

**HOUSING POLICY COUNCIL**  
**THE FINANCIAL SERVICES ROUNDTABLE**



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December 23, 2009

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave., N.W.  
Washington, D.C. 20551

**Re: Regulation Z; Docket No. R- 1367: Truth in Lending**

Dear Ms. Johnson:

The Housing Policy Council of The Financial Services Roundtable (“HPC”) is pleased to submit its comments on the proposed changes in Regulation Z, Truth in Lending (“TILA”) rules for open end home-secured credit, or home equity lines of credit (HELOCS).

HPC has commented on the additional Regulation Z proposal for closed end credit, and as there, we applaud the Board of Governors of the Federal Reserve System (“Board”) and are generally in support of the proposal. We have some suggestions and some comments which we believe will improve the proposal if adopted by the Board.

**I. Disclosures Within Three Business Days After Application**

We would recommend that the Board clarify that changes in terms that arise after the transaction-specific HELOC disclosures given within 3 business days after application do not require redisclosure, provided that the account opening disclosure is sufficient.

The Proposal provides that the consumer may receive a refund of all fees paid if a disclosed term changes and the consumer decides not to open the account. The Proposal also makes the credit limit one of the disclosed terms. However, because the creditor will not have completed an appraisal and may not be able to verify the amounts of any prior liens on the property, the amount of the credit limit will usually be based on the applicant’s estimate of the value of the property and the applicant’s estimate of the amount of the prior liens. If the creditor offers a lower credit limit than the amount disclosed because the actual value of the property is lower than the consumer’s estimate and/or the amount of prior liens is higher, the creditor should not be required to refund the amount charged to the consumer for the cost of the appraisal or other collateral evaluation. We also recommend that the Board consider whether many of the provisions regarding fee refund requirements are contradictory.

We recommend the disclosure contain a clear statement that the disclosure is not a commitment by the creditor and that the disclosures are based on information provided by the consumer. On the model form after the statement “You have applied for a home equity line of credit” we recommend adding: “This form is not a commitment by the creditor and reflects your estimate of the property value and other information provided in your application.” In addition, we recommend that the Board clarify

that the creditor need not disclose any fees and charges which the creditor pays and does not charge to the consumer.

## **II. Disclosures At Account Opening**

We recommend that the Board clarify that the creditor need not disclose any fees and charges which the creditor pays and does not charge to the consumer.

The proposed form states “You have no obligation to accept these terms. Use this statement to confirm that these are the terms for which you applied.” However, because this disclosure will usually be presented just before the consumer signs the account opening agreement that will contractually bind the consumer, we suggest that the disclosure further state “Do not sign the account agreement if you do not want to accept these terms”

More than one loan originator may work on a HELOC account. We do not believe that it is helpful to list the ID’s of all of the loan originators. We recommend that the creditor should not be required to list more than one ID, and that the creditor should be permitted to use any reasonable method to determine which loan originator is the primary loan originator whose ID should be listed. The Board should also note that internet applications may not have an “originator” at all.

The Proposal allows certain optional charges to be disclosed orally or in writing before the consumer agrees to or becomes obligated to pay the charge. We ask the Board to clarify what the definition of “optional charges” is and which charges are included in that definition.

Additionally, the Proposal disallows the charging for a feature or service previously not charged for, or increasing a fee for a feature or service. Costs for services increase over time yet it seems the Proposal does not take this fact into account. This portion of the Proposal, if adopted in the final rule, would cause creditors to eliminate some features or services if they would be prohibited from ever imposing or varying the charge. This would be to the detriment of consumers who would otherwise benefit from these features or services, such as an expedited delivery fee. We ask the Board to reconsider this portion of the Proposal.

## **III. Periodic Statements**

There are several proposed changes to the periodic statements. First, the Proposal would eliminate the requirement to disclose the effective APR for HELOCs. Second, the Proposal would eliminate the requirement to characterize particular costs on the periodic statements as “finance charges,” and costs instead would be labeled as “interest” or as a “fee.” Third, interest charges and fees imposed as part of the plan must be grouped together and totals disclosed for the statement period and year to date. We strongly support the proposed elimination of the historical APR.

## **IV. Changes-in-Terms Notices**

These changes are parallel to the changes made for open-end (not home-secured) credit lines in January 2009. The Proposal would expand the circumstances in which consumers receive advance notice of changed terms, including interest rates; would provide consumers with earlier notice (45 days instead of 15 days); and would introduce format requirements to make the disclosures about changes in terms, including increased rates, more effective.

Where the HELOC has a feature that contains a contractual provision for a change in terms upon the happening of specified event, as long as that feature was disclosed at account opening in accordance with the terms of the regulation the creditor should not be required to give 45 days notice. For example, if the consumer rescinded an authorization to make payments by preauthorized debits from his or her deposit account, the creditor should be able to increase the rate without 45 days notice as long as that feature was properly disclosed at account opening.

**V. Additional protections**

a. Account Terminations/Suspensions

We support the Board's goal of protecting consumers from "hair trigger" terminations based on minor payment infractions. We agree with the proposed 30-day minimum delinquency period before a creditor may terminate the account. We also agree that creditors must retain the right to impose late fees and suspend or reduce credit limits during those 30-day periods to prevent any more financial loss that may occur. We ask that the Board extend this right to any circumstance where the borrower is in noncompliance of a material obligation under the terms of the loan, material change in financial circumstances, or significant decline in collateral value.

*i. Use of Credit Scores to Reduce/Suspend Lines*

The regulation and commentary should remain flexible in this regard and not require a specific/minimum decrease in credit score or even require that a drop in credit score is necessary before a creditor can take action to suspend/reduce a line pursuant to a "material change in financial circumstances."

*ii. Suspending or Terminating HELOCs Due to SARS Filings/ Suspected Money Laundering*

We recommend that the Board clarify that actions taken by a creditor connection with suspicious activity (like the filing of a SAR or multiple SARS) or because of suspected money-laundering activity related to the use of the HELOC can provide a basis for suspending or terminating a HELOC.

b. Suspensions and Credit Limit Reductions based on a significant decline in property value.

*i. Notice of Action /AVMs*

Where an action is based upon collateral deterioration and an AVM has been used, it is not clear how to comply with the requirement to provide a copy of the valuation. Often AVMs are provided electronically and are not in a format that can be readily provided to consumers. We recommend that the creditor may comply by providing any documentation that can be created/printed from the AVM report provided by the vendor.

c. Material Change in Consumer's Financial Circumstances

The Proposal adds commentary clarifying that evidence of a material change may include credit report information showing late payments or nonpayments, or public records related to the consumer's

failure to pay other obligations. These payment failures must occur within a reasonable time from the date of the creditor's review, with a 6 month window given as a safe harbor.

We support these additions to the Commentary. We suggest that significant declines in credit scores be included in this safe harbor of proof of material change. Credit scores are evidence of a consumer's financial situation and thus a significant decline in credit score should be evidence of a material change in a consumer's financial circumstances.

d. Reinstatement of Accounts

The Proposal makes changes to ensure consumers have a meaningful opportunity to request reinstatement and to have this request investigated. The Proposal would require: (1) additional information in notices of suspension or reduction about consumers' ongoing right to request reinstatement and creditors' obligation to investigate this request; (2) creditors to complete an investigation of a request within 30 days of receiving the request and to provide notice of the result to consumers whose credit privileges will not be restored; and (3) creditors to cover the costs associated with investigation the first reinstatement request by the consumer.

*i. Consumer Requests Received Shortly After Action*

The proposal requires the creditor to bear the costs of the first reinstatement request and to respond within 30 days. We recommend that where the action was taken due to deterioration in the value of the collateral a minimum of 12 months should pass before the consumer could request reinstatement at the creditor's cost. This is because property values take time to increase. Any earlier requests for reinstatement should be done at the consumer's cost.

*ii. Timing of Creditor's Response*

We agree with the Board that consumers have a right to be properly informed of a suspension or reduction in their HELOC credit line. Because HELOC account management decisions are typically done in batches/waves and consumers will get a "free" first reinstatement request, this will likely significantly increase the number of reinstatement requests the creditor will receive at one time. This will make it difficult to comply with the 30-day response time. Additionally, in certain circumstances, the creditor will need to obtain information from a third party or the consumer; in those instances, it is likely that the investigation will take more than 30 days. We recommend that the time period for responding be increased to 45 days.

*iii. Actions Taken Prior to the Effective Date of the New Regulation*

We request a clarification that the free first reinstatement request does not apply to any line actions taken prior to the effective date of the new regulation

*iv. Monitoring*

It is important that the regulation and commentary preserve the ability for the creditor to shift the burden to the consumer for requesting reinstatement and permit the creditor to avoid the self-monitoring requirement. The costs and other burdens associated with a requirement on the creditor's part to monitor actioned accounts for reinstatement would be significant and could serve to reduce the number of

actions that a creditor could otherwise permissibly take (which could effect safety/soundness and ultimately reduce overall credit availability).

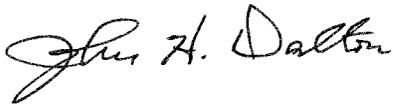
**VI. Implementation Period**

The Board is seeking comments on what an appropriate implementation period would be for creditors to adopt these provisions. Given the scope of the changes, creditors should have 24 months to implement the final rule. This is particularly true for the disclosure requirements.

**VII. Conclusion**

We appreciate the opportunity to comment on this Proposal and looking forward to working with the Board on the finalization of the Rule. If you have any questions, please contact me at 202-289-4322.

With best wishes,



John H. Dalton  
President  
Housing Policy Council  
The Financial Services Roundtable