a greater array of products and services to customers via mobile devices such as cell phones and PDAs, as well as through enhanced ATMs. While many financial institutions are now attempting to replicate the online experience for customers using web-enabled cell phones to access their accounts, at present there are still significant technological and operational limitations on the ability to deliver, display, retain and print required disclosures. For example, while technology is rapidly developing, it is still not feasible for a consumer to quickly download many required disclosures (particularly those that require extensive information or that must be presented in a particular format or font size). Even if technologically feasible, depending on the terms of the consumer's mobile service agreement, the process could be cost prohibitive. These limitations are similar to limitations that financial institutions face when transacting business with customers over traditional phone lines. Many of those limitations have been addressed by special rules for the delivery of required disclosures by telephone.

We believe that applying rigid interpretations of traditional disclosure timing and delivery requirements to these devices could place an undue burden on financial institutions and consumers alike and could impede the development of this emerging delivery channel. As a result, the Board should consider the logical extension of special disclosure timing and delivery rules to the various forms of electronic communications that can be conducted through these devices.

Early Mortgage Loan and Transaction-Specific Mortgage Disclosures

Bank of America agrees with the Board's recognition that better or additional disclosures, alone, will not adequately address the risk of abusive or unaffordable loans. However, we believe that uniform and clear mortgage disclosures will significantly assist borrowers with making informed choices and appreciate the Board's efforts in this regard.

The Board's proposed rule extends the Regulation Z early mortgage loan disclosure requirements for residential mortgage transactions to other types of closed-end mortgage transactions, including refinancings of any home-secured loan, home equity loans and reverse mortgages. Today, the early disclosure requirement is limited to residential mortgage transactions subject to RESPA, which covers closed-end loans secured by the principal dwelling for the acquisition or initial construction of that dwelling (other than bridge or other temporary financing). Therefore, this new rule will expand the coverage to all home-secured, closed-end loans (not limited to purchase money loans, as is the case today).

Certainly, the delivery of early mortgage loan disclosures to all home-secured, closed-end loans prior to the payment of a fee in connection with an application (other than a credit review fee), does promote a better understanding of the offered credit terms and allows the consumer the opportunity to shop early before paying more than a nominal fee. However, in order to meet this new standard, most lenders, including Bank of America, would incur significant technology expenditures because the proposed rule materially changes the way in which we conduct business. Currently, the disclosures that must be given at application or before imposition of a non-refundable fee are not transaction specific. There would have to be extensive operational changes and system modifications. (If the proposal is adopted we therefore would respectfully request consideration of additional time after publication of the final rule beyond the standard six months from date of promulgation to adequately update our systems and adequately test.)

The Board has recognized that such additional costs may be passed on in part to consumers. It will also significantly delay a lender's interaction with a borrower over an issue where there have been few, if any, problems. For example, if a borrower wanted to initiate a loan during a face-to-face meeting they would have to meet with a lender; the lender would take the necessary information and consider the terms; and, then, the lender would then have to contact the prospective borrower again to discuss the loan.

Additionally, section 131 of the Truth in Lending Act (TILA) authorizes consumers to bring claims for disclosure violations against assignees if the violation is apparent on the face of the disclosure document. Therefore, an expansion of the scope of the disclosure requirements under TILA would appear to expand assignee liability under TILA. This will reduce the ability to sell these loans into the secondary mortgage market further limiting liquidity in a sector that has been suffering over the past several months.

The proposed rule specifically excludes home equity lines of credit from these early disclosure requirements, and we support this exclusion. Home HELOC disclosures are given at the time of application. Early in the application process disclosures are provided that educate the consumer on the product terms and further provide for a refund right for fees paid in connection with an application if a disclosed term changes prior to opening the line of credit account. Therefore, we agree that adequate protections already exist under Regulation Z for this product type.

Civil Liability and Remedies; Administrative Enforcement

A. Consumer Remedies for Unfair, Deceptive, or Abusive Practices

The proposed remedies for violation of the rules are severe and present a significant risk to the lender for what may ultimately be a minor infringement. As discussed above, lenders and investors have been forced to weigh the risk of making or purchasing HOEPA loans, and the potential cost of defending lawsuits for such loans. By promulgating rules for higher-priced mortgage loans under the authority of TILA section 129(l), the litigation risk expands, and access to credit is likely to suffer. The remedies available to the consumer should bear a proportionate relationship to the harm experienced by the consumer as a result of the violation. Accordingly, we believe that the proposed regulations are better considered as part of the Board's effort to promote the informed use of credit, which underlies the Board's regulatory action under Section 105(a) of TILA. The penalties for violations of the proposed regulations should be consistent with the other provisions of TILA and Regulation Z with the same purposes.

B. Effective Date

The proposed rule provides that the new amendments will be effective on the October 1 which follows by at least six months the date of promulgation. Bank of America encourages the Board to consider that some parts of the rule could be adopted quickly, but others may take additional time. The final rules should give banks some flexibility in compliance as there may need to be significant system enhancements and training required to comply with the rules.

III. Conclusion

Bank of America appreciates the opportunity to comment on the Federal Reserve Board's proposed regulations, and we thank you for your consideration of these comments.

Respectfully Submitted,

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Deputy General Counsel
Bank of America