February 9, 2009

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave. NW
Washington, DC 20551
regs.comments@federalreserve.gov
Docket No. R-1340

Subject: Docket No. R-1340: Proposed Amendments to Regulation Z

Dear Sir or Madam:

The Mortgage Bankers Association[1] (MBA) greatly appreciates the opportunity to comment on subject amendments to Regulation Z (Docket No. R-1340) proposed by the Board of Governors of the Federal Reserve (the Board).[2] The rules would amend Regulation Z, the Truth in Lending Act (TILA) regulations, in accordance with certain changes made under the Mortgage Disclosure and Improvement Act (MDIA).[3] MBA supports the Board's efforts to improve the disclosure process for consumers and

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

[2] The proposed amendments were published at 73 Fed. Reg. 74989 (December 10, 2008). The notice that the public comment period in this rulemaking is extended until February 9, 2009 is at 73 Fed. Reg. 77554 (December 19, 2008).

[3] The Mortgage Disclosure Improvement Act was enacted as §§ 2501 – 2503 of the Housing and Economic Recovery Act of 2008 (HERA), Pub. Law No. 110-289, 122 Stat. 2654, 2855 – 57.

thanks the Board for its leadership in efforts to harmonize TILA disclosures with Real Estate Settlement Procedures Act (RESPA) disclosures which are the responsibility of the Department of Housing and Urban Development.

Background: The Board's July 30, 2008, TILA and Home Ownership and Equity Protection Act (HOEPA) final rule (hereinafter HOEPA Rule) extensively revised the TILA and HOEPA rules (Regulation Z) to include substantive prohibitions and requirements respecting mortgage lending and new requirements for disclosures under TILA. Respecting TILA, the HOEPA Rule amended Regulation Z to require that creditors give consumers early disclosures even when the loan is not for the purpose of financing the purchase or initial construction of the principal dwelling (such as a refinance loan). The HOEPA Rule also requires that disclosures be given before the consumer pays any fee, other than a *bona fide* and reasonable fee for reviewing the consumer's credit history.

On the same day the HOEPA rule was issued, Congress enacted MDIA as part of the Housing and Economic Recovery Act (HERA). MDIA in part contains requirements identical to the HOEPA rule but further expands the category of loans for which early disclosures are required and establishes new timing requirements for disclosures.

Specifically, MDIA requires early disclosures for "any extension of credit secured by the dwelling of the consumer" and "dwellings other than the principal dwelling." Also, MDIA requires creditors to deliver good faith estimates of TILA disclosures or place them in the mail no later than three business days after receiving a consumer's application for a dwelling-secured closed-end loan. The delivery or mailing of these disclosures must occur at least seven business days before consummation. If the annual percentage rate (APR) provided in the good faith estimate changes beyond a stated tolerance, creditors also must provide corrected disclosures to the consumer at least three business days before consummation of the transaction. Consumers may expedite consummation to meet a "*bona fide* personal financial emergency."

On October 3, 2008, Congress amended the MDIA under the Emergency Economic Stabilization Act of 2008 to establish different requirements for early disclosures for mortgage transactions secured by a consumer's interest in a timeshare. MDIA's requirements are to become effective on July 30, 2009, about two months earlier than the HOEPA rule, which is to become effective October 1, 2009.

The Board's proposed rule seeks to conform Regulation Z to the aforementioned MDIA changes by the effective date in MDIA of July 30, 2009. Notably, MDIA also makes changes to the variable rate loan disclosure requirements to be effective January 30, 2011 which are not part of this rulemaking.

Summary of MBA's Comments: MBA's comments on the rule, discussed further below, are as follows:

1. MBA supports the rule's coverage including its expansion of disclosure requirements to closed-end refinance mortgage loans and mortgage loans made for the purchase of a second home but not investor properties.

2. It is important that the rule, particularly its provision for waiver of its new disclosure timing requirements, be implemented with maximum flexibility so that borrowers are not unduly delayed in receiving needed credit. MBA strongly supports enumeration of grounds beyond "imminent foreclosure" in the rules and in commentary to provide bases for waiver of the timing requirements.

3. Lenders also must be able to rely on a consumer's claim of bona fide financial emergency when considering the merit of a request for waiver or modification of a waiting period. Lenders are not equipped and should not be required to look behind or otherwise police borrowers' certifications to determine the extent to which a borrower has a financial emergency.

4. True RESPA and TILA reform requires coordinated and complementary efforts by HUD and the Board. While MBA appreciates the efforts of the Board and its staff to work with HUD in the past, the new timing requirements under MDIA demand new efforts at coordination with HUD to ensure that neither industry nor consumers are overwhelmed with an array of disparate disclosures that are provided at diverse times in the mortgage process. In particular, new efforts should be made at HUD to coordinate the GFE redisclosure requirements under RESPA with the new requirements for APR redisclosure under TILA. Also, the Board should make necessary clarifications to its rules to address the new RESPA rule.

5. Given the increased use of U.S. Postal Service Express Mail delivery, private mail delivery and e-mail delivery of disclosures, the rules should clarify the timing implications for these delivery methods.

6. The more precise definition of "business day" in Regulation Z would be more beneficial to regularize compliance across the array of firms in the settlement services industry for the new seven-day and three-day timelines for initial disclosure prior to consummation and APR redisclosure, respectively. However, until HUD adopts this definition, the "general definition" should be used for the requirement that TILA and RESPA disclosures be provided within three days of application.

7. The rule's effective date of July 30, 2009 should apply only to applications received on or after that date.

8. MBA does not believe similar disclosure requirements, including the new timelines, are needed for home equity loans and will provide further information concerning this point during the forthcoming rulemaking process.

Comments

1. Coverage

As indicated, Regulation Z currently requires the provision of early disclosures for "residential mortgage transactions" subject to the Real Estate Settlement Procedures Act (RESPA) or loans to finance the purchase or initial construction of a consumer's dwelling. Regulation Z also currently limits the definition to transactions secured by the consumer's principal dwelling.

MDIA, consistent with the Board's July 2008 rule, extends TILA's early disclosure requirements to any extension of credit secured by the dwelling of a consumer, i.e. including refinance and home equity loans. The proposed amendment would also amend Regulation Z to apply the early disclosure requirements to loans secured by dwellings other than the consumer's principal dwelling, e.g., vacation homes.

MBA supports the expansion of disclosure requirements to consumers' refinance loans and to loans that do not involve a principal dwelling. In accordance with the current RESPA and TILA rules, MBA does not believe, however, that the requirements should extend to investor properties. While MBA does not believe that the Board intended to drop this exclusion which also applies under the RESPA rules, the point should be clarified in the final rule.

2. The Need for Maximum Flexibility

MBA believes it is important that the rule be implemented with maximum flexibility so that borrowers are not delayed unreasonably in receiving credit. While MBA recognizes that many of the provisions included in this proposal including the new timing requirements are mandated by MDIA, MBA is concerned, and was concerned when the provisions were enacted, that the timing provisions for disclosures, while well intended, would unduly delay the mortgage process and the consumers' access to credit. It is for this reason that we strongly support efforts to apply these requirements, particularly those permitting waiver, as flexibly as possible so that borrowers are not delayed unreasonably. Such flexibility, as detailed below, would allow for example, the lender to rely on a range of reasons for a borrower's request to waive the three-day or seven-day time periods.

3. Waiver of the Waiting Periods

As indicated, under MDIA, consumers may modify or waive the timing requirements to expedite consummation to meet a "*bona fide* personal financial emergency" and thereby

waive the seven-day and three-day waiting periods under the MDIA. MDIA does not define the term "bona fide personal emergency" and the Board has responsibility for doing so.

By way of defining "bona fide financial emergency," proposed comment 19(a) (3)–1 explains that whether a *bona fide* personal financial emergency exists would be determined by the facts surrounding individual circumstances. The imminent sale of the consumer's home at foreclosure during the three business-day waiting period is provided as an example.

The Board solicits comment on the proposed modifications or waiver procedures especially whether such procedures should be more or less flexible than existing procedures for modifying or waiving the rescission rights or the waiting period before consummating high-cost transactions. The Board also requests comment on whether there are circumstances, other than pending foreclosure, where the consumer may want to waive the waiting period. It also requests comment on whether a consumer may modify or waive the required waiting period(s) only if the consumer has a bona fide personal financial emergency that must be met before the end of the waiting period.

Under the proposed rule, the consumer would be required to give the creditor a dated written statement specifically modifying or waiving the waiting period which describes the personal financial emergency meriting a waiver. All consumers entitled to receive the disclosures would have to sign the statement. This proposed statutory change would also prohibit the use of printed forms. The Board notes that the provisions concerning the modification or waiver of the waiting periods are substantially similar to the provisions for waiving the right to rescind and waiving the three-business day waiting period before consummating certain high-cost mortgage loans.

MBA believes that the rules applicable to the MDIA should be very flexible in granting waivers, more flexible than the rules for rescission rights or the waiting period before consummation of high cost transactions. Unlike the rescission or high cost rules, they apply to disclosures for virtually all mortgage loans and, if not applied flexibly, risk delaying needed credit for an enormous number of borrowers.

MBA strongly supports enumeration of grounds beyond "imminent foreclosure" in the rules and in commentary to provide bases for waiver. "Imminent foreclosure" is not required by the statute and by solely identifying it as the standard restricts the rules such that only similar emergencies could be bases for waiver. MBA believes that *bona fide financial emergency* encompasses a very wide range of concerns from timely getting cash to avoid delinquencies in medical, legal, educational and credit card bills, closing a deal to ensure a timely ancillary home purchase or refinance or simply assuring a timely closing on a particularly advantageous loan. Considering that all eventualities cannot reasonably be listed, in addition to a list of possible grounds, the rules should also make provision for a "catch-all" to cover instances not explicitly listed but which nonetheless constitute financial emergencies.

While many emergencies will occur before the end of the waiting period, we do not believe that either the statute or its intent support the inclusion of such a requirement. Some emergencies may extend a day or two beyond the waiting period or even later, in the case of actual foreclosure, but, in any case, we doubt it was Congress's intent that legislation to protect the consumer must force them to the precipice of financial emergency before a waiver can be sustained.

MBA also strongly believes that lending institutions must be able to rely on the statements and claims of economic hardship by the consumer when granting a waiver. The consumer is in the best position to determine whether his or her financial concerns support waiver of the timelines in the proposal. Lending institutions are not equipped and should not be expected to serve as police to investigate the validity or magnitude of claims of financial emergency by a consumer. If lenders, explicitly or implicitly, are required to do so, the costs of such investigation and inevitable litigation will only serve to increase industry's and ultimately consumers' costs.

Failure to specify examples will cause lenders to be reluctant to grant any waivers whatsoever consistent with how they treat waivers of rescission requests today. Such an outcome would be contrary to Congress's clear intent to allow relief where there was a *bona fide* financial emergency.

Finally, while MBA understands that MDIA requires redisclosure of an "inaccurate" APR three business days before settlement, MBA strongly believes that the proposed rule, consistent with the legislative intent, should exempt from the additional waiting period all loans in which the initial disclosure *overstated* the APR. MBA believes the redisclosure period under the law was intended to ensure borrower consideration of any changes to avoid harm from higher fees than expected. However, any overstatement that is beyond the tolerance, which triggers a corrected disclosure, would benefit, not harm, the consumer. Imposing a waiting period of three business-days in such a case would only delay the benefit. Accordingly, MBA believes that, where an inaccuracy in the APR is due to an overstatement in the initial disclosures made to the consumer, the regulations should be revised to remove the requirement of a three-business-day waiting period and allow for redisclosure at consummation of the transaction.

4. Need for Coordination of Board's and HUD's TILA/RESPA Timing and Other Requirements

RESPA, which is HUD's responsibility, provides borrowers information on their settlement charges, while TILA, which is the Board's responsibility, provides borrowers information on the costs and terms of the credit transaction. HUD issued its final RESPA rule on November 17, 2008 which includes new Good Faith Estimate and HUD-1 forms along with attendant timing requirements. The Board's proposed rule indicates that the Board believes that its timing requirements are consistent with HUD's November 17, 2008 final rule including its good faith estimate and HUD-1 timing rules.

The Board requests comment about ways to further conform Regulation Z's disclosure timing requirements for dwelling-secured credit to the disclosure timing requirements in HUD's Regulation X, as amended.

MBA shares the Board's view that RESPA and TILA disclosures should be coordinated and given at the same time. TILA on the one hand and RESPA on the other provide information on the costs and terms of the transaction respectively. Coordination on timing will result in lower costs for both the consumer and the lender as well as greater clarity. Consumers will not be inundated with RESPA disclosures at one point in the process and TILA disclosures at another. For this reason, MBA supports the provision of both RESPA and TILA disclosures within three days of application for refinance loans and purchase loans as well as loans on second homes and on a consumer's principal dwelling consistent with the RESPA rules.

To achieve consistency between RESPA and TILA disclosures, MBA urges the Board to work with HUD to consider changes to Regulation X to ensure that the GFE of settlement costs will be provided at the same time as the early TILA disclosure and that changes to the GFE will be given no later than three days before loan consummation. HUD's new rules bind a lender to the tolerances applicable to the GFE unless the lender provides a new GFE to the borrower based on "changed circumstances" within three days of receiving information to establish such circumstances. The proposed rule and the MDIA require that if the APR contained in the early disclosures becomes inaccurate, creditors must redisclose and provide corrected disclosures that the consumer must receive at least three days before consummation. These are different standards and potentially, consumers will receive one or more GFEs before they receive a final TILA disclosure.

Increased efforts to coordinate these rules will allow consumers to receive complementary and complete RESPA and TILA disclosures at key moments in the mortgage process without inundating the consumer with potentially confusing information.

Also, there are other provisions of HUD's rules that should be carefully examined in conjunction with their implications for the Board's requirements under Regulation Z, for example, concerning mortgage broker fees. We also believe that "average cost pricing" should be regarded as resulting in "bona fide and reasonable" fees and the TILA rules or commentary should so provide.

5. Clarification of Timing Implications of Two-Day, Private and Electronic Delivery of Disclosures

The proposed rule and the MDIA require creditors to deliver or mail the early disclosures no later than three business-days after receiving the consumer's written application and at least seven days before consummation. The rule further provides that

if early disclosures or corrected disclosures are mailed, they are deemed to be received by the consumer three days after the creditor mails them.

Lenders often use two-day U.S. Postal Service delivery, private carrier delivery or electronic delivery because these methods are faster and provide delivery confirmation. Given the increased use of these methods, the rules should also clarify the timing implications for these methods. Specifically, considering that these are actual deliveries, the rule should make clear that disclosures by these means are regarded as delivered on the date they result in delivery or transmission to the consumer.

6. Definition of "Business Day"

Currently, there are two definitions of ''business day'' under Regulation Z. Under the "general definition," a ''business day'' is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for some purposes under TILA, a "more precise definition" applies where ''business day'' means all calendar days except Sundays and certain specified federal legal public holidays.

In the July 2008 final rule, the Board revised the definition of ''business day'' to clarify how creditors should count weekends and federal legal public holidays in determining when mailed disclosures are presumed to be received, and how long the restriction on fees applies under TILA. The Board revised the definition to apply the more precise definition of "business day" – all calendar days except Sundays and specified legal holidays – to the consumer's receipt of early mortgage loan disclosures. The Board believes that the definition of business day that excludes Sundays and legal public holidays is more appropriate because consumers should not be presumed to have received disclosures in the mail on a day on which there is no mail delivery. The Board is proposing to further amend the definition of ''business day'' to clarify that creditors should count ''business days'' the same way for purposes of the presumption in proposed § 226.19(a) (2) that consumers receive corrected disclosures three business-days after they are mailed.

Under the Board's proposal, the general definition of business day would be used for purposes of satisfying the early disclosure timing requirements. The Board indicates this creates consistency with RESPA's requirement that creditors provide good faith estimates of settlement costs not later than three business-days after the creditor receives the consumer's application for a federally related mortgage loan. In order to simplify the rule, the general definition of business day would also be used for determining when the seven-day waiting period has expired and consummation may occur. *The Board requests comment, however, on whether the more precise definition of business day should be used to facilitate compliance with the seven business day waiting period requirement.*

MBA believes that the definition of "business day," for purposes associated with these consumer disclosures, should be standardized considering the array of companies in

the settlement services industry. This militates in favor of using the more precise definition consistently. However, for the reasons explained here, at this point, MBA supports use of the general definition for early disclosures and the more precise definition for the seven-day period between early disclosure and consummation and the three-day period for redisclosure of the APR.

MBA agrees the general definition corresponds more closely to the current RESPA definition of "business day." Accordingly, MBA supports the Board's use of the general definition in this area to create uniformity between the timing of early TILA disclosures and the timing of the RESPA GFE disclosures. Coordination of these disclosures, as indicated, is necessary to optimize consumer understanding of the loan's terms and costs and to relieve both industry and consumers of the added costs and confusion that come with uncoordinated disclosures.

At the same time, MBA supports using the more precise definition of business day to determine both the three-business-day waiting period as the Board proposed, as well as the seven-business-day waiting period. HUD does not yet have similar requirements in this area and, therefore, no purpose is served by defining the three-day waiting period and the seven-day waiting period differently business to business. Having a standard definition of business day will help diverse entities manage to the time limits.

7. Clarifying the Rule's Effective Date

The proposed rule states that its requirements will become effective on July 30, 2009, the effective date of the amendments in the MDIA. MBA members will be making systems changes prior to that date to comply. However, considering that countless loan applications will have been received prior to that date and disclosures provided, we believe it makes sense to make the rule apply only to mortgage loans for which applications are received on or after July 30, 2009. Such an approach will assure compliance with the statute as required without disrupting the loan process for pending applications.

8. Home Equity Lines of Credit (HELOCs)

Currently, proposed § 226.19(a)(1)(i) would not apply to home equity lines of credit (HELOCs), which are subject to separate rules for open-end credit; the July 2008 HOEPA rule also did not apply to HELOCs. Consumers typically receive non-transaction specific disclosures describing the creditor's HELOC plan at the time they receive an application. Creditors must provide more detailed disclosures at account opening, before the first transaction. *The Board is requesting comment on the timing of HELOC disclosures, in connection with the review of content and format requirements for HELOC disclosures by Board staff that currently is under way.*

MBA is not aware of any need to apply new timing requirements to HELOC transactions paralleling or even similar to the new requirements for closed end transactions. Absent

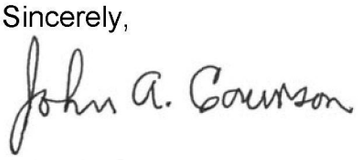
a finding of need, such requirements will only serve to delay access to credit. Moreover, it is our understanding that many lenders contract with lenders specializing in HELOC transactions to actually initiate and process HELOC loans. For this reason, MBA understands that changes to these disclosure requirements may increase costs for these transactions beyond the costs occasioned by instituting new disclosures.

MBA appreciates the Board's decision to make any proposals for changes to timing of HELOC disclosures part of the forthcoming rulemaking process. While MBA does not support changes to these requirements, if the Board determines to propose such changes, MBA will provide further comments on this subject.

Conclusion

Again, MBA appreciates the opportunity to comment on the proposed amendments to Regulation Z and the Board's efforts to improve disclosures to consumers. If there are any questions about these comments, please contact Ken Markison, Associate Vice President and Regulatory Counsel, at kmarkison@mortgagebankers.org or (202) 557-2930 or Joseph Silvia, Senior Public Policy Specialist, at jsilvia@mortgagebankers.org or (202) 557-2858.

Sincerely,



John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association