



November 23, 2010

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

**Re: *Interim Rule Revising Disclosure Requirements for Closed-End Mortgages
[Regulation Z, Docket No. R-1366]***

Dear Ms. Johnson:

The American Financial Services Association ("AFSA") appreciates the opportunity to comment on the Interim Final Rule proposed by the Federal Reserve Board ("Board") which implements certain requirements of the Mortgage Disclosure Improvement Act of 2008 ("MDIA"). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

Section 226.18 (s)

Section 226.18(s) replaces the payment schedule with a new interest rate and payment summary table for a transaction secured by real property or a dwelling, other than a transaction secured by a consumer's interest in a timeshare plan. The current payment schedule is well-understood by, and very important to, consumers because consumers can use the disclosure to see the exact number of payments, the amount of payments, and the date payments are due, in a very simple format. Eliminating that clear payment schedule for fixed rate (and especially amortizing) loans is unnecessary and will create confusion for consumers. These loans were not implicated in the mortgage crisis in any way. Because the current payment schedule is so helpful to consumers, lenders will likely want to continue providing it, but will now have to do so outside the "TILA Box." This will add more disclosure for consumers at a time when everyone, regulators and lenders, is working toward simplification.

The change in the payment schedule requires creditors to change their systems and the way they provide disclosures, as well as re-train staff and update compliance programs, while actually eliminating information important to the consumer. It's a lose-lose for everyone involved and is unnecessary. Additionally, since the schedule of payments is different from the schedule for non-real estate secured transactions, it seems as though those lenders who secure loans with real estate and non-secured real estate could no longer do so and still comply with Regulation Z. AFSA respectfully requests that compliance with the Final Interim Rule for fixed-rate, fixed-payment mortgage loans be optional. Alternatively, we suggest that the Board clarify

that for fixed-rate loans, the new disclosure supplements the current 226.18(g) payment schedule, rather than replace it.

The Board estimates that it would take lenders, on average, 120 hours to update their systems and internal procedure manuals and to provide training for relevant staff to comply with the new disclosure requirements in this section. However, AFSA members believe that the Board is underestimating the time it will take lenders to implement these new disclosures, particularly with the new requirement for a disclosure of interest rate. Consumer mortgage disclosures are produced electronically because automation very substantially reduces the chance for inaccurate disclosures, reduces costs, improves data security, and vastly shortens the time required to produce individualized disclosures. The technology systems that produce the disclosures are interactive rather than isolated, so that making one change may affect other processes and results.

Additionally, there are many creditors who currently use the same Regulation Z “TILA Box” for both closed-end transactions that are secured by real property or a dwelling (“real estate secured transactions”) and other non-real estate secured transactions. The impact of this Interim Final Rule is even greater on these creditors than on those who only make real estate secured transactions. These creditors will now have to program their systems to select the correct TILA Box disclosure, based on the types of security taken. Something as simple as no longer allowing the number of payments in the TILA Box for a real estate secured transaction is problematic for those creditors whose only reference in their forms to the number of payments and the amount of the payments is in the schedule of payments currently contained in the TILA Box. For those state-licensed creditors with that issue that do business in multiple states, not only will the Interim Final Rule impact the TILA Box disclosure, it will require most of their real estate secured loan agreements to change, requiring review of all loan agreements for real estate secured transactions and changes to all of those loan agreements for real estate secured transactions.

Also, under Section 226.23, the payment schedule is a “material disclosure,” and that the failure to disclose the schedule of payments, which has been taken out of the TILA Box in the Interim Rule, therefore subjects the creditor to possible rescission of the transaction for failure to provide (see footnote 48 of Section 226.23).

In addition, we would like to point out that the use of the term “Total Est. Monthly Payment” has the potential to confuse the customer, since the use of the term “monthly payment” usually does not include amounts for taxes and insurance (an example of this is its use in the FNMA/FHLMC Multistate Fixed Rate Notes). The Rule would also require creditors to estimate amounts for taxes and insurance, which amounts increase and decrease over time for various reasons. As such, disclosing a payment that includes taxes and insurance could mislead a consumer into believing that the escrow amount and therefore payment will never change.

Section 226.18(s)(3)(C) requires the creditor to disclose that an escrow account is required, yet the disclosure of this is not in Model Forms H-4(E), H-4(F), H-4(G) and H-4(H), leaving creditors

to guess as to whether the sample forms alone will be enough to meet this requirement, or whether an additional disclosure of this is required in the TILA Box. Also, there is no new sample form that incorporates all of these changes into one or more model forms, leaving creditors to again guess as to where the new H-4 disclosures and the new disclosures for balloon payments and “no-guarantee-to-refinance should be in conjunction with other disclosures required to be given in the box. The result will be variances among creditors in where these new disclosures are place in TILA Boxes.

Finally, AFSA believes that Model Form H-4(H) is imprecise. Although the Model Form is titled, “Fixed Rate Mortgage with Interest-Only Interest Rate and Payment Summary Model Clause,” the table in the form lists columns for “Introductory Rate” and “Maximum Ever.” This is unclear as the rate for a fixed-rate loan, even with one interest-only payment, will not increase. Thus, only one interest rate needs to be disclosed. There is no need for the “Introductory Rate” and “Maximum Ever” columns.

Compliance Date

We note that creditors that use combined forms or both real estate secured and non-real estate secured lending generally do not offer variable rate products or products where the payment amounts would otherwise vary. These creditors generally focus on providing fixed-rate, fixed-payment products to their customers. The statutory mandate under the MDIA does not require any changes to the payment disclosure for fixed-rate, fixed-payment products. The MDIA very clearly states:

(c) Effective Dates-

(1) GENERAL DISCLOSURES- Except as provided in paragraph (2), the amendments made by subsection (a) shall become effective 12 months after the date of enactment of this Act.

(2) VARIABLE INTEREST RATES- Subparagraph (C) of section 128(b)(2) of the Truth in Lending Act (15 U.S.C. 1638(b)(2)(C)), as added by subsection (a) of this section, shall become effective on the earlier of--

(A) the compliance date established by the Board for such purpose, by regulation; or

(B) 30 months after the date of enactment of this Act.

Due to the excessive burden these creditors will face it seems appropriate to reconsider including all closed-end mortgage loans in the Interim Final Rule. The Interim Final Rule should be limited to loans where the interest rate or payments may vary, which is what Congress intended. Short of excluding fixed-rate, fixed payment loans altogether from the Interim Final Rule, creditors should at least have a longer implementation period for loan products that are not addressed by the MDIA provision. Optional compliance for these loans or postponing the compliance date for these loans would allow creditors to focus their resources on the more pressing concern of adjustable rate mortgages. If the Board does not change the deadline for fixed-rate mortgages, thousands of lenders will have additional compliance risk with the

regulations, but not the act itself. We do not believe that the Board has present a valid reason for forcing an early compliance deadline on fixed-rate mortgages when not required statutorily to do so.

Conclusion

AFSA thanks the Board for the opportunity to comment on the Interim Final Rule and commends the Board for its work in protecting consumers. Please feel free to contact me with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.

Respectfully submitted,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive style with a large, prominent "B" and "H".

Bill Himpler
Executive Vice President
American Financial Services Association