



LEGAL AID SOCIETY OF MINNEAPOLIS  
Amber M. Hawkins ▪ (612) 746-3791 ▪ ahawkins@midmnlegal.org

December 23, 2009

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

**RE: *Truth in Lending – Proposed Rule: Regulation Z Part 226; Docket No. R-1367  
Open-End Credit***

Dear Members of the Federal Reserve Board:

The undersigned attorneys provide the following comments on the proposed changes to the regulations under the Truth in Lending Act (TILA). We work for Mid-Minnesota Legal Assistance and the Legal Aid Society of Minneapolis, which are legal services programs serving low-income consumers in Minneapolis, Hennepin County, and throughout central Minnesota. We represent homeowners who have been victimized by abusive mortgage lending practices and who are in danger of foreclosure because of those practices. Last year, we helped more than 80 homeowners with problems involving their mortgage loans. In every case, we analyze whether borrowers have been given disclosures as required by TILA. Through this work, we know, firsthand, the inadequacies of the current TILA disclosure rules. They are simply outdated and do not take into account the realities of the modern mortgage lending marketplace; as a result, they fail to ensure that consumers receive meaningful disclosure of the terms of credit agreements they sign and they frequently misunderstand those terms.

**Proposed Changes in Rules and Timing for Open-End Credit are Deeply Flawed.** The Board's proposal would also allow creditors to make HELOC loans with *no advance disclosures*. Allowing open-end, home-secured credit to be made with such minimal disclosure requirements will push the predatory activity into that form of lending – which is just as dangerous for consumers and the economy as predatory closed-end credit has been.

Additionally, we strongly oppose the Board's proposal for a weak, nothing-in APR for open-end credit. Here the Board proposes to put *no up-front fees or charges in the APR*. This is directly opposite to the approach of the "all-in" finance charge in the closed-end proposals. Creating this tremendous gap in meaningful regulation between closed- and open-end home secured credit will make it impossible for consumers to compare the products.

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**Changes for Open-End Credit is Based on Wrong Assumptions.** Unlike the changes proposed by the Board for closed-end credit disclosures, the changes for open-end credit are deeply flawed. If adopted, this proposal will do a great deal of harm. It will not only enable HELOC lending to become much more abusive, but will also undermine the Board's innovative proposals for closed-end credit – because the abuses will simply migrate to the less regulated open-end credit market. The Board's HELOC proposal requires major revision.

The Board bases its flawed approach for HELOC changes on the mistaken idea that HELOC borrowers seek out HELOCs. Borrowers in the subprime market are most often provided HELOCs as part of 80-20 financing deals. The lender finances 80 percent of the obligation with a closed-end mortgage, and the remaining 20 percent with a HELOC. This may be a home purchase or a refinance, but the bottom line is that the borrower is highly leveraged, with no equity cushion. The borrower rarely understands the terms of the deal before closing, or even that there are two loans, and is never made aware that one of the loans is a HELOC. *The HELOC is a line of credit in name only, as nearly the entire amount available is drawn down at closing.* The Board has completely failed to deal with this subprime HELOC market – the market where abuses are most likely to occur.

Additionally, the Board treats HELOCs as an alternate form of a credit card, not an alternate form of a mortgage. Again, this view ignores the subprime market, where HELOCs are primarily sold as part of a mortgage transaction. They are sold along with closed-end mortgages in 80-20 transactions. By allowing HELOC lenders to state an APR that does not include fees, the Board is blessing a disclosure regime that will make HELOC APRs appear lower than the APRs for comparable closed-end mortgages, giving consumers the *false impression that the HELOC rate is lower.*

The Board's proposal is a recipe for abuse. Brokers will be able to steer borrowers into HELOCs and provide the terms of the HELOC only at closing. HELOCs that are used to purchase a home will not be rescindable, so home purchasers who sign a fully-drawn HELOC at closing will have no ability to get out of it. Brokers will be able to mislead borrowers by selling HELOCs as cheaper than closed-end loans by showing borrowers the HELOC APR, which will look lower only because the two APRs are defined differently. Lenders could even offer a consumer a plain-vanilla fixed-rate closed-end loan to purchase a home, and then switch the borrower to a subprime HELOC at closing. Bad lending will migrate to HELOCs, undermining the true reforms that the Board has proposed for closed-end lending.

Based on this blindness toward the part of the market where the greatest abuses occur, the Board has decided to *dispense with all early disclosures about HELOCs.* Instead, the Board is giving its blessing to the practice of giving the borrower the first and only disclosures about the terms of the HELOC *at closing.*

**The Board's Mandate to Protect Consumers from Unfair Mortgage Practices Includes Home Secured Open-end credit.** It is disappointing that in the midst of the current

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disaster in the mortgage market, including the obvious problems caused by essentially unsecured second mortgages, the Board does not appear to recognize the dangers of home secured open-end credit. The Board's proposal on open-end credit reduces rather than increases protections for consumers from open-end credit lines. Instead, the Board should be mandating disclosures equivalent to closed-end credit, and substantive protections such as requiring creditors to evaluate the borrower's ability to pay all home-secured credit.

There are many other issues which merit comment; for those, we refer the Board to the comprehensive comments provided by the National Consumer Law Center.

Sincerely,



Galen Robinson  
Litigation Director



Amber M. Hawkins  
Attorney

GR/AMH:nb