CONSUMER
BANKERS
ASSOCIATION

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

Re: Regulation Z; Docket No. R-1367

Dear Ms. Johnson:

The Consumer Bankers Association (CBA) is pleased to provide comments on the Federal Reserve Board's (Board) proposed amendment to Regulation Z regarding Home Equity Lines of Credit (HELOCs). Our comments are divided into subject areas, as designated in the headings, and further divided into general remarks and more detailed comments. Proposed changes to the Regulation Z Commentary are addressed in the same sections as the regulation sections they interpret.

I. General

In general, we support much of what is proposed as an improvement in the flow of information to consumers. The Board has stated that the goal of the Proposal is "to improve the effectiveness of the Regulation Z disclosures" as well as "to strengthen substantive protections for HELOC consumers." Subject to our comments below, and notwithstanding the instances where we disagree over particulars, we believe that the Board has proposed changes that advance these goals.

Implementation
Our greatest concern is that these extraordinary changes to forms, systems and compliance processes will be an enormous undertaking by every creditor nationwide. In addition to the high cost to comply—costs which will be passed on to consumers in the cost of credit—and the attention it will take away from other activities—such as expanding lending to consumers and small businesses—this transition will take a great deal of time to implement. As systems have become more complex, and compliance more involved, we have witnessed a growing restlessness with the amount of time it takes to implement compliance changes and an unwillingness to allow for the amount of time needed. We encourage the Board to allow for the necessary time to make these massive changes. If sufficient time is allowed, the transition will have the least detrimental impact on consumers and will pay off in the end in strong and effective compliance programs. Therefore, we recommend a delayed effective date of at least 18 months, in particular for changes to the Early HELOC Disclosures, Account-Opening Disclosures and periodic

statements. This would be necessary to ensure that systems are changed and tested, employees are trained, and the new disclosures and compliance requirements are put into effect without confusion for consumers and the industry. If necessary, we believe that other changes, such as the Key Questions document, suspension and reinstatement requirements, change in terms notification requirements, and optional insurance rules could be implemented more rapidly, possibly within 6 months.

Lines secured by rental property
Comment 5-1 provides that the creditor may ascertain the status of the property to determine whether compliance under section 226.5b is appropriate. The comment adds, however, "if the creditor is not able, or chooses not, to determine the status of the property, the creditor may comply with the rules [under section 226.5b and related sections]. We appreciate this option; however, we recommend that the creditor always be permitted to comply under these HELOC rules. By permitting this option only when the creditor has not "determined the status" of the property, the Board raises a great many compliance questions that will lead to unnecessary liability risks. What characterizes the extent of knowledge by the creditor? What happens if the property status changes over time? What if the creditor has a policy of not determining status of the property, but the status becomes known? These are just a few of the compliance questions that would arise. We recommend that the Board permit these HELOC rules to be the default option so that, for existing or new accounts, the creditor always has the right to treat HELOCs secured by rental property as subject to these rules, whether or not the creditor knows the status of the property.

II. Application Disclosures

The Proposal would require a creditor to provide a consumer at application a new one-page document published by the Board, called "Key Questions to Ask about Home Equity Lines of Credit." This document would substitute for the HELOC brochure, which would no longer be provided.

The Proposal would replace the current application disclosures—which contain information about the creditor's HELOC plans, but are not "transaction specific"--with a new set of disclosures that would have to be provided within three days after application (but no later than account opening). The purpose of the change is to provide information of greater value to the consumer. The current application disclosures are provided prior to any underwriting, and as are not dependent on the applicant's particular information, such as creditworthiness or home value. The resulting information is of limited utility.

The Early HELOC disclosures, provided several days after application, would include several additional disclosures: (a) the APR and credit limit being offered; (b) a statement that the consumer has no obligation to accept the terms being offered; and (c) if a signature is obtained, a statement that the signature only confirms receipt of the disclosure.

Several items that are currently included in the application disclosure would no longer be included in the Early HELOC Disclosures: (a) a 15-year historical payment example; (b) a statement that the APR does not include costs other than interest; and (c) a statement of the earliest time that the maximum APR could be reached. The Board determined through consumer testing that the consumers do not find this information to be useful.

Several current disclosures would need to be provided in a different manner. The current requirement to provide several payment examples based on a hypothetical $10,000 balance would be replaced by examples that are based on the maximum credit line. Only two payment plan options would be permitted.

Finally, the Board has proposed making format requirements for Early HELOC Disclosures that are stricter than those for the existing application disclosures. Unlike the application disclosures, which may be in a narrative form, the Early HELOC Disclosures must be provided in a tabular format.

Comments

We support the elimination of the HELOC brochure and the substitution of the one-page Key Questions document. The HELOC brochure is lengthy and is not of much value to consumers, as the Board's consumer testing has demonstrated. The one page document is a concise substitute that highlights only the most important information. However, we wish to note that Item 6 of the document fails to reflect the prevalence of "no closing cost" HELOCs where the account-opening costs are borne by the creditor. Nor does it allow for typical plans in which an origination fee is paid by the consumer in return for a lower rate. A revision to the language would be useful.

Regarding the Early HELOC Disclosures, we believe the use of transaction-specific early disclosures before sufficient information is known to make the disclosures meaningful raises problems. The creditor does not have sufficient information in most cases to make the disclosure meaningful; much of the information is subject to change; and the Account-Opening disclosure with very similar information will be provided often within a few weeks thereafter. The result will simply confuse consumers, raise costs, and limit the program options creditors will offer. We recommend more generic disclosures be provided, along with examples based on uniform credit amounts in order to permit the consumer to shop for credit. The result would be no less useful than "transaction-specific" disclosures that are not based on firm information.

We are also concerned that the proposed early disclosures will lead consumers to believe that they constitute a commitment to the disclosed terms, particularly as this is the approach being taken by HUD in regard to its revised RESPA disclosure rules. Thus, if this approach is retained, we strongly recommend a prominent disclosure at the outset stating that the disclosures do not represent a commitment, and that they may change prior to account opening. This is made doubly necessary by the disclosure at account opening that encourages the consumer to "confirm that these are the terms for which you applied." We would recommend either eliminating that disclosure or revising it to reflect the very real possibility that the key terms will have changed.

We have the following additional comments:

- We recommend more flexibility be permitted in disclosing payment options. As proposed, if more than one repayment option is offered, the creditor may only disclose two options in the table, but must provide detailed information about both the options, as set forth in the Proposal. If others are offered, the creditor must disclose that other plans are available and the consumer should ask for more details. We believe this is overly restrictive and will unnecessarily limit the information that the consumer will generally obtain. We appreciate the Board's desire to prevent overdisclosure, but the proposed approach raises serious concerns about how the creditor is to select the options provided, and whether the consumer will believe that he or she was misled or steered into the wrong product. We recommend that the Board reconsider this restriction, and adopt a more flexible alternative.

- The disclosure under section 226.5b(c)(22) is too general (a statement that the consumer may be entitled to a refund of all fees paid if the consumer decides not to open the plan), and implies a general right that does not exist. Presumably, this is intended to refer to the 5b(d) refund right. This is redundant and unnecessary, since it is previously disclosed under section 226.5b(c)(4). The model form deals with the redundancy problem by referring to the earlier disclosure, but that is not a requirement in the Proposal, and we believe it is potentially confusing.

- The disclosure under section 226.5b(c)(4) juxtaposes a disclosure of terms that are "subject to change" (in subparagraph (i)) with the right to cancel and receive a refund of all fees, if any disclosed term (other than a change due to the fluctuation of the index in a variable-rate plan) changes (in subparagraph (ii)). This is confusing, as the two items are not related, and by putting the requirements together, the Board is implying that they are. The Board invites the question whether terms that are identified as "subject to change" (i.e. not "guaranteed" under 5b(d)) are to be treated differently than terms that are not subject to change, in the event that they do change. The Board appears to believe that they are to be treated the same (see, e.g. Comment 5b(d)-1), but it is then unclear then what the purpose of the disclosure under (i) might be. Further, what is the difference between disclosing a term as "subject to change" and disclosing it as an estimate? We recommend that the disclosure that terms are subject to change be replaced by the prominent disclosure that the terms are estimates. This would eliminate any confusion about the distinction and would make it clear to the consumer that this is not a firm offer.

- Comment 5b(d)-1 is so broadly worded, it appears that the creditor must refund all fees paid by the consumer, even if they are unrelated to the transaction that the consumer has chosen not to enter into—e.g. safe deposit box fees, deposit account fees, mortgage-related fees. We request clarification.

- We request clarification that the creditor need not disclose any fees and charges that are paid by the lender and not passed on to the consumer, for both the Application and Account-Opening Disclosures. This would be consistent with the way in which fees related to HELOCs are currently disclosed.

III. Account-Opening Disclosures

The Proposal would make two major changes in the Account-Opening Disclosures that are currently provided for HELOCs. First, it would mandate the disclosures be provided in a summary table, in order to make them more conspicuous and easier to read. With two exceptions, the tabular format would correspond to the format of the Early HELOC Disclosures, so the consumer can compare the terms with those previously disclosed. The exceptions: (a) The Account-Opening Disclosures would show only the payment plan chosen by the consumer, rather than a maximum of two plans, as required in the Early HELOC Disclosures; and (b) the table at account opening would contain transaction fees and penalty fees not required in the earlier disclosure.

Second, the Proposal would eliminate the artificial distinction currently employed among "finance charges," "other charges" and charges that are neither finance charges nor other charges, and instead specify precisely the charges that the creditor must disclose in writing at account opening (e.g. interest, account-opening fees, transaction fees, annual fees, and penalty fees such as for paying late). It would also permit creditors to disclose certain optional charges orally or in writing before the consumer agrees to or becomes obligated to pay the charge.

Comments

In general, we believe that these changes to the initial disclosures would be beneficial to the consumer. The consumer would no longer have to search for information in the disclosure to determine if it corresponds to the earlier information provided. The format change would also improve the clarity and readability of the disclosures by providing them in a more sensible and organized format.

The elimination of the finance charge/other charge distinction is long overdue. For years, we have urged the Board to jettison this artificiality. It has resulted in confusion and legal risk, while providing consumers with no meaningful benefit. We applaud the Board's proposal to abandon this senseless dichotomy.

We have the following additional comments:

- In section 226.5(b)(1)(ii), the Board proposes to permit certain disclosures to be provided orally or in writing at the time the consumer is seeking the service, rather than at account opening. We support this proposal. As the Board notes in the preamble, the account-opening terms may be provided months or years before a subsequent service is sought. It is far more valuable to give the disclosures at the time they are most relevant. Since the transaction itself may occur remotely, by telephone, we agree with the Board's proposal to permit the disclosures to be provided orally. However, we have several concerns:

    - Clarity is needed around which fees and charges must be disclosed in the formal disclosures, and which fees and charges may be disclosed orally or in writing at the time the consumer is seeking the service.

    - Comment 5(b)(1)(ii)-2 states that the creditor "would not be permitted to impose a charge for a feature or service previously subject to a lower charge, even if the absence of a charge, or the lower charge, had not been previously disclosed to the consumer." We recognize that this is an attempt to satisfy the limitations on changes in terms while providing for later disclosures of those same terms, but the outcome is odd at best. Charges for routine services would be fixed for years or decades, despite the changes in circumstances and costs, and creditors would be unable to amend their fee schedules to reflect those changes. Inequities would result: Consumers with newly originated HELOCs could be charged a different amount for the same service as consumers who had the same HELOC for many years. The same rationale that led the Board to propose allowing disclosures to be provided so many years later (the consumer would not recall the disclosure; the disclosure would be more closely connected to the event) applies equally here: The creditor should not be bound to a fee set years earlier in different circumstances.

- The Federal Register is especially difficult to read in section 226.6(a), because the outline repeats the letter and number formatting at the sub-sub-level. The likelihood of error is great. We realize that the Board does not control the editorial decisions of the Federal Register, but it would be helpful if the Board's formatting could be reconsidered in this light.

- There is no proposed section 226.6(b) in the Federal Register. Nor is there a proposed Commentary section for 226.6(b). However, there is a section 6(a), which suggests that a section 6(b) may have been intended or is missing. Further, section 226.5(a)(1)(A)(2) refers to nonexistent sections 226.6(b)(2) and (3).

- Section 226.6(a)(2) prohibits disclosing in the table any term applicable to a fixed-rate and –term plan offered during the draw period of the plan, unless they are the only payment plans offered. However, this should be permitted in the event that the consumer enters into a fixed-rate or –payment plan at account opening.

- The last sentence of section 226.6(a)(2)(vi) before subparagraph (A) states that the following need not be in 16 point type: “Any minimum or maximum annual percentage rates that may apply; and any disclosure of rate changes set forth in the initial agreement except for rates that would apply after the expiration of an introductory rate.” This is not clear. Are these other APRs and disclosures of rate changes *prohibited* from being in 16 point type, or is it permissive? Presumably, they may not be larger, but the regulation does not say so here. Also, the awkward sentence structure makes it unclear to what the second phrase refers: Neither “rate changes” nor “rates that would apply after the expiration of an introductory rate” are themselves annual percentage rates. Any rate changes identified in the agreement would presumably apply after the expiration of the initial rate, making the last phrase particularly unintelligible.

- Section 226.6(a)(2)(xxiv)(A) requires a disclosure that the consumer has “no obligation to accept the terms disclosed.” It is not clear why this disclosure is needed. We believe that both this, and the disclosure in section 226.6(a)(2)(xxiv)(B) need to be clarified.

  Section 226.5(b) states that the Account-Opening Disclosures under section 226.6 must be provided before the first transaction under the plan. But the disclosures are given at account opening, i.e., when the agreement is actually entered into. Therefore, this statement in the disclosures implies a general right for the consumer to reject the terms of the plan. While it is generally the case that the consumer can cancel a HELOC agreement if there has been no draw on the account, it is not clear why this needs to be stated as if it is a “right” at account opening. The disclosure that is relevant involves the section 226.5b(d) right to a refund of fees paid in the limited circumstances permitted by the regulation (i.e. when there is a change in a term previously disclosed other than one due to a variable rate feature). This right appears to be alluded to in section 226.6(a)(2)(xxiv)(B) (“A statement that the consumer should confirm that the terms disclosed in the table are the same terms for which the consumer applied.”); but it does not actually say so, as the disclosure does in 226.5b(c)(4)(ii) at application. In any case, the two disclosures, adjacent to each other under the box, are simply not clear and raise more questions than they answer.

- Comment 6(a)(3)(ii)-2(iii) states that fees to pay by telephone or via the Internet are examples of fees that affect the plan under section 226.6(a)(3)(ii). However, this is not always the case. Fees can be assessed through the Internet bill pay program of the institution, operating in effect as charges that are NOT related to the plan. These two should be distinguished.

- More than one loan originator may work on a HELOC account. As it would not be helpful to require all the IDs of all the loan originators to be listed, we recommend that the creditor be permitted to disclose the ID of one loan originator.

- In order to prevent the implication that the Account-Opening Disclosure is the agreement, we recommend the inclusion of the following disclosure: "See your HELOC Agreement for a more detailed description of the terms of your HELOC and your legal and financial obligations."

IV. Subsequent Disclosures

Regarding periodic statements, the Proposal would eliminate the requirement to disclose the "effective APR" for HELOCs, as the Board's consumer testing revealed that it serves no useful purpose and that consumers generally fail to understand it. The Proposal would also substitute the disclosure of costs as either "interests" or "fees" in place of the identifying certain fees as "finance charges." Interest charges and fees would be grouped together and totals disclosed for the statement period and year to date.

Regarding changes in terms, the new requirements would generally parallel those that were adopted for non-home-secured open-end credit such as credit cards in January 2009. Three major changes have been proposed: First, the Proposal would expand the circumstances in which the consumer receives advance notices of changes in terms; second, the advance notice would be provided 45 days before the effective date of the change, rather than the current 15 days; and third, new formatting requirements would be required.

Comments

- We support the elimination of the "finance charge/other charge" distinction. As noted above, this distinction has been a long source of frustration by creditors attempting to comply with the regulation but finding too much ambiguity to avoid unnecessary liability risk.

- We also applaud the elimination of the "effective APR." This has been a disclosure of no value. The purpose initially was to provide consumers with "payment shock" when they had numerous fees in a payment cycle. Instead, as the Board's consumer testing amply demonstrated, it merely confused. Consumers were better served with a clear disclosure of the total of fees that they paid during the cycle—a figure they could readily understand.

- In regard to the 45-day notice requirement, which is modeled on a similar requirement already adopted for credit cards and other non-home-secured open-end credit, the Board seeks comment on whether HELOCs are different because of the additional time it might take to obtain a new HELOC as compared with credit cards. Alternatively, the Board notes that this difference, if it exists, might be mitigated by the more narrow range of situations in which a creditor can change the terms of a HELOC.

We believe that there is no reason to extend the amount of advance notice for HELOCs beyond the requirement for nonhome-secured credit. As the Board notes, creditors typically only change the terms of HELOCs in a narrow set of circumstances, since the possible actions are restricted by law and contract. For many creditors these days, the amount of time it would take to close on a new HELOC is not that much longer than it takes for a creditor to issue an unsecured line. Therefore, the amount of time it takes the consumer to find an acceptable new HELOC is dependent on other factors, including the consumer's security and credit history.

V. Annual Percentage Rate

We request a provision be added that overdisclosure of the APR is not a violation, and that the tolerance should be employed for underdisclosure. There is no reason why the creditor should be liable for a rate disclosure that exceeds the accurate disclosure, since the creditor's incentive is to provide a disclosed rate that is as low as possible.

In regard to the APR disclosed with the Early HELOC Disclosure, given the possibility that the consumer may not obtain the disclosed APR, we suggest that some qualifying language be permitted to explain that the actual APRs may be higher or lower than the quoted APRs based on factors such as credit score and loan-to-value ratio.

VI. Line Management—Limitations on home-equity plans

Sections 226.5b(f) and (g) cover limitations on the management of home equity lines of credit. Section 226.5b(f) sets forth the restrictions imposed on creditors in managing home equity lines, including limitations on termination and acceleration, change in terms, and restrictions on access and reductions of credit limits. Section 226.5b(g) mandates certain requirements for subsequent reinstatement of privileges.

Comments

- The regulation currently prohibits from changing the terms of a HELOC plan after it is opened, subject to several exceptions. Among these are suspensions of credit based on a significant decline in the value of the dwelling securing the plan, or a material change in the consumer's financial circumstances. The Board is proposing to provide additional clarification on the application of these exceptions. The Commentary currently provides that whether a decline in value is "significant" varies according to the individual circumstances. It also provides a safe harbor standard for determining whether a decline is significant. Under the safe harbor, a decline is significant if it results in the initial difference between the credit limit and the available equity diminishing by 50 percent or more. Because of the increasing frequency of CLTVs approaching 100 percent, the Board is proposing a modification to the safe harbor. As proposed in Comment 5b(f)(3)(vi)-4, for plans with a CLTV of 90 percent or higher, a five percent reduction in property value would constitute a significant decline in value.

We recognize the concern that the Board is addressing, but we do not support the approach taken. We have members who are concerned that the proposed five percent safe harbor would not be adequate in many cases where the CLTV is over 90 percent. As noted, the Board would continue to provide that individual circumstances are determinative, however for many creditors a safe harbor becomes a *de facto* rule as a compliance matter. Where property values are approaching 100%, even a small decline in value can be a significant risk factor. Creditors must be able to react to such high risks and bring consumers into line with current credit standards.

- Section 226.5b(g)(2)(iii) provides that the creditor may not charge the consumer any fees associated with investigating the consumer's first request for reinstatement after a suspension of advances or credit limit reduction. We believe this will lead to potentially frivolous and unfounded reinstatement requests, since there will be nothing to stop every consumer in that situation from making one "free" reinstatement request, whether or not it has merit. While we understand the desire not to create a disincentive to a legitimate request, this proposed approach will have the opposite and unintended effect of encouraging requests that lack merit, at significant cost. We recommend that the Board delete the prohibition on charging property valuation and credit report fees for the first reinstatement, or, in the alternative, require the creditor to reimburse for the cost of the first request where the reinstatement is proved to be warranted.

- The Board should clarify that for HELOC agreements entered into prior to the mandatory effective date of the final regulation, where the agreements provide for fees that are prohibited by the final regulation, the creditor would not be in violation of the regulation as long as such fees are not assessed after the mandatory compliance date.

- Section 226.5b(f)(3)(iv) is missing from the Federal Register version of the proposal, and section 5b(f)(3)(iii) is stated twice.

- Section 226.5b(f)(3)(vi)(A) could be worded better. It states that "the home's value declines below the value," which appears to be circular. We recommend amending it to state: "the home's value declines below the value at origination [or "below the initial value"]."

- Comment 5b(f)(3)(vi)-5 states that whatever property valuation method is used "must not merely estimate the value based on property values or re-sale prices generally in a particular geographic area." We would appreciate clarification that, while the valuation method should not be limited to *only* such comparisons, such comparisons serve a very useful purpose and may be included as *part* of the valuation.

- We recommend the addition of additional subsections under section 226.5b(f)(3)(vi) to permit the creditor to prohibit extensions of credit or reduce the credit limit during any period in which:
  --the creditor has a reason to believe there is fraud or illegality, including the possibility of identity theft, in connection with the plan [section 226.5b(f)(2)(i) only refers to fraud or material misrepresentation *by the consumer*].
  --the consumer is less than 30 days delinquent on the plan [termination and acceleration under section 226.5b(f)(2)(ii) cannot be triggered until the consumer is more than 30 days delinquent].
  --the account is unsecured for any period of time [section 226.5b(f)(2)(iii) only permits termination and acceleration if the threat to the creditor's security is the result of action or inaction by the consumer].

- In response to the Board's request for comment, we recommend that the Board state that reliance on a FICO score or similar indicator is a permitted basis for determining a consumer's ability to pay.

- Regarding the time for reinstatement under section 226.5b(g)(2), the regulation specifically calls for the creditor –after a request for reinstatement --to complete an investigation (under section 226.5b(g)(2)(ii)) or mail or deliver an adverse action notice (under section 226.5b(g)(2)(v)) *within 30 days of receiving the consumer's request*; but the commentary interprets this as calling for the creditor to *"promptly investigate"* and makes no mention of the 30 day period. If the 30 day requirement to resolve the matter is clearly stated in the regulation, why is it necessary for the commentary to interpret this as calling for the creditor to act promptly? That would appear to be a different requirement entirely.

- Sometimes the creditor may require information from the consumer in order to investigate fully a request for reinstatement—such as to determine if fraud or material misrepresentation is still a concern, or to obtain current income or asset documentation. A comment to section 226.5b(g)(2)(v) would be helpful to clarify that the creditor may decline to reinstate credit privileges within 30 days if such information is not made available to the creditor upon request, in a timely manner. Otherwise, the creditor may be unable to meet the 30-day time requirement.

- The Board requests comment on whether the regulation should require ongoing monitoring in all cases rather than having the consumer request reinstatement. We believe that creditors should be given a choice. Some may find that an ongoing monitoring requirement would be costly and burdensome to impose. Institutions have an incentive to reinstate accounts, as they are in the business of lending, making a regulatory mandate superfluous.

- Section 226.5b(g)(3) states that the creditor must provide the consumer, upon request, "a copy of the documentation supporting the property value on which the creditor based the action." Clarification is needed as to the way in which the phrase "copy of the documentation" is intended to be read where there are no documents, but only a valuation, provided electronically.

- Comment 5b(f)(3)(vi)-4 follows immediately upon Comment 5b(f)(3)(vi)-2, skipping Comment 3.

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Thank you again for the opportunity to comment on the proposal. If you have any questions, please feel free to contact us at any time.

Sincerely,
/s/
Steven Zeisel
Senior Counsel