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SECURIAN™

December 21, 2009

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Proposed Rule – Revisions to Reg Z – Home Equity Lines of Credit
Docket No. R-1367

Dear Ms. Johnson:

This letter is submitted in response to the Board's Proposal to revise Reg Z's rules regarding Home Equity Lines of Credit.

Securian Financial Group is a leading provider of credit insurance programs to the bank and credit union industry, and administers debt cancellation contracts and debt suspension agreements for our clients. We are also a lending and deposit forms provider to our credit union clients, and as such, provide closed-end and open-end mortgage and home equity loan forms, credit card forms, and deposit forms to hundreds of credit unions nationwide. It is with this background and knowledge that this letter is submitted. We appreciate the opportunity to provide this information.

The following will provide our comments for the various proposals.

IMPLEMENTATION PERIOD

The Board contemplates providing creditors sufficient time to implement any revisions that may be adopted. The Board seeks comment on an appropriate implementation period.

We recommend an implementation period of 12-18 months, especially if both closed-end and HELOC rules will have the same effective date. The proposal is a complete overhaul of the forms and disclosures that need to be provided. The changes that would need to be made to loan forms, systems programming, policies & procedures, compliance programs, and training will be unprecedented. Many creditors will have to rely on third-party forms providers and data processors, who will need months to make the necessary revisions. Given the scope and breadth of the changes, 12-18 months is a very reasonable implementation period.

PROPOSALS REGARDING FINANCE CHARGES, FEES, AND CHANGE-IN-TERMS

REDEFINITION OF FINANCE CHARGE

Coordination of "all-in" Definition of Finance Charges. The Board believes that changing the definition of finance charge for HELOC accounts would not have a material effect on the HELOC disclosures and accordingly is unnecessary. However, the Board requests comment on whether there are reasons why consideration should be given to changing the definition of finance charge for HELOCs. For a detailed discussion of the Board's proposals regarding the "all-in" finance charge for closed-end mortgage loans, see the Board's separate Federal Register notice published today.

We wholeheartedly agree that changing the definition of "finance charge" to an "all-in" approach for HELOCs is unnecessary. As we discuss in detail in our Comment Letter dated December 21, 2009 that we submitted to the Board regarding closed-end mortgages, we are opposed to such a re-definition. All the same reasons set forth in that comment letter would apply here.

Moreover, for HELOCs, any re-definition should more closely mirror the change to the credit card rules, in which the Board took all fees out of the definition of finance charge. HELOCs are, obviously, open-end credit and therefore utilize "effective APRs" on periodic statements. As the Board already knows that consumers do not understand the effective APR and therefore the disclosure is meaningless and misleading. We believe that any re-definition of "finance charge" for HELOCs should involve removing all fees from the APR, rather than including them.

TOLERANCES FOR PAYMENTS, COSTS, AND FEES

The Board is considering setting a general standard for changes that would be considered insignificant, such as allowing changes to be deemed insignificant that result in the same or substantially similar payments (including periodic payments and the total of payments), rates, fees, and overall loan costs. One concern about establishing a general standard is that confusion among creditors and consumers, and possibly increased litigation, may result, particularly concerning particularly concerning the meaning of terms such as "substantially similar."

The Board requests comment on whether setting a general standard for term changes that would be considered insignificant is desirable. In this regard, the Board also requests comment on whether prescribing specific tolerances for resulting payments, costs, and fees would be helpful, and what appropriate tolerances might be.

The current Commentary provides guidance on insignificant changes, and this Commentary should be retained. We agree that providing a general standard can create problems. Prescribing specific tolerances is not possible - there are too many varying factors and circumstances involved.

ADVANCE NOTICE REQUIREMENTS

Alternative Financing. The Board is soliciting comment on whether it may be more difficult to seek alternative financing or otherwise mitigate the impact of a change in terms for HELOCs than for credit cards. The Board is also soliciting comment on whether, because changes in terms are more narrowly restricted for HELOCs than for credit card accounts, the impact on consumers of term changes for HELOCs is likely to be less severe than for credit cards and thus whether the proposed time period is likely adequate.

We agree that a change-in-terms notice should be given if a creditor imposes a penalty APR. However, we see no need to have those changes mirror the credit card rules. The Board itself has stated that it knows of very little abuse in the HELOC sector, and that HELOCs have not been the cause of the "mortgage crisis". Under the current rules, the 15 day notice would suffice. Certainly the time period should not be any more than 45 days. That is more than enough time for a consumer to secure alternative financing.

<u>Balances to which the penalty rate applies.</u> Rate increases for HELOCs subject to § 226.5b, where permissible at all (i.e., for a reason that would permit termination and acceleration of the plan under § 226.5b(f)(2)), would generally apply to all balances. Thus, the disclosure under § 226.9(g)(3)(i)(E) would not appear appropriate for HELOCs. However, the disclosure under § 226.9(i)(3)(i)(D) may be useful to indicate, for example, whether a rate increase would apply to balances under the regular variable-rate feature of a HELOC, while not applying to balances under a fixed-rate option. The Board solicits comment on the appropriateness of this disclosure.

We do not believe this disclosure is appropriate. If creditors impose a penalty rate, it will do so on variable balances as well as balances on a fixed-rate option. However, if a creditor chooses not to impose it on a particular balance, it should be optional for the creditor to disclose that fact. Otherwise, the penalty rate should be assumed to apply to all balances.

<u>Model Form G-25</u>. We make the following comments regarding Model Form G-25:

We find it unnecessary to disclose a change in credit limit on this form. If the credit limit is reduced, it will covered in the Notice of Action Taken forms (G-24). If it is increased, it is usually done by the request of the borrower and therefore no specific format should be required, and the opt-out rules would certainly not apply. Even if the creditor unilaterally increases the credit limit, it wants consumers to use that increase, so it will send a letter or otherwise inform consumers of the increase. Moreover, consumers know they can ask to have the credit limit reduced. There is no need to subject credit limit increases to new rules.

PROPOSALS REGARDING OPERATIONAL PROCESSES & PROCEDURES

OCCUPANCY STATUS & CREDIT CARD ACCESS

<u>Occupancy Status of Real Estate Collateral</u>. Proposed comment 5-1 generally permits creditors to assume that the property securing the line of credit is the principal residence or a second or vacation home of the consumer and, therefore, that the line of credit is covered by the HELOC rules. However, creditors are also permitted to investigate the actual use of the property. If the creditor ascertains that the property is not the consumer's principal residence or a second or vacation home, the creditor may comply with the rules applicable to open-end (not home-secured) credit under Regulation Z. In this case, if the credit plan is accessible by credit card, the creditor must comply with, in addition to the

rules applicable to open-end credit generally, the rules for open end (not home-secured) credit card plans under § 226.5a and associated sections in the regulation. The Board requests comment on whether the proposed comment provides useful and appropriate guidance.

This proposed comment does not provide useful or appropriate guidance. If the property constitutes the consumer's dwelling at the time the HELOC is established, the creditor will treat it as a HELOC and obtain a mortgage on the property. If at some point later it is discovered that the property is used in a different manner, the creditor will not surrender its mortgage. On the contrary; such new use could increase the creditor's risk, and it must be allowed to protect itself accordingly. The disclosures at the time the HELOC was established would have been accurate, and the proper rules for credit cards will have been followed. The creditor should not be penalized for the consumer breaching the loan agreement and increasing the creditor's risk; there is simply no reason to begin following the 226.5a rules when the nature of the loan has not changed.

This comment should be revised or withdrawn. If it remains, however, it should also clarify that an investigation into the use of the property is completely optional to the creditor, and that the creditor may rely on the representation of the consumer.

ON-GOING MONITORING OF SUSPENDED ACCOUNTS

The second compliance option under Reg Z regarding reinstatement of accounts permits creditors to forego ongoing monitoring and instead require the consumer to request reinstatement. This option is available only if the creditor complies with the provisions of § 226.5b(g)(2). During outreach for this proposal, the Board was asked to consider requiring ongoing monitoring in all cases, rather than allowing creditors to shift the burden to consumers to request reinstatement. Proposals to strengthen requirements on creditors that require consumers to request reinstatement, as discussed below, were intended in part to address concerns about allowing creditors to require consumers to request reinstatement.

The Board requests comment on requiring ongoing monitoring in all cases, including specific information about potential benefits and burdens of this approach.

We strongly oppose on-going monitoring. Such monitoring would be extremely burdensome and costly and provides no additional benefit to the consumer. Monitoring would involve systems programming, tracking, training, paperwork, and human resources.

In order to use this compliance option, creditors must provide notice of the right to reinstate the credit privileges, and the method with which to make the request. Upon request, the creditor must reinvestigate and provide the results of that investigation within 30 days. This is more than adequate to safeguard the consumers' interests. Moreover, the consumer is in control of whether to attempt reinstatement or not. It could be that the consumer decides not to make such an attempt, in which case the creditor would simply be wasting time, effort, and money. Requesting reinstatement is extremely easy for consumers; on-going monitoring, on the other hand, is extremely difficult and costly for creditors. Retaining the proposal as-is makes the most sense.

Reinvestigation. The Board proposes to require that the creditor complete the investigation and mail a notice of reinstatement results within 30 days of receiving the consumer's reinstatement request.

The Board requests comment on whether this timeframe is appropriate and whether the Board should consider additional guidance for creditors when consumers do not provide needed information to complete the investigation in a timely manner. Such guidance might, for example, require that the creditor request the information within a reasonable period of time after receiving the reinstatement request, and permit the creditor to delay sending the notice until a reasonable period of time after receipt of the requested information.

We agree that a 30 day time frame is appropriate. However, we would ask that that timeframe begin to run upon the creditor's receipt of all information requested from the consumer. We believe a reasonable timeframe in which to request the necessary information from the consumer is 5 business days.

We also note that reported abuses of creditors' right to suspend the HELOC have been virtually non-existent, and did not contribute to the mortgage crisis. And while suspensions are a relatively new phenomenon, there are no indications of abuse. Creditors are already restricted in when they can suspend HELOCs, which is an important and effective safeguard for the consumer. There is simply no reason to impose more burden on creditors in this regard.

Charging Consumers for Reinstatement Requests. Proposed § 226.5b(g)(2)(iii) would grant the consumer one reinstatement request investigation free of charge. That is, for consumers required by the creditor to request reinstatement, the regulation would prohibit a creditor from charging the consumer any fees for investigating the consumer's first reinstatement request after each time the line is frozen or reduced. Proposed § 226.5b(g)(2)(iv) would permit a creditor to charge bona fide and reasonable property valuation and credit report fees only for investigations of reinstatement requests other than the consumer's initial request after a line is suspended or reduced.

The Board requests comment on this approach, including whether consumers should have to pay reinstatement investigation costs for any reinstatement request. The Board also requests comment on whether, if the first reinstatement request is free but fees may be charged for subsequent requests, a consumer should be required to pay investigation costs for a subsequent reinstatement request made a significant time period after the first request, such as six months, one year, or other appropriate time period commenters might suggest. Finally, the Board requests comment on whether the Board should consider requiring that the amount of the fees be disclosed along with the notice that the consumer must request reinstatement, and the burdens and benefits of this requirement.

We believe that it is reasonable to have one free investigation, except that, if consumers request an appraisal, they should pay for that cost. This is because (1) appraisals are expensive; and (2) allowing unlimited free appraisals can lead to abuse by the consumer. For example, consumers would be allowed to request the free appraisal even though they have no intention of using the line again, for purposes that have nothing to do with the line itself.

We request that the Board clarify that consumers can request only one investigation per suspension. We also request that the Board clarify that, if the creditor has a recent appraisal on file, it can rely on that appraisal when performing the reinstatement investigation. We believe 6 months would be a reasonable definition of "recent" (this is the length of time that the FHA relies on for loans such as reverse mortgages - i.e., if a consumer is not happy with the appraisal it receives from one lender, he must wait six months before another appraisal will be done, even by another lender).

COMMENTS ON THE MODEL FORMS

We submit the following comments regarding the various Model Forms.

KEY QUESTIONS TO ASK ABOUT HOME EQUITY LINES OF CREDIT

We generally have no objection to the content and use of this form. We do, however, request three changes in order to make certain disclosures within the form are more accurate. They are as follows:

1. Block 4 - How soon do I have to pay off my balance? The last phrase in the last sentence should state, "'may' have to make larger minimum payments than during the borrowing period" (rather than "will"). While more often than not, it is probably true that the payments during the repayment period will be larger, that is not always the case. It will depend on the length of the draw period, the balance outstanding at the beginning of the draw period, and the minimum payment formula. Therefore, "may" is the appropriate word to use, rather than "will".

2. Block 6 - Do I have to pay any fees? As currently drafted, this language implies that an application fee will always apply. We suggest changing this language to state that five types of fees may apply, and listing "application fees" as one of the five types.

3. Block 7 - Should I get a home equity loan instead of a line of credit? We do not believe that this block accurately reflects the differences between a closed-end home loan and a HELOC. It implies that a closed-end loan always has a fixed rate and that payments will never change. This is not true in the case of variable rates and ARMs. It also implies that HELOC payments are always higher, and does not explain that the payments can fluctuate. We also believe that the last sentence is poorly worded and therefore difficult to understand.

As such, we suggest the following revisions:

> **Should I get a home equity loan instead of a line of credit?**
> With a home equity loan, you can borrow a fixed amount of money once. ~~at a fixed interest rate~~. Your interest rate is usually fixed, and your payments are usually equal installments over a fixed amount of time. This means that your interest rate and minimum payment will usually stay the same over time. Consider a fixed-rate home equity loan if you plan to borrow a fixed amount of money at one time and want to know the exact amount of your minimum payment. Consider a home equity line of credit if you plan to borrow different amounts of money over time and can afford ~~higher payments, even if the interest rate on your line of credit reaches its maximum.~~ payments that will fluctuate over time. You should make sure you can afford your payment, especially if the interest rate on your line of credit reaches its maximum.

EARLY DISCLOSURES

We base the following comments on proposed Model Form G-14(C).

We appreciate the Board's attempts at simplying this disclosure and generally like the Board's approach. We think the Board is on the right path. However, we have the following concerns and comments.

GENERALLY

Consumer-Specific Calculations & Disclosures. We are strongly opposed to requiring transaction-specific disclosures on the Early Disclosures, for the following reasons.

1. Consumer-specific disclosures do not allow an apple-to-apples comparison. Consumer-specific disclosures will not allow consumers to make apples-to-apples comparisons of HELOCs offered by different lenders. This is because the disclosures are based on credit limit, and different lenders may approve different credit limits for the same consumers. As such, the numbers on the disclosures will be misleading or confusing to the consumer. For example, suppose two lenders offer the same HELOC plan - it has interest-only payments at 5.25% during the draw period, and a 1.5% payment during the repayment period with a balloon. Lender A approves the consumer for a $50,000 credit limit, while Lender B assigns an $80,000 credit limit. The numbers on Lender B's disclosures will be higher, and therefore Lender B's program will look more expensive, when in fact that is not the case. Consumers will be lured into thinking that the comparisons are valid, when in reality they are comparing apples to oranges.

Similarly, transaction-specific disclosures will not allow a consumer to compare different types of plans against other lender's plans if the lenders assign different credit limits. For example, suppose in the example above, Lender B offers interest-only during the draw, with a 1.0% payment during the repayment period with a balloon. Perhaps the consumer wants to know what the difference in the monthly payment would be between Lender A's 1.5% and Lender B's 1.0%. This will not be readily ascertainable because Lender A's 1.5% payment will be based on $50,000, while Lender B's 1.0% will be based on $80,000. Thus, when looking at the Early Disclosure Table, the consumer will be comparing Lender A's $750 versus Lender B's $800. However, that is not a valid comparison because the consumer will never have two outstanding balances with the same lender. It is also misleading because Lender A's monthly payment looks lower than Lender B's, when that is actually not the case. So the consumer may choose Lender A and take an initial $20,000 advance. In that case, his monthly payment would be $300. However, had he chosen Lender B, the same balance would only cost him $200 per month.

This situation would be rectified if the generic $10,000 example that is currently allowed by Reg Z is used. In such a case, the consumer will know that the difference in the monthly payments from Lender A to Lender B would be $150 v. $100, a true difference of $50.00 with an accurate representation that Lender A's monthly payment is lower than Lender B's. The consumer will have compared apples to apples and made a much more informed, accurate decision.

2. <u>Consumer-specific disclosures are overly burdensome to creditors</u>. Providing consumer-specific transactions is extremely expensive and labor-intensive for creditors. The number of fields and calculations in the Board's proposed form is significant. In the Plan Comparison tables alone, there are 12 separate calculations to make and 12 fields to populate. Currently, creditors' forms providers make the generic calculations allowed by current Reg Z based on pre-packaged calculation software. Such calculations are included in the cost of purchasing the form, and the annual updates required by Reg Z are covered under the cost of the annual maintenance agreement between the creditor and the forms provider. There is no data programming and the creditors do not need to engage their data processors.

Under the Board's proposal, consumer-specific calculations would have to be made by the creditors as they process each loan. Creditors will need to engage their data processors to program the calculations and create fields to be mapped and populated when the consumer-specific data are determined. Data programming costs will skyrocket compared to the early disclosures being used under current Reg Z. This will also be the case when creditors change their HELOC programs - new calculations will need to be made, new fields may need to be created, and new mapping will be required. This will absolutely cripple creditors' flexibility to discontinue current programs or offer new programs as market conditions or safety & soundness concerns might dictate.

Consumer-specific disclosures within 3 days are also not possible under certain circumstances or by certain creditors. Consumer-specific disclosures require that creditors determine the consumers' credit limit. This cannot be done until an appraisal or valuation is made. Often times appraisals or valuations cannot be made within 3 days. And relying on the consumer's representation of property value on the application would seem to have little utility, especially in today's marketplace of depressed values and unprecedented drops in value. This will make it impossible to comply with the new rules - in such a case, is the creditor to deny the loan? This cannot possibly be the Board's intent.

3. <u>There has been little or no abuse in the HELOC marketplace, and therefore consumer-specific disclosures are not warranted</u>. There is no dispute that the HELOC marketplace has experienced very little abuse and did not contribute to the mortgage crisis. Given the potential misinformation to consumers and the unreasonable burden on creditors discussed above, consumer-specific disclosures are simply not warranted. Providing the Board's proposed disclosures based on generic $10,000 examples will allow truer comparisons between plans and lenders, and will keep creditor burden at a reasonable level.

For all the reasons discussed above, we respectfully request that the Board withdraw the proposal to provide consumer-specific disclosures.

<u>Font Size and Legal-Sized Paper</u>. We believe the 10-point font size requirement is unnecessary. It only lengthens the disclosures, which is evidenced by the Board's use of legal-sized paper. It is very rare for creditors to use legal-sized paper today; it is more expensive and harder to generate from loan origination systems. We also believe that the fewer disclosures on a page and the larger number of pages lessens the effectiveness of tabular disclosures. We believe font-size should be set forth in the rules as a "suggestion" or safe harbor; that a requirement of legibility should be emphasized; and that any size stated should be 8-point. A font-size of 8 points would still make the forms perfectly legible, and could help reduce the number of pages significantly, thereby helping to ensure that consumers read all pages.

CONTENT AND FORMAT OF THE EARLY DISCLOSURES

We have the following comments regarding the content and format of the Early Disclosures. Again, we base these on Model Form G-14(C).

Generally. We have issue with using the term, "Borrowing Period". It is not the term used in the industry, and will cause confusion if a loan officer calls it the more common "draw period". It is also slightly misleading, since the fact remains into the repayment period that the consumer has borrowed money, and until the balance is paid in full, the consumer is "still borrowering" from the lender. "Draw period" is the more accurate term, i.e., the period in which the consumer can draw on the account. We do not believe that consumers have been confused by the terminology in the past, and there is no reason to change it now.

Borrowing Guidelines; Credit Limit; Transaction Limitations. As noted above, the disclosures should not be based on credit limit. We think this disclosure should be removed from the Early Disclosures. We also believe that transaction limitations are of secondary importance to consumers, and should be moved to Page 2.

Annual Percentage Rate Disclosure on Page 1. The sample form discloses an Introductory Rate, and then a specific "current rate" of 5.25% that will apply after the six-month intro period. However, a creditor will not know the rate at the end of the intro period since it depends on the Index value. Because we do not believe that the Early Disclosures should be consumer-specific, we believe this APR should be one that has been used recently (e.g., within the past 6 months), and disclosed as follows:

> **4.00%** Introductory APR for the first six months.
> After that, your APR will be a variable rate that will change monthly based on the Prime Rate plus a margin [of ___] [based on your credit standing]. There is no limit on how much the rate can change in one year. An example of an APR we have used recently is **5.25%**. Ask us the current rate [and margin that you may qualify for].

If the Board retains this disclosure as proposed, we request clarification that the 5.25% number is the Index + margin as of the date of the disclosure. We also suggest placing an asterisk next to the 5.25% with the explanation below: "This is today's current rate; your rate at the end of the introductory period may be different if the Index changes." Otherwise, as currently worded, it misleads the consumer into believing that 5.25% will be the initial rate when the intro period ends.

Minimum APR. We also believe that the section for floor or minimum rate should be disclosed even if there is no floor (in which case that fact would be disclosed). This is important information for the consumer to know, and the disclosure is important in order for the creditor to enforce the floor. It is also confusing if the consumer receives one Early Disclosure from Lender A with the Minimum APR, and another from Lender B without it - the consumer will not know if Lender B has no floor, or whether it simply chose not to disclose it.

Payment Plans Section Generally. We note the absence of a minimum dollar amount in this section, e.g., $50.00 per month. This is important information for the consumer to know, and is crucial when figuring sample calculations. We request clarification that a minimum dollar amount can be placed in this section, e.g., "Your minimum monthly payment would cover interest plus 1.5% of the balance, or $50.00, whichever is greater."

We also note a discrepancy in the payment formulas chosen by the Board and those used in the industry. When the Board uses "1.5%" and "1.0%", it is using it as, e.g., 100% of the monthly interest *plus* 1.5% of the balance. For example, the Board uses $1,550.00 in the sample for an $80,000 balance at 5.25% interest ($350 interest plus $1,200). While there may be some plans that use this formula, the standard in the industry is 1.5% of the outstanding balance; it does not cover 100% of the interest. For example, on an $80,000 balance that has not yet accrued interest, this figure is $1,200. In the second month, with accrued interest and the consumer's payment of $1,200, the outstanding balance (P&I) is $79,150, and the minimum payment is $1,187.25 ($79,150 x .015). While this may be a level of detail irrelevant to most, we are concerned that anyone who carefully studies the Board's sample forms will misconstrue how the payments are calculated in a real-life situation by creditors, loan origination systems, and home equity calculator software readily available on the internet (see, e.g., http://www.calculatorplus.com/mortgage/loan_payment.html.) We feel that the sample forms provided are very useful, but should reflect industry norm.

Payment Plans; Disclosure of Two Payment Plans

The Board believes that the proposed approach of only allowing two payment plans to be disclosed in the table, and allowing the consumer easily and quickly to receive information about additional payment plans upon request, strikes the proper balance between ensuring that consumers are adequately informed about the payment plans that are offered on the HELOC plan and preventing "information overload" that might result if all payment plans were disclosed in the table. The Board solicits comment on the proposed approach.

While we appreciate the Board's attempt at simplifying the disclosures for the consumer and to avoid "information overload", we have several concerns with the 2-plan approach and we don't think it should be used. We do not believe that such an approach provides enough information for consumers to make an informed decision on the plan that is best for them. We explain as follows.

The two-plan approach generally. First, only consumers can know which plan is best for them. Under the proposed approach, the creditor would be forced to choose which plans to compare. While we agree that a plan with a balloon payment should be disclosed, how does the creditor choose which other plan to compare? It is not uncommon for a creditor to offer more than one payment plan that would result in a balloon. For example, a creditor could offer (a) an interest-only plan; (b) a plan with 1% payment over the draw and repayment periods; and (c) a 1% payment over the draw period, with the balance fully amortized over the draw period. While we agree that one plan disclosed should be a balloon plan, and the other the non-balloon plan, how does the creditor choose which balloon plan to disclose? For example, a plan with interest only throughout a 10-year draw with no repayment period can be very different from a plan with 1.5% during a 10-year draw period and a 10-year repayment period.

Second, consumers will not request to see other plans. More than likely, the application disclosures will be mailed to the consumer. Consumers must then call the creditor and wait for additional disclosures to be mailed to them, or must make an extra trip to the creditor to obtain them. This is an inconvience that many consumers will avoid. Even if they avail themselves of this option, it unnecessarily delays the loan process and inconveniences the consumer.

Finally, requiring multiple forms increases creditors' costs and burden unnecessarily. Creating, programming, mapping, loading, and maintaining multiple forms is cumbersome, expensive, and potentially confusing for creditors. For example, data processors charge by the number of fields and number of forms; forms providers charge by the number and complexity of the forms. Because these disclosures will be transaction-specific, their initial cost versus creditors' current non-transaction-specific early disclosures will skyrocket exponentially. Multiply that by one or two additional sets of forms, and the cost could become so severe as to cause a hardship to many creditors. To combat this, many creditors could decide to pass the cost along to all borrowers (e.g., by increasing the interest rate); discontinue one or more plans, which limits consumers' loan choices; or exit the HELOC market altogether.

We believe that, with changes to the content and format of the Early Disclosures, more than 2 plans can be disclosed in one easy-to-understand, comprehensive form that provides the consumer with optimum information on all plans available, while streamlining costs and burden on the creditor. We explain further in the following section.

<u>The Two-Plan Approach; Content & Format of the Payment Plans Disclosures.</u> We also have concerns with the content and format of the "Plan Comparison" disclosures on page 2 of the model form.

First, we believe the maximum APR payment figures should be moved elsewhere on the form. While we agree that this is important information for the consumer, we doubt that it is at the forefront of the consumer's initial decision regarding which plan to choose. Placing these figures in the same table with the current APR payment figures only congests the information and makes it difficult to compare Plan A's current rate payments to Plan B's current rate payments. It also prevents additional plans from being disclosed on the Table without creating "information overload".

We also have concerns with the section, "Plan A vs. Plan B". In this section, there is a statement that the consumer will pay less over time. However, there is nothing in the figures disclosed that would suggest or explain that statement, and therefore it is confusing. We also think this is of secondary importance to the consumer, and has never before been a disclosure requirement for open-end loans. We believe this proposed disclosure should be withdrawn.

Next, we are concerned that the balloon payment is not prominent enough. It is buried as a footnote to the much more conspicuous table of monthly payment figures. This will lead consumers to focus on the monthly payment, and skip over the very important balloon information. To alleviate this concern, we believe another column should be added to the Table for balloon payments. We also note that, in the example, only one balloon payment figure is disclosed, even though there are two circumstances under which the balloon will occur, and two balloon amounts, that would apply - one for the balloon using the current APR, and one for the balloon using the maximum APR. The form does not explain which figure the disclosure represents, does not disclose the second balloon, and is therefore confusing and misleading.

We also believe that, if the maximum APR figures are moved out of the Table, additional plans could be incorporated into the disclosures without causing information overload. We also note that most creditors, if they have more than one or two plans, usually have three or four. Any more than that would be extremely rare. As such, we believe that up to four plans could be disclosed on one form without creating information overload. This would provide consumers with complete, readily understandable information with which to make an informed loan choice, while streamlining the disclosures so as to control cost and burden to the creditor.

We also believe that all dollar figures disclosed should be referred to as estimates. They are not necessarily the figures the consumer will experience since the rate is variable and the introductory APR is not taken into account. (We request confirmation that the intro APR is not to be used in calculating the minimum payment examples).

Finally, we believe using the term, “first” payment in the tables could be misleading and confusing to the consumer. It implies that the payment will change, which isn’t the case if it is a fully amortizing payment. We also feel it is an unnecessary detail that does not need to be disclosed and will only confuse the consumer. For example, it is true that the payment will change if the APR changes or if the payment decreases as the balance decreases; however, since the table is meant as an appoximation only, it is already implied that the figures may change. Using the term, “estimates” when describing the table gives consumers all the pertinent information required to make an informed loan choice while informing them that the payment disclosed may not be their actual payment.

Alternative Disclosures. Based on all of the above, we respectfully submit the following alternative disclosures for the minimum and maximum payment examples. We provide the following background regarding or Table:

- Our Tables reflect the Board’s Plan A and Plan B; however we have calculated the payments based on the industry norm of 1.5% of P&I, rather than 100% interest plus 1.5% of P&I.
- Plan C has an interest-only draw period followed by a fully-amortizing repayment period; Plan D has a 1.0% balance payment during the draw, followed by a fully-amortizing repayment period.
- Our tables are based on a generic $10,000 example that is not consumer-specific, for the reasons that we discuss above. As such, we provide the formula with which consumers can calculate estimated payments for other balance amounts.
- We provide a footnote allowing consumers to be aware of a minimum dollar amount per month; however, we do not insert that amount into the table so that consumers can use the numbers in the table to calculate payments for other balance amounts.

The following demonstrates our suggested Minimum and Maximum Payment Examples:

Minimum Payment Examples on a $10,000 balance

The following table shows examples of your estimated monthly payments for the Draw and Repayment Periods, along with the estimated balance at the end of the draw period, for each plan at the current APR if you had a $10,000 balance[1]:

Sample Payments at Current APR				
	Draw Period (Years 1-10) **Estimated Payment**	**Balance at Start of Repayment Period**	**Repayment Period** (Years 11-20) **Estimated Payment[2]**	**Balloon Payment?**
Plan A: 1.5%; then Full P&I	$150.00	$2,775.33	$29.77	No
Plan B: Int. Only; then 1.5% of Bal	$43.75	$10,000.00	$150.00	$2,775.33
Plan C: Int. Only; then Full P&I	$43.75	$10,000.00	$540.00	No
Plan D: 1.0%; then Full P&I	$100.00	$3,825.17	$41.04	No

[1] To calculate the above payments for other balance amounts, multiply by the quotient you would like to see. For example, to calculate payments on a $50,000 balance, multiply the above numbers by 5.

[2] or $50.00, whichever is more.

Maximum Payment Examples on a $10,000 balance

The following table shows examples of your estimated monthly payments for the Draw and Repayment Periods, along with the estimated balance at the end of the draw period, for each plan at the maximum APR if you had a $10,000[1] balance:

Sample Payments at Maximum APR				
	Draw Period (Years 1-10) **Estimated Payment**	**Balance at Start of Repayment Period**	**Repayment Period** (Years 11-20) **Estimated Payment[2]**	**Balloon Payment?**
Plan A: 1.5%; then Full P&I	$150.00	$20,076.57*	$456.60	No
Plan B: Int. Only; then 1.5% of Bal	$208.25	$10,000.00	$301.14	$40,305.90
Plan C: Int. Only; then Full P&I	$208.25	$10,000.00	$227.42	No
Plan D: 1.0%; then Full P&I	$100.00	$50,790.46*	$1,155.08	No

[1] To calculate the above payments for other balance amounts, multiply by the quotient you would like to see. For example, to calculate payments on a $50,000 balance, multiply the above numbers by 5.

[2] or $50.00, whichever is more.

***Negative Amortization:** Your payments will not cover the interest that accrues and "negative amortization" will occur. This means that the unpaid interest is added to your outstanding balance each month, which increases the amount that you owe and reduces the equity in your home.

We believe that the above Tables are quite readable, while providing all pertinent information for the consumer in one streamlined, consolidated disclosure.

Plan A vs. Plan B Section

This section is confusing and not completely accurate. It is essentially a "total of payments" disclosure, which has no applicability to a revolving line of credit, even one with a set term. This fact has always been recognized under Reg Z, as "total of payments" has never been an open-end disclosure. This is because there is no way of knowing, at the onset, which plan will cause the consumer to pay less over time or more over time. It will depend on the outstanding balance, how interest rates fluctuate, and the consumer's payment habits. Essentially, consumers are in control as to how much the HELOC will cost them over time.

We also find this disclosure unnecessary. How much the plan will cost over time is of secondary importance to consumers.

We also note that the balloon disclosure is confusing. While it discloses a balloon payment of $23,950.43, it does not state which plan it applies to. The balloon payment will not be the same under the current APR and the maximum APR. Therefore, if the Board retains this disclosure, it should be clarified and disclose both balloons.

We ask that this portion of the proposal and this section of the Model Form be withdrawn.

Fixed Interest Rate Option

This section, as currently worded, sounds as if consumers have the right to choose a fixed-rate, fixed-term loan. As such, this could detract from the importance of the variable rate disclosures and how closely consumers pay attention to them. Additionally, consumers do not necessarily have "the right" to choose a fixed rate option, as creditors may condition it upon having to be current on payments, or they may limit the number of times or frequency at which consumers may choose to exercise the feature. Such a feature also does not usually apply to new advances. We suggest the following alternative language:

Fixed Rate Conversion Feature
During the draw period, you may convert [a portion of] your outstanding balance to a fixed rate and fixed repayment term. New advances, however, will remain at the variable rate unless you again exercise the lock feature. Ask us for details.

We believe this is a more accurate description of the fixed-rate feature.

For More Information, Visit the Board's Website
We have no objections to the inclusion of this statement. Regarding the content for the website, we would include the following: (a) an overview of HELOCs versus closed-end mortgage options; (b) an explanation of the draw and repayment features; (c) an explanation of the disclosures that must be given; (d) the fact that advances can be denied and the line suspended or closed, and the circumstances under which that could occur; (e) an explanation of balloon payments and negative information; (f) and a calculator with which the consumer can calculate various payment options, such as the one at http://www.calculatorplus.com/mortgage/loan_payment.html. This calculator allows a consumer to calculate figures for a fixed-term; interest-only; and 1.0%, 1.5%, and 2.0% payment options.

Signature Section
We request clarification that the consumer's signature is not required on this form, and that creditors may delete this section if they choose not to have the form signed.

OTHER COMMENTS REGARDING THE EARLY DISCLOSURES

Elimination of the Historical Example
Based on consumer testing, the Board proposes not to require that creditors provide the historical example table as part of the early HELOC disclosures. Instead, the Board proposes to require a creditor to provide in the table as part of the early HELOC disclosures the range of the value of the index over a 15-year historical period.

The Board solicits comment on the appropriateness of this proposal. The Board also solicits comment on whether the new proposed disclosure should show the range of the APR that would have applied to the HELOC plan over the past 15 years, calculated based on the range of the index value plus the margin that is currently offered to the consumer.

We agree with the elimination of the historical example. Not only are consumers confused by it, many creditors are too.

We believe the Board's proposal to provide the range of the Index is the most appropriate solution. There is no need to calculate the range of APRs. As the Board states, consumers found it helpful to know how the index had behaved in the past, so that they would have some sense about how it might change in the future. In addition, some participants found the range of the index useful in determining the likelihood of the APR reaching the maximum APR allowed under the plan. Disclosing the range of Index values serves this purpose. Disclosing APRs could just confuse consumers, and would be additional calculations that creditors would have to program, map, and maintain. We also note that creditors may not know the margin applicable at the time of the Early Disclosures, if they base it on

Loan-to-Value ratio and creditworthiness. For all these reasons, disclosing the range of Index values, rather than a range of APRs, would suffice.

Disclosing Costs of debt collection, collateral protection and foreclosure
The Board is mindful of concerns that consumers may be charged a wide array of fees upon default without adequate notice or explanation. For these reasons, the Board requests comment on the appropriateness of this proposed clarification. The Board requests comment on whether, if the proposal is adopted, the Board should clarify requirements regarding disclosure of these costs in the initial agreement beyond stating that specific amounts need not be disclosed. For example, would it be sufficient for the creditor to disclose simply the possibility that costs under the three categories contemplated in the proposal – debt collection, collateral protection and foreclosure upon default – may be charged? Or should the creditor be required to itemize in whole or in part the types of costs under each category that could be charged?

We agree that such costs are not "imposed as part of a HELOC plan" and therefore welcome the Board's clarification in the Commentary. We do not believe it is necessary to require a specific disclosure. If one is required, however, it cannot be an actual dollar amount or itemization of such fees; as the Board correctly notes, there is no way for creditors to know such figures at the time the HELOC is established. If the Board insists on a disclosure requirement, we would suggest:

You may also have to pay additional costs if you default, such as for debt collection, force-placed property insurance, costs of foreclosure proceedings, and attorney's fees.

This would suffice.

Disclosing the Length of an Indefinite Draw Period
The Board requests comment on whether additional guidance is needed on how to disclose the length of the HELOC plan and the length of the repayment period in the table where the plan does not have a maturity date and the length of the repayment period cannot be determined at the time the early HELOC disclosures must be given.

In rare instances there are HELOCs that are true revolving lines. We would simply state that the length of the credit plan is indefinite. In the Table section, we suggest using an example such as that set forth in the open-end (non-real estate secured) rules or current HELOC model form G-14B, e.g.:

Minimum Payment Examples on a $10,000 balance
The following shows an example of your estimated monthly payments at the current APR if you had a $10,000 balance and took no other advances and made only the minimum payment each month:

It would take __ years to pay the balance in full. During that time, you would make ___ payments varying between $____ and $____.

We would have a similar example for the Maximum APR.

Substituting Account Opening Summary Table for Early Disclosures

The Board solicits comment on whether, and if so in what circumstances, creditors should be permitted to substitute the account-opening summary table for the table containing the early HELOC disclosures in situations where the early HELOC disclosures are required to be given at the time the account is opened (because account opening occurs within three business days after application). For example, the regulation could provide that, because the account-opening summary table shows only one HELOC payment plan, the account-opening summary table would be permitted to be used in place of the early HELOC disclosures only if the creditor offers only one payment plan or the consumer had already chosen a plan before account opening.

As noted above, we do not believe that the Early Disclosures should be consumer-specific. If a non-consumer-specific approach were taken, then it would not be appropriate to substitute the Account Opening Disclosures for the Early Disclosures.

If the Board's consumer-specific approach is adopted, then we agree that the Account Opening Disclosures would be appropriate in the circumstances that the Board describes, and we support such proposal. We also believe the account opening disclosures should be allowed as a substitute if the creditor only has one plan even if the account opening occurs after the 3-day period for application disclosures. (The creditor would still be required to satisfy the 3-day timing requirement.) The account opening disclosures are substantially similar to the application disclosures, and, we would argue, actually provides more specific, pertinent information. If the creditor were required to maintain two separate forms, it would only increase the creditor's costs and legal and regulatory risk, without providing any additional protection or benefit to the consumer. If creditors must provide a disclosure twice, it is more cost-efficient, more manageable, and less confusing to the consumer to provide the exact same thing twice, rather than the same disclosures at two different times in slightly different formats. It would also reassure the consumer that the terms of the HELOC have not changed from application to closing.

ACCOUNT-OPENING DISCLOSURES

To the extent our comments on the Early Dislosures apply equally to the Account Opening Disclosures, we reiterate them here. In addition, we have the following comments:

We would conform the Account Opening Disclosures to our suggested changes on the Early Disclosures; however, we believe the minimum and maximum payment tables can be combined since only one plan is being shown, as follows:

Payment Examples on a $10,000 balance

The following tables show examples of your estimated monthly payments for the Draw and Repayment Periods, along with the estimated balance at the end of the draw period, for the plan you have chosen at the current and maximum APRs if you had a $10,000 balance[1].

These are not your actual payments. Your actual payment each month will depend on the amount that you have borrowed and the interest rate that month. Your actual payment will be disclosed on your billing statement each month.

Sample Payments at Current APR:				
	Draw Period (Years 1-10) **Estimated Payment**	**Balance at Start of Repayment Period**	**Repayment Period** (Years 11-20) **Estimated Payment[2]**	**Balloon Payment?**
Plan A: 1.5%; then Full P&I	$150.00	$2,775.33	$29.77	No

Sample Payments at Maximum APR:				
	Draw Period (Years 1-10) **Estimated Payment**	**Balance at Start of Repayment Period**	**Repayment Period** (Years 11-20) **Estimated Payment[2]**	**Balloon Payment?**
Plan A: 1.5%; then Full P&I	$150.00	$20,076.57*	$456.60	No

[1] To calculate the above payments for other balance amounts, multiply by the quotient you would like to see. For example, to calculate payments on a $50,000 balance, multiply the above numbers by 5.

[2] or $50.00, whichever is more.

CONCLUSION

We believe that consumers can benefit from some reasonable revisions to the HELOC rules and forms. However, we ask the Board to keep in mind that HELOCs did not contribute to the mortgage crisis and that the HELOC market has shown virtually no signs of abuse. We ask that the Board keep creditor risk, cost, and burden in mind when finalizing its proposal. Both objectives can be achieved if:

- Early Disclosures are NOT required to be consumer-specific;
- The proposed tabular format is used, with some revisions, including the use of one comprehensive disclosure form with our proposed Minimum and Maximum Payment Example Tables, rather than the proposed two-plan approach;
- On-going monitoring of suspended accounts is not required; and
- HELOCs continue to be exempt from Reg Z's 226.5a credit card disclosure rules.
- A 12-18 month implementation period is allowed.

We appreciate the Board's efforts and this opportunity to submit our comments. We would like to be a resource for the Board as it continues its rulemaking. If we can be of further assistance, please do not hesitate to contact us at the above numbers or addresses.

Sincerely,

/s/

Catherine Klimek
Counsel