

November 23, 2010

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

**Re: Interim Rule Under Regulation Z Implementing New Tabular  
Disclosure Requirements for Truth In Lending Consumer Disclosures  
(Docket No. R-1366)**

Dear Ms. Johnson,

Our firm, Weiner Brodsky Sidman Kider PC, appreciates the opportunity to comment on the Interim Rule amending Regulation Z and the Official Staff Commentary to Regulation Z (the "Commentary") issued for public comment by the Board of Governors of the Federal Reserve System (the Board).<sup>1</sup> We submit these comments on behalf of a client of our firm that is a residential mortgage lender that offers a range of residential mortgage products.

### **Background**

The Interim Rule implements certain requirements of the Mortgage Disclosure Improvement Act of 2008, which amended TILA. Generally, the Interim Rule requires creditors extending consumer credit secured by real property or a dwelling to disclose certain summary information about interest rates and payment changes, in a tabular format. The Interim Rule also requires a statement that consumers are not guaranteed to be able to refinance their transactions in the future to be included with the TILA disclosure. These interest rate and payment summary tables replace the payment schedule previously required as part of the TILA disclosure for mortgage transactions.

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<sup>1</sup> The Interim Rule was published in the Federal Register at 75 Fed. Reg. 58470 (September 24, 2010) and is referred to herein as the Interim Rule.

However, disclosures for non-mortgage, closed-end consumer credit will continue to include the current payment schedule.

As part of this new tabular format, creditors are required to include, where applicable, specific estimates for escrow payments for property taxes and insurance over the life of the loan. Our comments seek additional guidance and clarification as to the appropriate implementation of these required disclosures.

### **Required Estimates for Property Taxes and Insurance**

The Interim Rule requires, where an escrow account will be established, the creditor to disclose the estimated payment amount for taxes and insurance, including any mortgage insurance.<sup>2</sup> Therefore, for transactions secured by real property or a dwelling, creditors will no longer have the flexibility to exclude escrow amounts. The Board believes that this will allow “consumers to understand the monthly amount they actually will be required to pay for a particular loan, information about payments for taxes and insurance is necessary.”<sup>3</sup> Moreover, the Board has included escrow information in the new tabular format in order to make it easier for consumers to identify whether there is an escrow account and how much of their payment applies to the escrow.

In its Staff Commentary, the Board provides the following guidance for creditors:

“An estimated payment amount for taxes and insurance must be disclosed if the creditor will establish an escrow account for such amounts. The payment amount must include estimated amounts for property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer’s default or other credit loss. Premiums for credit insurance, debt suspension and debt cancellation agreements, however, should not be included. Except for periodic mortgage insurance premiums included in the escrow payment [...], amounts included in the escrow payment disclosure such as property taxes and homeowner’s insurance generally are not finance charges under § 226.4 and,

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<sup>2</sup> New Section 226.18(s)(3)(i)(C).

<sup>3</sup> 75 Fed. Reg. 58470, 58476 (September 24, 2010).

therefore, do not affect other disclosures, including the finance charge and annual percentage rate.”<sup>4</sup>

### **Practical Implementation Issues**

This part of the Interim Rule, and this brief Commentary, respectfully, leave many questions unanswered for creditors charged with implementing this Interim Rule by January 30, 2011.

While the Interim Rule and the Commentary appear to provide an accounting of what is to be included in this estimate for an escrow account, where so established, as well as what should not be included, the Interim Rule and the Commentary do not provide sufficient or detailed guidance for creditors estimating these amounts. It is unclear, for example, whether and what particular industry index might be utilized to develop these estimates. This will result in complications for creditors charged with developing such estimates as accurately as required under TILA in order to avoid regulatory or otherwise adverse action.

Practically, and absent further guidance, creditors may be conservative in estimating future increases in property taxes and insurance and thereby disclose a lower total estimated monthly payment that, when combined with a higher interest rate, may result in a disclosure that fails to meet the overall disclosure goals of the Rule.

Indeed, it is because changes in such costs are beyond the control of both creditor and borrower, and largely uncertain as to direction or amount, that additional and more detailed guidance from the Board, beyond that provided in the Interim Rule and the Commentary—that all creditors could use to develop the estimates required (e.g., a specific rate of increase or index to be used consistently)—would be so helpful both to creditors and to consumers in the loan shopping process.

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<sup>4</sup> 75 Fed. Reg. 58470, 58487 (September 24, 2010).

### **Additional Unanswered Questions for the Board**

The following questions also have been identified as appropriate for additional Board guidance:

1. In general, what methodology is appropriate to use in estimating property taxes and insurance beyond the amount currently due and confirmed through a tax certification?
2. What assumptions are appropriate to use for increases? Is there a specific index to apply?
3. By way of example and with respect to the first column, the "INTRODUCTORY Rate & Monthly Payment (for first (*period*)) \_\_\_\_%," it is likely that the estimated property taxes and insurance over the first five years of a five year Adjustable Rate Mortgage (ARM) will not be consistent. In this scenario, is it appropriate to use the maximum amount, which will presumably come in the fifth year? Or, is it more appropriate to use the amount that is known to be due with the first payment?
4. By way of example and with respect to the third column, the "Maximum Ever (as early as (*date*)), "if the maximum interest rate is 8%, which cannot occur earlier than December 1, 2018, is it appropriate to estimate the property taxes and insurance as of the date inserted in that column or should creditors estimate what those amounts would be in year 30?
5. Given the Interim Rule newly required estimates, how will the accuracy of these estimates be judged by the Board?
6. What liability, if any, will a creditor have if the estimate is significantly underestimated in, say, year five because of an unforeseen substantial increase in property taxes and insurance?

In sum, and respectfully, unless creditors have specific and detailed guidance as to how to estimate property taxes and insurance, there is a significant risk that borrowers may be presented with greatly varying and not fully helpful or accurate estimates of

their "Total Estimated Monthly Payment." Such disclosures also run the risk of distracting the consumer's focus away from what our client believes is the most important criteria for a consumer to consider, the "Principal + Interest Payment," driven by the interest rate and interest-related costs being offered.

Under these circumstances, and respectfully, additional guidance is needed and would be helpful in order to allow creditors to effectively and consistently implement this Interim Rule.

**Conclusion**

The law firm of Weiner Brodsky Sidman Kider PC and its client appreciate the opportunity to comment on the Interim Rule amending Regulation Z. Should you have questions or wish to discuss any aspect of these comments further, please contact either myself or my colleague, Joseph Silvia, at (202) 628-2000.

Very truly yours,

James A. Brodsky

