COLONIAL
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December 23, 2009

Jennifer Johnson
Secretary, Board of Governors
Federal Reserve System
20th Street & Constitution Ave. NW
Washington, DC 20551

Re: Response to Proposed Regulatory Changes
Amended Regulation Z; docket No. R-1366

Dear Ms Johnson,

Thank you for this opportunity to comment on the proposed amendments to Regulation Z, the implementing regulation for the Truth in Lending Act. I applaud the efforts of the Federal Reserve Board in its stated goal to improve the effectiveness of consumer disclosures during the mortgage lending process. The consumer disclosures associated with a mortgage loan have become overwhelming to the average homebuyer – not only in the number of disclosures, but in the incongruous terms and definitions used, and the seemingly competing nature of the different regulatory forms that are piled before a homebuyer at the time of loan closing.

The Fed had the right idea in their original intent of the Truth in Lending Act to establish a uniform methodology to tell consumers how much a loan was going to cost. But as the implementation of Regulation Z matured over the decades, getting useful information in the disclosures has become a challenge for lenders. As recently as October 1, 2009, new timing requirements for initial and final TILA disclosures were mandated. But the October changes did more than simply alter when disclosures were to be made; the amendments limited the collection of fees, added additional events that necessitate new disclosures (more paper), and caused persons across the country to ask the question 'what is a business day?' Further, the timing and tolerances proposed by the TILA changes are different from those imposed by existing RESPA tolerances, making it doubly confusing to practitioners and consumers.

Now on top of the October amendments, the proposed changes to Regulation Z dramatically revise virtually every existing TILA disclosure form currently used with mortgage transactions, change certain definitions and also impose compensation restrictions that ignore the value distinctions in the market place.

Regulatory Burden

It would be one thing if amendments to TILA for mortgage loans were the only regulatory changes currently being absorbed by financial institutions. But a myriad of changes to other regulations have or are being made including: TILA changes to education loans, TILA changes to HELOCs, TILA changes to credit cards, TILA changes regarding higher cost loans, FCRA and accuracy of information standards, SAFE Act implementation, HMDA revisions, expanded data collection for foreclosure prevention programs, to name but a few. And on the near-time horizon are the significant changes to Regulation X (RESPA) that will require all lenders to completely revise long-standing standard operating procedures, existing forms, and loan origination system software programs. While these mandates are shared by different agencies, the tasks of implementation are burdens carried by individual institutions who are also attempting to keep operations profitable and customers happy.

The Federal Reserve's estimated time of 200 hours for individual institutions to update their systems, change internal procedures, adopt new forms, and provide adequate training for all employees is not realistic. Just reading and considering the Federal proposal will consume 93 hours. Then developing, testing, programming and training will multiply that number by a factor of seven (7). And what will be the end result? Consumers will still be baffled by the definition of APR and still no acknowledgment of the differences between this disclosure and those required by RESPA. What is truly needed is a concerted effort to combine the RESPA and TIL disclosures into one meaningful disclosure document.

Lack of Coordination with HUD

Colonial applauds the stated intentions of the Federal Reserve to coordinate regulatory reform with those of HUD; however that horse has already left the corral. The revisions to RESPA have already been finalized and our internal implementation process has begun. By issuing the RESPA revisions, HUD seemingly acted independently from the Federal Reserve and the other financial regulatory agencies. Likewise, the Federal Reserve has acted independently by issuing revision proposals to TIL that encompassed hundreds of pages. The Federal Reserve's actions were distributed without prior coordination.

Buying a home is an exciting time for a consumer. Home buyers are inundated with documents during the purchasing process. Certainly consumers should be well informed about all their contractual obligations and their decisions should be assisted by clear and understandable information. The lack of consistency between disclosures can only add to a consumer's anxiety and confusion. One need look no further than HUD's references to "interest rate" – meaning 'note rate' - and the Federal Reserve's use of Annual Percentage Rate (APR) to see where a consumer's confusion begins. Such confusion will be exacerbated if and when your proposal to expand the items included in "APR eligible fees" is enacted. This will widen the difference between the note rate and the APR and in many cases will put the proposed mortgage into the new Section 35 definition. This will occur because of the "basis risk" created in comparing two different things—Freddie Mac's so called "Prime" rate which is simply a contract interest rate versus a now expanded APR. And that is not where the confusion ends. Another example is that consumers may need guidance as to why the amount and composition of total settlement charges can not be readily identified and tracked between the disclosures.

Colonial believes that before any significant regulatory or disclosure revision is implemented, a coordinated effort on the part of government be part of the routine process. While jurisdiction and congressional mandates may contribute to why and how action is taken, a macro view should be taken during the design process to determine if efficiencies can be achieved as well as identifying instances where duplicative or inconsistencies can be avoided.

The Graph Regarding the APR and Higher Cost Loans

The proposed revised disclosures substantially alter the TIL presentation to the consumers. A predominate feature of the new disclosures is the APR bar that is designed to show the average best APR "on similar conforming loans offered to applicants with excellent credit", the APR of this loan and the range where the APR would fall within the high cost category. Consumers are sure to ask why they are not receiving the average best rate or why they are being charged the high cost rate.

While inquiring consumers may have been the intended result of this bar graph, the descriptive phrase of 'the average APR on similar conforming loans offered to applicants with excellent credit' is misleading. This term implies that a significant factor in the average best APR and the APR of the loan that is the subject of the disclosure is the applicant's credit. Underwriting and pricing decisions are based on a wide variety of elements, only one of which is the applicant's credit score. Factors such as source(s) of income, debt to income ratios, amount of down payment, source of down payment, premiums paid, seller's assistance, appraised value, and a host of other criteria, in addition to the applicant's credit score, impact the cost of credit. It would be a disservice to the consumer to imply that if their credit score was increased by X points, their APR would decline to the 'best' rate.

Compensation of Loan Officers

Of particular concern in the proposed regulation is the section which would dictate how lenders may compensate their employees. The proposal would eliminate a valuable, long-standing incentive tool that ties compensation to the value of the mortgage servicing rights produced. The proposal seems to ignore the well known mortgage banking practice of using some portion of the future value of the Mortgage Servicing Rights (MSR's) generated by the origination of the loan to subsidize the street price available to the loan originator/consumer. The less subsidy used by the originator, the more value created for the Lender. If Originators are not allowed to deviate from a price, then the consumer is prevented from negotiating a better deal. Allowing that flexibility allows the originator to be more competitive and offer the consumer better terms. Secondly, some servicing is more valuable than other servicing because of the underlying features and characteristics of the loans included in a servicing package. The mortgage market places a higher value on certain loan products and services than it does others. For instance, 30 year fixed rate mortgage loan servicing rights (MSRs) are more valuable than adjustable rate servicing rights. Servicing rights in Texas are more valuable than servicing rights in California, simply because of property tax rates. As has been evidenced in the financial crisis over the last two years, fixed rate loans are also safer for consumers. Providing originators with incentives to sell safer financial products is good public policy and good business. Imposing price controls on financial service products will negatively impact consumer choice and restrict competition. We think a better idea that would allow Regulators to be more successful in achieving Consumer protection would be focusing on product deficiencies and suitable underwriting standards rather than trying to control compensation. If restrictions are imposed, they need to apply only to non-traditional loans such as Pay Option ARM's, Interest Only, and Negatively Amortizing loans and NOT to traditional fixed rate, fully amortizing loans for which the borrower has demonstrated the character, capacity, and credit history necessary to qualify. Finally, any compensation restrictions should apply only to the individual dealing directly with the consumer (if at all) and not to executives or managers. Nor should compensation restrictions apply to secondary market payments to lender companies.

In summary, the last two years have seen a dramatic reduction in the offering and acceptance of alternative loan products. Lenders who profited by charging borrowers higher interest rates on inappropriate products have been forced out of business, not primarily by Regulators or laws, but rather by market forces. The market recognizes that those products are not good for anyone. Nonetheless, it is easy to see why Regulators would want to be seen as "tough on crime" and add more rules to prevent such bad behavior from re-appearing. But in doing so, we believe that the Federal Reserve should continue to support the general premise of a capitalistic economy in which legal contracts specifically and business transactions generally are conducted between educated individuals acting in their own best interests. Dictating compensation methodologies that are subjective and creating some complex tracking system for that is neither productive nor cost effective for institutions. Further, it could subject Lenders not only to Regulatory risk but to unwarranted class action risk (similarly situated individuals being compensated differently). We recommend that:

1) The Fed work with HUD to develop ONE set of consumer disclosures that are simple, clear, and tell the Consumer what they want to know—what is my rate, what is my payment, and how much do I need to bring to closing. Neither the Fed proposal nor the new RESPA rule tells the consumer this basic information. Disclosures from HUD and the Fed should be compatible and complementary with identical terms and definitions of those terms.
2) The Fed should focus on appropriate products for protecting the consumer and create/impose/require minimum product standards that include specific product

features, definitions, and disclosures that instruct borrowers about the benefits and risks of the loan products they chose.

3) The Fed use specific definitions and terms in establishing such standards and develop objective, quantifiable measurements by which compliance is determined rather than some subjective measurement such as "the loan may not be in the consumer's best interest". Such nebulous standards invite litigation which will ultimately be paid by consumers.

Since our founding in 1952, Colonial Savings has been privileged to serve tens of thousands of American homebuyers. Colonial Savings is the parent company of Colonial National Mortgage, a retail division with 15 branches and a national Home Loan Center; CU Members Mortgage, which provides mortgage origination services to more than 1,000 credit unions nationally; and Community Bankers Mortgage, which provides mortgage services to small community banks. Together, they originated more than $3 Billion in government and conforming loans in 2009. Privately held and OTS regulated, Colonial retains approximately 98% of loans we originate, and currently services more than $13 Billion in residential loans. We were not part of the problem that caused the "financial melt down" because we didn't make sub-prime loans to people who couldn't qualify. Rather, for 57 years we stuck to our principals of doing the right thing for our customers, our investors and ourselves. There are many other companies who did the same thing. We ask that you not impose extraordinary government intervention on the many to punish the sins of a few.

Colonial Savings appreciates the opportunity to comment on these proposed amendments to Regulation Z. Should you have any questions or wish to discuss any aspect of these comments further, please contact Ken Majka, Compliance Manager, or me at 817-390-2200, or dave@colonialsavings.com.

Sincerely,

J. David Motley

J. David Motley
President