From: ComplianceEase, Aspen Richter

Subject: Reg Z - Truth in Lending

Comments:

To whom it may concern,

I am submitting comments on Docket Number R-1366 (Regulation Z - Truth in Lending - Closed-end Mortgages) on behalf of my company, ComplianceEase. ComplianceEase provides automated compliance software solutions to numerous players in the mortgage market place, including mortgage lenders, mortgage brokers, and regulators. Our comments are on the proposed changes to the definition of finance charge, to the proposed restrictions on originator compensation, and on other topics.

Calculation of Finance Charge and Points and Fees
Our first comment is on the impact on HOEPA loans and state anti-predatory lending laws (all generically referred to as "high-cost" laws). Page 43244 of the Federal Register analyzes how APR will change under the proposed regulations and impact these laws. We agree that "high-cost" APR thresholds will be affected as you have stated. However, we would like to emphasize that points and fees high-cost thresholds would also effectively become more restrictive under both HOEPA and many state laws.

In the case of state high-cost laws, some have points and fees thresholds that mirror HOEPA's. Others are substantially lower than HOEPA's. Almost all of the state high-cost points and fees definitions include items included in the Regulation Z finance charge as their first component, and some of these states simply say to use the HOEPA points and fees. This means that the addition to the finance charge of large and previously excluded dollar amounts - MIP, taxes, title charges - would cause a significant increase in the calculation of points and fees and thereby the severity of these high-cost thresholds. While some affected states may amend their statutes and either explicitly exclude more charges from the points and fees or increase their points and fees thresholds, this action is not guaranteed.

In the case of both HOEPA and state high-cost laws, these effectively lowered thresholds are likely to impact lending behavior since lenders and investors are still very unwilling to make a "high-cost" loan in any jurisdiction.

Secondly, page 43278 states that the Board believes the proposed 226.4 would render 226.32(b)(1)(ii) through (iv) unnecessary. We agree that these portions of the high-cost points and fees definition become redundant and already included in points and fees given the proposed definition of finance charge.

Yield Spread Premiums and Similar Originator Compensation
We have comments on proposed regulation 226.38 dealing with yield spread premiums (YSP). We know many comments have been received on the apocalyptic consequences of banning YSP. We have no comments one way or another on this particular effect of the proposed regulation. Rather, we would like to comment on one unintended consequence and how it might also effectively and unintentionally ban all YSP.

Specifically, if the originator is prohibited from receiving both an indirect payment from the lender and a direct payment from the borrower, under the new RESPA regulations it would be questionable whether a broker could receive a YSP. This is because under the new RESPA rules and the new Good Faith Estimate and HUD-1 Settlement Statement, a broker is required to disclose a YSP twice: once as a "credit" to the borrower's closing costs (which is intended to represent the YSP) and, if the broker wishes to retain any portion of the YSP, once as a "charge" to the borrower. Therefore the disclosures appear to contain both an indirect payment from the lender and a direct payment from the borrower. Admittedly this is simply a double disclosure of a single payment, so it may not be the intention of the proposed regulation to limit such a circumstance. Also this is admittedly a disclosure under Regulation X which is separate from Regulation Z. However, the double disclosure of YSP may cause some consumers or legal advocates to question whether or not a particular loan has violated this regulation, which could potentially lead to confusion and litigation.

While the treatment of YSPs under the new RESPA regulations has been confusing and has caused a great deal of chaos from a compliance perspective, these regulations will shortly be in effect and will be disclosing YSPs in a new fashion. Perhaps HUD's new disclosure treatment will render the issue of YSP moot; therefore the Board may wish to wait and observe the effect of this new regulation's impact before making a decision on how to or whether to further regulate YSP and similar originator compensation.

Other

We ask that the Board update the definition of "total loan amount" in the commentary to 226.32. The commentary currently references sections of the "points and fees" definition that are being proposed for deletion. Note that officially equating the "total loan amount" to the "amount financed" would simplify compliance.

We would suggest changing the proposed wording of 226.18. "For each transaction, the creditor shall disclose the following information as applicable, except that for each transaction secured by real property or a dwelling." (Emphasis added.) The words "except that" seems to imply an exception, rather than an additional disclosure requirement. Under the proposed text, it might be unclear whether 226.18 must still be followed. Using "and in addition" or similar wording would be clearer.

Under the commentary to 226.19, formerly comment 3 to 19(a)(1), now comment 2, where it is stated that the Regulation X (RESPA) definition of application can be used as the TILA application, please update the description of a RESPA application. RESPA's definition of application has been changed by the new rules effective January 1, 2010. We have a similar request in the comments to 19(d)(1) which discuss the RESPA "application" definition.

On page 43279, regarding 226.35 and the proposal to use HMDA guidance in determining the rate spread, we have two comments, one general and one specific. Generally, we advise caution when applying reporting standards to a compliance regulation. The intent and timing of the two is fundamentally different and some of the guidance for how to comply from a reporting side may not make much sense where origination is concerned. As a specific example and comment, we find one particular portion of HMDA's guidance to be unsettling

when applied to HOEPA HPMLs. Under the HMDA FFIEC FAQ regarding the rate calculation (http://www.ffiec.gov/hmda/faqreg.htm#rate), the date the interest rate the set is allowed to be "the last date the investor set the rate with the broker, not the date the broker set the borrower's rate." Certain lenders have taken this to mean that they can take the last date they set the rate with their correspondent or broker, even if this occurs after loan closing. How does it make sense to use a rate after closing for determining compliance with a provision that requires the compliance check to be performed at the latest at consummation? If would be helpful if this FAQ were clarified to specifically state that the date the rate is set must occur at or before consummation.

Thank you for your time and attention to these comments.

Sincerely.
Aspen Richter
ComplianceEase