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Subject: Regulation Z - Truth in Lending

Comments:

Date: Dec 21, 2010

Proposal: Regulation Z - Truth In Lending Act
Document ID: R-1390
Document Version: 1
Release Date: 08/16/2010
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To the Board of Governors of the Federal Reserve: I am an Associate Professor of Law at Georgetown University Law Center, where I teach courses in secured lending, contracts, and consumer finance. I am writing in opposition to the Federal Reserve Board's proposed revisions to Regulation Z under the Truth in Lending Act [R-1390]. I am greatly concerned by the Fed's proposed limitation on the TILA rescission right, the proposed increase in accuracy tolerances, and permission for lenders to use their own disclosure forms instead of the Fed's disclosure forms. The TILA rescission right is one of the most basic protections of mortgage borrowers. That the Fed is proposing to weaken this right during the midst of the nation's worst foreclosure crisis in modern memory is nothing short of baffling. The Fed's proposal that consumers obtain a new loan before their first loan may be rescinded eviscerates the TILA rescission right, as few homeowners can qualify for a two full-sized home mortgages simultaneously. I strongly urge the Fed to leave the TILA rescission right untouched. I am also deeply concerned that the Fed is proposing to loosen the tolerances for accuracy in terms of monthly loan payment and loan amount. A precise knowledge of monthly loan payments is critical for a borrower when deciding whether to enter into a loan agreement. The Board's proposal is motivated by concerns that without greater latitude in tolerances for TILA disclosure accuracy inconsequential or ministerial mistakes might result in borrowers obtaining a right to rescission without having suffered a material harm. This concern is misguided for two reasons. First, the tolerances proposed by the Board are in fact material. A $100 tolerance for monthly payments is roughly a 10% tolerance for many mortgage payments, which is clearly a material misstatement. Second, TILA's strict liability function is actually quite meritorious, much like section 11 rescission liability under the
Securities Act of 1933, which permits investors to rescind securities purchases based on material misstatements or flaws in the registration process, without having to show any actual economic harm. Strict liability disclosure regimes

like TILA have the effect of strongly incentivizing lenders to be careful with disclosures. Given that lenders have complete control over the disclosure process, it is sensible to hold them liable for misstatements. Minimal investment in software can ensure accuracy in TILA disclosures. Lenders, however, often are not interested in such investments because it's more profitable to play bait-and-switch games at closing, where pricing variations are invariably in the lender's favor. While the consumer windfalls from small errors seem to be an unfair result, it is a result that lenders can easily avoid and such a strict liability regime has a general deterrence effect on sloppiness in the market and ensures better market efficiency. I would urge the Fed
to constrain, rather than expand the Reg Z disclosure accuracy tolerances. Third, the Fed should not permit lenders to replace the Fed's consumer-tested disclosure forms with their own. While there are shortcomings with the Fed's disclosure forms, they impose uniformity on the disclosure process, which is critical to ensuring that information is conveyed to consumers in the most effective way. When consumers are confronted with non-uniform disclosure forms, comparison-shopping becomes more difficult and consumers are more likely to make errors. Indeed, when lenders control disclosure forms, they are incentivized to make the disclosures as ineffective as possible. Finally, there is absolutely no urgency in revising Reg Z, and in light of the serious problems in the proposed revisions to Reg Z, the Fed should postpone adoption of a final rule until the Bureau of Consumer Financial Protection is operational so the BCFP can engage in a thorough review of the proposed rules and decide
whether to proceed with the proposed rule-making. I strongly urge the Fed to rethink the proposed Reg Z rule-making and enact a rule that strengthens, rather than weakens, home mortgage borrowers' protections. Sincerely, Adam J. Levitin Associate Professor of Law Georgetown University Law Center