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SUBJECT: Docket Number: R-1305
Proposed Rule/Federal Reserve System: Truth in Lending

I am a private individual submitting these comments independently. I was fortunate to have been given the assignment to read and comment on this Rule by the Civil Rights Division of the Agency for which I work. Many of the comments below will overlap those of my Agency. However, many of the comments would not have been appropriate for the agency for which I was doing the review or for their civil rights focus. Therefore, I am sending this on their own..

This Rule is long overdue and is excellent.

The many comments below are to suggest or request further clarification or to comment on issues where the Federal Reserve specifically asked for comment. I made these suggestions because I believe that when requirements are unclear or lenders are given too much discretion, it will be low-income, primarily minority borrowers, women, and persons with disabilities who are most likely to be negatively affected.

Requirements for Prime Loans, Refinancing and Other Loans.

The Regulation asks for comments on the extent to which requirements that apply to subprime or high rate mortgage loans should apply to borrowers in the prime market, refinance loans and other loan categories.

1. Many of the "predatory" practices described are also used in the prime market. If only subprime and high-cost borrowers are protected, then racial and ethnic minorities (especially those with poor English skills women and persons with disabilities will more likely be targeted in the prime market. They are also at increased risk of being "steered" to subprime loans when it is not necessary. I have personally owned four homes and refinanced mortgage loans several times. Despite being better educated in these issues than the average person, I was the unwitting victim of one of the practices described and lenders have tried to make me the victim of other practices, including in refinancing.

2. The disclosure requirements should apply to ***all*** loans, whether Home Equity Lines of Credit (HELOC), reverse mortgages, construction-only loans, subordinate lien loans, etc. All loans become risky if the borrower does not adequately understand the rates and terms. If there are exemptions, predatory lenders may find new ways to structure loans in predatory ways. In addition to the negative effects on individual borrowers,

these practices could create havoc with housing prices in specific, primarily in low-income communities.

3. The disclosure for HELOCs with daily accrual interest should explain what this daily accrual means, including lack of a grace period, advantage of paying earlier than the due date and repercussions for paying later than the due date.

4. Plain language must be used for all Notices the borrower receives.

5. The lender should be responsible for the borrower's understanding the loan terms. The best way to document this would be to videotape the loan closing and all sessions where rates and terms are discussed. The lender should ensure that the borrower's questions are answered accurately.

6. As suggested in the regulation, waivers of escrow accounts are one of the few exceptions that should be universally allowed for prime loans after good disclosure of the possible effects of that decision. This protection of borrower interests should override state law.

7. The other exception could be HELOCs being allowed to be used as first (and only) loans in the prime market only when clearly disclosed.

8. For other issues where the regulation asked this question, all loans must be protected with prohibition on APR manipulation and repayment ability must be based on the fully-indexed rate and fully-amortized payments.

9. In addition to the reasons stated above for consistency between different types of loans, there is less chance of misunderstandings if all loans are treated the same way. It would avoid confusion for lenders, borrowers, Realtors, lawyers, etc..

<u>Advertisements</u>

1. Advertisements should clearly state the taxes and insurance along with the loan payment and total, whether the loan would have an escrow account or not.

2. If an internet advertisement has a link to an information website, there must be a strong, equal-sized caveat that all prospective borrowers should click the link for additional rates, terms, and payment information.

3. All aspects of all advertisements should be large enough to easily read and in plain language. Potential applicants should be told, in their own languages, where translations into other languages are found.

4. Advertisements on documents that could be days or weeks out of date, should state that "This information is accurate as of (date), but it may be out of date by the time you read it."

5. You asked for comment on second lien loans providing credit that totals more than the fair market value of the house. It is advisable that this never be allowed.

6. All advertisements should state that this is not a "disclosure" statement and that the disclosure will be provided separately and all questions will be answered.

7. The regulation says that advertisements may advertise that the loan would reduce and/or consolidate debt or shorten the term of the loan. Add to the end of that section and any other applicable section, "if the statement is accurate."

8. For advertisements that provide phone numbers to call for more information, explanations must be comprehensible by the people who call. Lenders must be certain that those answering phones speak clearly, can accurately answer questions, explanations are available in other languages and alternative formats. It would be desirable if these calls are taped.

Transaction-Specific Mortgage Loan Disclosures

Many excellent requirements are being introduced in this regulation.

1. However, there is no or inadequate mention of disclosures being in ***very plain language***, comprehensible to anyone, in other formats for persons with disabilities and other languages.

2. A current problem in the lending industry is the ***clarity*** of disclosures and its relevance to the actual mortgage conditions. I bought a new home in March 2006 and the lenders "met disclosure requirements" (one even stated that HUD required her to do this) when they inundated me with extraneous information (i.e., the loan may have Condition A, Condition B, or Condition C. If your loan has Condition A, it means this; if Condition B…, etc.) With computers, it should be easy to develop "phrases" for disclosures **in plain language** so that accurate disclosures **based on the actual** requirements of the **specific loan** are sent and are the **only** disclosures sent.

3. One idea that is not discussed, is video-taping disclosures in cases where borrowers may not understand the documents, to be certain the borrower understands the conditions. This documentation of adequacy of the specific disclosure could be used as a defense of a lender if borrowers claim they didn't understand the rates and terms of the loan. (In fact, borrowers should be able to purchase a copy of the video at cost, to refer to if clarification was needed in the future.)

4. When points are paid at the closing to lower the interest rate, the APR describes the payment interest rate with the points spread over the life of the loan. This discrepancy can be confusing. There should be disclosures developed to clarify this.

5. For advertisement and cost-free phone numbers, explanations must be accurate and comprehensible, whether by clear explanations, alternative formats, or other languages. It would be desirable if these calls are taped.

6. If the early disclosure turns out to be inaccurate after any fees (application fee, appraisal fee), the applicant should be able to cancel the application and receive a refund of all fees paid even if the lender has already used the funds to make a payment to a third party.

Cost to mortgage industry

The six-month period before the regulation becomes effective should give lenders sufficient time to change their systems and procedures. In fact, in the long run, these new procedures should prove to be less expensive overall because there will be fewer questions, fewer lawsuits, fewer delinquencies, etc.

Waivers for Escrow Accounts for Taxes and Insurance

It's interesting that the majority of subprime loans don't have escrow accounts but for prime loans, many lenders charge for waiving the escrow and assess escrow amounts larger than necessary. In the former case, borrowers have been set up to fail; in the latter, lenders aren't looking forward to foreclosures so they want to use the borrowers funds, interest free.

1. Prime rate borrowers should always have the option of waiving the escrow account at any time without penalty or fees from the lender. Federal law should override any state laws that require escrow accounts be mandated in the prime lending market.

2. All lenders ***should*** provide for borrower escrow accounts if the borrower wishes. This should be the default position but the option to waive it should be discussed with pros and cons clearly disclosed, if the borrower is eligible.

3. Regardless of state requirements for availability of waivers, in the subprime market or for high-cost loans, waivers should not be allowed until the borrower has gone at least one year without making any late payments for the mortgage and taxes and insurance escrow. If state exceptions are allowed, then escrow accounts must pay interest to the extent available in the larger banking market and other escrow account abuses of loan servicers must be prohibited.

4. For the borrower's protection, if a borrower who has waived an escrow account becomes delinquent on either the loan, taxes, or insurance payments, the lender should impose standard escrow account requirements.

Prohibition Against Creditors Paying Mortgage Broker Excess Amounts

The proposed requirements and restrictions are excellent and sorely needed. This subterfuge is used regularly in the prime market and I was a victim of fraud by a mortgage broker in one of these situations. When other forms of predatory lending are eliminated or greatly reduced, it is likely that low-income individuals will be the primary targets for this practice.

1. Broker compensation and other disclosures should be established prior to any application, appraisal or other fees being paid. Brokers should be required to provide clear disclosures to applicants about their relationship to the lender and the borrower.

2. The issue isn't really what the lender is paying the originator; it's what it costs the borrower. Originators who work for lenders can also have arrangements where they are paid based on the interest rate they can get a borrower to pay. There should be no difference in requirements when a mortgage broker of loan officer is handling the loan. Prior to the borrower paying for the application fee and appraisal, the borrower should know the total amount they will be charged by the lender for ***all*** purposes combined.

3. Fees paid for other service, that is chargeable to the borrower, must be disclosed upfront. As with refinancing, charges for "services" cannot be paid to outside contractors if the industry standard is that the services are generally performed by the mortgage broker. In addition, collusion between two or more companies for these charges must be prohibited.

4. There are no sanctions discussed for mortgage brokers (and others in the process) who don't follow these procedures; provide misinformation or inadequate disclosures, etc. The three-year "rescission" provision (See page 1717) is good but inadequate for the borrower when the loan must be closed.

<u>Other Languages</u>

In communities with a substantial number of foreign residents, all documents, disclosures, and advertisements should be easily available in languages prevalent in that community and/or interpreter services should be available by lenders. The English language document should tell readers where to find the translation or how to receive interpreter services. It is doubly important that disclosures provided in other languages be video-taped to be certain the translations are accurate—and that there was no attempt to deceive the applicant.

<u>Determination of Repayment Ability</u>

1. Comment was requested on whether a fixed interest rate and payment for a minimum of five years or seven years would obviate the need for determination of long-term repayment ability. Seven years would certainly be preferable; five years should be the absolute minimum number of years for such a provision. However, the disclosure must still be accurate and comprehensible to the borrower.

2. The regulation asks for comment on whether income verification is necessary for subordinate lien loans. If borrower payments are always punctual, perhaps all you need is to obtain the credit score. If the credit score is above 720 (or some other "prime" rating), then additional income verification need not be necessary. Lenders should still get applicants statements of income, however, since loss of income may be the reason for obtaining the loan.

Fraud

The discussion on income verification asks for comment on loan originators who misrepresent an applicant's income, often unbeknownst to the borrower. This is a serious enough violation that criminal charges should be filed when the government can demonstrate this has happened showing a pattern or practice. A taped disclosure would certainly be valuable in these cases.

Prepayment Penalties

1. Prepayment penalties should not be allowed. The restrictions put on prepayments by this proposed rule are excellent but the waiver must be available anytime the mortgage interest rate and payment amount are increasing. Since the purpose of the penalty is to reimburse the lender for the expenses of making the loan, perhaps the amount of penalty should be limited by that cost (minus whatever part of that cost was paid by the borrower at closing), proportionately reduced with time. Of course, accurate and comprehensible disclosure is needed.

2. The option to allow the consumer a choice between a prepayment penalty and a higher payment is excellent—***if*** disclosure is adequate. However, aren't closing points used for this purpose (as well as other trade-offs) in interest rate?

3. Loans with balloon payments should ***never*** have a prepayment penalty, so people can refinance at any time until the balloon payment comes due.

Prohibition on Refinancing with Same Creditor or Affiliate

While the Board's proposal is a positive step, you should also protect against refinancing where Lenders A and B (and possibly C, D, and F) exchange customers for refinancing to try to disguise a relationship between lenders.

Appraisals

1. In order to keep appraisals independent, appraisers ***should not know*** the contract price for the house. Perhaps a small negative difference (5%?) in contract price and appraised value should be ignored by the lender; e.g., Contract price $100,000/Appraisal $95,000; Contract price $1,000,000/Appraisal $950,000. Lenders can assume the contract price is the appraised value and proceed from there.

Similarly, if the house appraises up to 5% more than the contract price (e.g., 105, 000 or $1,050,000 in the above examples), the equity should be based on contract price. Buyers should be protected against sellers cancelling contracts due to appraisal higher than the contract price. Of course, corrections and adjustments due to new information would override the above considerations.

2. If multiple appraisals are used, the regulation leaves it up to the lender to choose the most reliable appraisal. You could use a system of averaging two or using a third which is binding. Leaving it up to the lender, may not be beneficial.

3. For a second lien or refinance, based on the specific circumstances of the local housing market and borrower documentation to renovations done, it may not always be necessary to do a new appraisal, thus saving borrowers hundreds of dollars.

The remainder of the proposed rule dealing with appraisals is excellent.

Servicing

1. Limits must be set on the amount of "advance" payments required for escrow accounts.

2. There must be penalties for servicers who make delinquent payments for taxes and insurance (and penalties can ***definitely not*** come out of the borrower's escrow account).

3. The Rule says that payments must be credited as of the date received. I recommend a requirement that servicers check the postmark on late payments. If the payment was postmarked (at least 5?) days prior to the due date, the payment will not be considered to be late.

4. All borrowers should receive a list of potential penalty fees at closing and explanations provided, if requested. To avoid abuse, fees should not be higher than justified by actual servicer expense for items plus charges based on estimated or actual time spent on issue. Borrowers should never have to ask for the fee schedule. Revisions to the fee schedule should be sent to borrowers (or posted on a website if borrowers have been notified) at least 60 days prior to the revisions' effective date. The fee schedule can never be changed in a way that violates the initial contract with the borrower.

5. No additional fees should ever be charged a borrower for normal servicing activities, including maintaining escrow accounts.

6. Borrowers should be told at loan closing and periodically thereafter, who to contact, at what address, how long in advance, and how often they may receive payoff amounts without charge (at least once/year?). If the borrower meets the requirements

but the amount is not provided in a timely manner, the lender should be held responsible for additional borrower expense.

7. Borrowers should be told at loan closing how to lodge a complaint against the lender and/or servicer and the names and addresses of state and federal agencies they can contact if they are not satisfied with the response they receive to the omplaint. The servicer contact information should be provided whenever the servicer is changed.

Thank you for the opportunity to comment.

Sincerely,

Arlene Halfon