CHASE

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December 23, 2010

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington D.C. 20551
Attn: Docket No. R-1390
By email: regs.comments@federalreserve.gov

Re: Docket No. R-1390 – Proposed Revisions to Regulation Z

Dear Ms. Johnson,

JPMorgan Chase Bank, N.A. ("Chase") appreciates the opportunity to comment on the proposal (the "Proposal") of the Board of Governors of the Federal Reserve System (the "Board") with respect to proposed revisions to Regulation Z that implements the Truth in Lending Act ("TILA"), appearing at 75 FR 58489 (September 24, 2010).

## I. GENERAL OBSERVATIONS

Chase strongly supports the Board's objective to promote consumer understanding of residential mortgage products through clear and simplified disclosures and access to information. We appreciate the extraordinary efforts of the Board in crafting the Proposal as a complement to its efforts in 2009 to improve the open-and closed-end provisions of Regulation Z (Docket nos. R-1366 and 1367) (the "2009 Proposal").

In addition to the Board's efforts, Congress has passed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA"). The DFA, together with its implementing regulations, will result in sweeping changes to the residential mortgage process. We urge the Board to make sure that its efforts in amending Regulation Z are consistent with the provisions of DFA and with new regulations to be promulgated by the new Bureau of Consumer Financial Protection (the "Bureau").

Special Advisor to the President Elizabeth Warren and Treasury staff have begun the process of combining the disclosures required by the Real Estate Settlement Procedures Act ("RESPA") with those required by TILA to create a single, integrated system of disclosures and consumer protections. Chase whole-heartedly supports the Bureau's efforts in this regard. We urge the Board to refrain from finalizing any changes to Regulation Z until the Bureau's efforts to coordinate TILA and RESPA have been completed.

Chase is in favor of overhauling the residential mortgage disclosure system. We believe that disclosures and processes can be improved so that consumers may more easily understand the mortgage products they select and the related costs, and that this can be done in a manner that streamlines and simplifies the mortgage process. We believe, however, that this can be accomplished only through cooperation and consistency. There is an urgent need for a single, uniform mortgage regulatory system that will benefit consumers and lenders alike. We urge the Board and the Bureau to work toward that end by avoiding successive, piecemeal changes and inconsistent regulations and by waiting until a uniform disclosure and regulatory system is created. We also believe that the Board should refrain from finalizing those portions of the Proposal and the 2009 Proposal that may impact or conflict with DFA or RESPA.

While we urge the Board to refrain from acting on portions of the Proposal as stated above, we wish to comment on a number of aspects of the Proposal, including but not limited to: rescission; disclosures on modifications; high cost and higher priced tests; fee refunds; servicer responses to requests for information; FHA prepayment penalties; and advertising requirements.

## II. RESCISSION

Chase generally agrees with the steps that the Board has taken to simplify the rescission process and has several suggestions that we believe would further improve the process. We also believe that, with certain changes, many aspects of the Board's Proposal with respect to rescission should be implemented in advance of other portions of the Proposal without the need to wait for completion of RESPA/TILA reconciliation or publication of DFA regulations.

### Rescission Notice – Form and Content

Chase finds the new proposed form of rescission notice to be clear and easily readable. We have a number of comments, however, on how the form could be made more user-friendly and facilitate compliance with timelines.

- Creditors should be able to make changes to the form (or, if the Board prefers, the Board should publish additional versions of the form) to better explain borrowers' rights in special circumstances. For example, if a borrower obtains a home equity line of credit ("HELOC") at the same time as a purchase money mortgage and uses a portion of the HELOC funds to purchase the subject property, only the unused portion of the HELOC is rescindable. The proposed form does not provide a means of explaining this distinction to a borrower.
- The "tear off" sheet would likely be a convenience to borrowers, but needs to contain sufficient information for the creditor to identify the loan and process the request. Critical information includes the name and address of the creditor; the loan number; the borrower's name and property (not mailing) address; and date the right is exercised. Loan number is particularly important and creditors should be able to request borrowers to provide it, particularly if the loan or servicing has been transferred and the current loan number differs from the original. This information is readily available to the borrower (e.g., on the periodic statement) and could easily be provided.
- The cancellation request should be signed and dated to establish authenticity and borrower intent.
- It is essential that lenders have the ability to tell borrowers where to send the rescission request – particularly during an extended rescission period. Sending the notice to the current owner or the person to whom the borrower sends payments is not sufficiently specific. The notice would likely be sent to an office that does not process rescission requests, to a bank branch that is not involved in mortgage origination or servicing, or to a lock box that only processes payments. The correct address could be provided in a servicing transfer notice or in periodic statements. The 20 calendar day period for processing rescission requests (which is tight in the best of circumstances) should not begin to run until the request is received at the right place.

- A generic statement about the availability of an extended rescission period may not be sufficiently informative. A more detailed explanation – or a reference to a Board publication or website that could provide more information – would be helpful. A more thorough explanation may also result in a lower number of invalid rescission requests.

Delivery of Notice

Chase supports the Board's proposal to require that only one copy of the rescission notice be delivered to each party with the right to rescind. We believe this will reduce the number of rescission requests and related litigation based solely on alleged technical errors, while protecting the rights of borrowers with substantive claims.

The Board requested comment on whether delivering the rescission notice for closed-end loans prior to consummation, such as with the final TIL proposed to be required 3 days before consummation, is advisable. We do not think so. The consumer can cancel or renegotiate the transaction on the basis of the final TIL; a rescission notice is not needed for this purpose. If the loan is re-negotiated, dates could change and mismatched closing documents and rescission notice could result in confusion. In addition, the consumer may not realize that the rescission period begins at closing if the notice is received earlier.

Exercise of the Right to Rescind

The Board seems to have extended the period of time during which the consumer may exercise the right to rescind by changing the language of the regulation from "midnight of" to "midnight after" the third business day following consummation. Chase finds the new language somewhat unclear. Examples of how to calculate the rescission period would be helpful.

As stated above, it is critical that the rescission notice be sent to the right place if the request is to be processed in a timely manner. Creditors (or servicers) must have the ability to specify where the borrower must send the notice exercising the right to cancel, and notices sent to the wrong place should be ineffective.

Material Disclosures and Tolerances

Chase believes that, with certain exceptions, the Board has identified as material the disclosures containing information most relevant to consumers and most critical to understanding the loan product they have selected. We are concerned, however, with the impact that the "all in" definition of finance charge and APR in the Board's 2009 Proposal will have on the accuracy of disclosures of APR and interest and settlement charges (formerly finance charge). We are also concerned that the Board has added total settlement charges for closed end loans and total one time plan opening fees imposed by the creditor and third parties for open end loans.

Creditors frequently have no control over the fees imposed by third parties, especially settlement service providers selected by the borrower. We stated in our comment letter on the 2009 Proposal that we did not support including in the definition of finance charge items such as inspection fees, survey fees, title insurance fees and notary fees because these service providers are generally selected by the borrower or the borrower's settlement agent, the costs do not vary by lender, and do not serve as the basis for comparison. Likewise, we opposed the inclusion of government taxes and recording fees. We also opposed the Board's proposal to include in the finance charge amounts required to be paid into escrow accounts. Such amounts are not a cost of credit and are subject to significant fluctuation depending on when the closing occurs. We also pointed out in our comment letter on the 2009 Proposal that the all-in definition of finance charge would result in an average fee increase of $2500 per loan, with the figure in several states being closer to $4000. We continue to oppose the concept of all-in finance charge and APR for those reasons and because of their impact on rescission.

First, the tolerances proposed by the Board are unrealistic given the inability of creditors to predict third party charges with accuracy and the increase in the number of charges included. The Board proposes a tolerance of $100 (or over-disclosure) for plan opening fees on open end loans; the greater of ½ of 1% of the note amount or $100 for interest and settlement charges and APR on closed end loans; $100 or over-disclosure for total settlement charges; and 1/8 of 1% for APR on open end loans. If the Board proceeds with its all-in definitions of APR and finance charge, it should significantly increase those tolerances.

Second, rescission is too severe a remedy for disclosure errors related to settlement charges. Unlike APR (as currently defined) that impacts the borrower for the life of the loan, settlement charges and plan opening fees are one-time charges. If they are disclosed incorrectly, a more appropriate remedy would be a simple refund or, in some cases, damages.

Third, disclosure of settlement charges is already covered by RESPA. HUD's new, guaranteed Good Faith Estimate ("GFE") assures that settlement charges are accurately disclosed within the tolerances prescribed by HUD and that consumers will not be surprised at closing with new or increased charges. Adding another disclosure of settlement charges with a different accuracy tolerance and a different remedy is excessive regulation and creates undue exposure to creditors without benefit to consumers. We believe it could also result in consumer confusion to the extent that creditors defensively over-disclose settlement charges on the final TIL which will then not match the GFE and HUD-1. This is another example of the need to reconcile RESPA and TILA. We urge the Board to work with HUD and the Bureau to that end to create a consistent and uniform disclosure plan rather than adding to the confusion that already exists because of the conflicts between RESPA and TILA.

Effect of Rescission/Extended Period

Chase applauds the steps the Board has taken to rationalize the rescission process and to clarify the borrower's obligation to tender funds in order to rescind the loan. Rescission has always been intended as a means of unwinding a transaction and putting the parties back in the position they were in prior thereto. Requiring the borrower to tender the outstanding principal balance less interest and finance charges is the only way to accomplish this. The majority of Circuit Courts that have addressed the issue have taken that position. We are pleased that the Board is clearly recognizing the existing practice. To do otherwise would permit borrowers who are not creditworthy and cannot refinance to receive a windfall. This was never the intent of rescission.

Rescission requests after the initial 3 day period have skyrocketed in recent years as borrowers use rescission aggressively to attempt to gain leverage in connection with loan modification requests. The vast majority of rescission claims are, in Chase's experience, baseless. Rationalization of the process and the requirements borrowers must comply with in order to rescind will benefit all concerned.

The volume of rescission claims currently being received makes compliance with the 20 calendar day response time extremely difficult. We believe a longer time period would be more realistic. This is particularly true in cases where the borrower does not have a legally valid claim, but where rescission may be a better economic solution for the borrower and the creditor/investor than foreclosure or modification. Additional time is needed in such cases for the servicer to consult with the investor and reach a decision. We also stress, as mentioned above, the need for borrowers to send cancellation notices to the correct place and with sufficient information for creditors or servicers to identify the loan and evaluate the request.

Chase also appreciates the Board's clarification that tender of property is appropriate only in cases where the creditor provided property to the consumer. A creditor that loaned money should not be required to accept a tender of collateral unless it agrees to do so.

The Board has requested comment on whether 60 days is a reasonable period of time for the borrower to tender funds. We believe that it is sufficient for borrowers who have the ability to refinance to obtain the funds to tender, or for borrowers who have funds independently available. On the other hand, the 60 day period will likely be used as a delaying tactic by delinquent borrowers who do not have the ability to refinance. In addition to establishing a reasonable time frame for tender, the Board should clarify the creditor's ability to set the terms for tender such as requiring certified funds. We also believe that it would be rare for creditors not to accept tendered funds within 120 days if they are sent to the correct place in the correct amount, but do not believe there should be forfeiture if the creditor fails to accept the funds. There are other less drastic means available for addressing such a delay.

Finally, in the context of rescission in a court proceeding, Chase agrees that courts have the ability to modify the process based on equitable powers. We are concerned, however, that unlimited modification powers could undermine the improvements and clarifications made by the Board. The Bankruptcy Code prohibits the modification of first lien mortgages on owner-occupied properties where the residence is the only collateral securing the loan. Similar limitations should be imposed in the non-bankruptcy context. It would be highly problematic, for example, for a court to permit a borrower to pay in installments instead of tendering the full amount due particularly in cases where the rescission request arises in connection with the borrower's delinquency.

Termination

Chase supports the Board's clarification of the circumstances under which the right of rescission is terminated. We disagree, however, with the Board's proposal to permit a refinancing only with a creditor other than the "current holder" to terminate the right to rescind the prior loan. In many cases, refinancing on more favorable terms is used as a means of resolving issues that arose in connection with the origination of the loan. Borrowers and lenders should have refinancing available as a means of settling their differences with finality. We appreciate the Board's concern that refinancing could be used as an abusive technique to cover past misdeeds or to avoid assignee liability. It may be appropriate to preserve the rescission remedy where the creditor has acted in bad faith. In other cases, however, refinancing, even with the same creditor, should terminate the right to rescind.

Waiver

Chase appreciates the Board's efforts to clarify the circumstances under which the right of rescission may be waived. More examples of situations that would or would not be considered a bona fide personal financial emergency would be helpful.

One of the common circumstances in which borrowers request to waive the rescission period is when their rate lock is expiring and the new rate would be higher. Under the Board's proposal, waiver would not be permitted under those circumstances, though it might mean considerable cost to the borrower over the life of the loan. This will increase the pressure on creditors to process loans quickly in order to avoid expiration of rate locks – something that is increasingly hard to do given the numerous review and cooling off periods that have been added to the mortgage process by both the Board and HUD. This is another example of the need for the Board and HUD to work together to streamline and rationalize the mortgage process.

## III. MODIFICATIONS

Chase shares the Board's concern that the current definition of "refinancing" in Section 226.20 as a transaction in which an existing obligation is satisfied and replaced with a new one excludes certain transactions that should be treated as refinancings. Modification, extension and consolidation agreements (MECAs) used in New York to reduce the amount of mortgage tax payable in connection with the transaction are a prime example. They are processed and underwritten in the same manner as any other new loan and the consumer is charged similar costs. Our practice is to treat MECAs as refinancings and provide consumers with the full range of disclosures. We believe this should be a required practice for MECAs and similar transactions which, in substance, are refinancings. We believe the same principle should apply for reporting purposes under the Home Mortgage Disclosure Act ("HMDA").

In other respects, however, we believe the Board has gone too far in its expanded definition of refinancing. We believe that imposing on these transactions the whole range of Regulation Z disclosure requirements, waiting periods and the right to rescind will turn simple transactions into complex ones and will have a negative impact on consumers. For this reason, we believe that with the exception of MECAs and substantively similar transactions, the Board should retain its existing definition of refinancing. Alternatively, the scope of transactions that would be considered refinancings under the Proposal should be limited to transactions where the borrower is not in default or imminent default and a risk factor is added or additional collateral consisting of real property or a dwelling is obtained.

Under the Proposal, a transaction would be considered a refinancing if any of the following elements were present: (i) an increase in loan amount (except for arrearages, related charges and escrow adjustments), (ii) a fee is imposed, even if provided for in the loan agreement, (iii) a change in loan term, (iv) a change in interest rate, (v) increasing the periodic payment, (vi) adding a risk factor, or (vii) adding collateral that is real property or a dwelling.

Lenders from time to time offer programs that would enable current borrowers to make beneficial changes such as to reduce their interest rate without the time and expense it takes to refinance, change the loan term to provide for lower payments over a longer term or for quicker repayment through a shorter term, change from interest only payments to amortizing payments, agree to a higher fixed rate to avoid a pending rate adjustment and future rate uncertainty, or to make similar changes. Sometimes such programs are offered free of charge. In other cases, certain charges are passed along to the consumer to help defray lender costs. We believe that programs that enable consumers to modify their loans at low or no cost without the burden of going through the refinance process are beneficial to consumers. Requiring lenders to provide the full gamut of TILA disclosures, adhere to waiting periods and provide the right of rescission would increase costs and serve as a disincentive to offering low cost modifications to current borrowers.

Chase agrees with the Board's Proposal to exclude modifications entered into as part of a court proceeding, including bankruptcy, from the definition of refinancing.

We strongly believe that all modifications entered into in connection with imminent default, default or delinquency should be exempt from the definition of "refinancing". The limitations proposed by the Board excluding cases in which the loan amount or interest rate is increased, the term is extended, or a fee is charged would seriously hamper the efforts of lenders to modify the loans of struggling homeowners using the most common modification programs currently available.

In a typical modification program such as the federal government's Home Affordable Modification Program ("HAMP") the servicer would first capitalize arrearages and, in the case of certain high loan to value loans, forgive principal. The servicer will then look to lower the borrower's interest rate and to extend the loan term as necessary to achieve the desired debt to income ratio. Different modification programs have different waterfalls, but all use similar techniques to attempt to improve the borrower's situation. In some cases, particularly with Option ARM loans, the interest rate and payment may be increased but the loan is converted to an amortizing fixed rate that gives the borrower the peace of mind of paying down principal at a rate that will not change over time. Another common loss mitigation technique is to reduce the principal balance on which the borrower is making payments by deferring a portion of the outstanding principal balance, interest free, until the loan is refinanced or the home is sold. This can provide enormous relief to homeowners who are seriously struggling, but could possibly constitute a balloon payment requiring disclosures under the Proposal.

Requiring disclosures, waiting periods and a right of rescission triggered by the most common (and often government-sponsored) loss mitigation techniques would further delay the modification process and the ability of struggling borrowers to get relief. Many borrowers are deep into delinquency when they complete the modification process. They are not qualified to refinance and are not in a position to shop and compare lenders. Causing additional delay by providing meaningless disclosures would serve no purpose. It is hard to imagine circumstances in which a consumer would want to rescind a modification to go back to a loan they were having trouble paying. It is also hard to imagine the effect of such a rescission. What would the creditor refund – the reduced interest payment that is less than the amount the borrower should have been paying but for the modification?

Chase also believes that the default modification exception should be extended to cases of imminent default. While there is no universally accepted definition of "imminent default", the term generally contemplates a situation in which it has been determined that the borrower will likely be unable to make scheduled payments in the foreseeable future as a result of a hardship such as a pending rate adjustment or loss of employment. While some borrowers will be able to refinance to a more favorable rate, many cannot, particularly if there has been a decline in property value or loss of employment. The ability of a servicer to reach such borrowers quickly and modify their loans before default occurs is critical to preserving home ownership and protecting borrowers' credit standing.

Chase also believes that charging fees should not convert a modification into a refinancing. Many servicers are currently bearing the cost of default modifications, a position that may not be sustainable for the long run, particularly in the case of third-party fees. Third party fees incurred by the creditor in the default and foreclosure process are passed along to the borrower and the creditor is repaid under the terms of the loan agreement or the foreclosure process. It is equally appropriate for creditors to be reimbursed for reasonable expenses incurred in the modification process. Creditors should be able to pass those fees along as well without triggering disclosure requirements normally associated with originating a new loan.

The Board has requested comment on whether streamlined disclosures comparing the original loan to the modified loan should be developed. Chase believes that streamlined disclosures would be preferable to the full gamut of existing TILA disclosures. However, we do not believe that there would be a significant benefit to the borrower, especially in a default situation. Documentation for modifications is much simpler than for mortgages. A modification agreement is only a few pages long and clearly sets forth the payments the borrower will be required to make, the interest rate, and the period of time for which each is in effect. We do not believe that it is difficult for a borrower to compare their existing loan to the modified terms. Moreover, existing TIL disclosure forms and those developed as part of the 2009 Proposal do not lend themselves to modifications. New forms would have to be developed. We think that aligning RESPA and TILA and developing regulations to implement DFA are a higher priority.

The Board has also requested comment on whether conversion of an adjustable rate loan to a fixed rate should require provision of an ARM change notice or new TILA disclosures. The ARM change notice is not designed for conversion of an adjustable rate loan to a fixed rate. For example, it requires index and margin values to be disclosed for both the old and the new rates. When modifying an ARM to a fixed rate, the new fixed rate generally is not based on an index plus margin, particularly in the case of a default modification. Either the existing loan agreement or the modification agreement sets forth the new fixed rate terms so an ARM change notice is not necessary. For reasons stated above, providing new TILA disclosures is not appropriate for modifications.

## IV. TRANSACTION COVERAGE RATE

The all-in APR and finance charge under the 2009 Proposal were of concern to many creditors because they would result in more loans being classified as "high cost" under Section 226.32 of Regulation Z or "higher priced" under Section 226.35.

In response to creditors' concerns, the Board elected to preserve the existing definition of "points and fees" under Section 226.32. The Board did the right thing. Its decision will prevent numerous loans from failing the federal high cost test and it appears to be consistent with DFA. The Board also elected, under the current Proposal, to address the concern that the comparison of all-in APR to APOR under Section 226.35 would result in an inordinate number of loans being deemed "higher priced" by creating a new Transaction Coverage Rate ("TCR") for comparison purposes. The TCR would essentially be the same as today's APR, with today's exclusions from finance charge. We believe that TCR is a useful idea and will solve the problem it sought to address, namely, to prevent loans from being inappropriately classified as higher priced under Regulation Z. However, TCR raises other concerns:

- Creditors would be required to calculate and track both APR and TCR, which could pose programming burdens.
- The Board indicates that TCR would not be disclosed to consumers. We believe that consumer groups would object to loans being classified on the basis of an undisclosed calculation that could not be examined. This could result in increased claims and litigation.
- The new TIL included in the 2009 Proposal graphically compares APR to APOR. Would consumers be confused by using one calculation to evaluate their loan for disclosure purposes and another for determining its legal status?
- There are multiple instances under DFA where a rate spread is used to determine if certain requirements apply including with regard to prepayment penalties, appraisals and escrow requirements. Would these use APR or TCR? It does not appear that Congress intended an all-in APR for DFA purposes. A consistent approach is needed.
- HMDA requires reporting of APR/APOR spreads. What impact would there be on the value of HMDA data regarding loan pricing if inconsistent measures are used?
- DFA requirements regarding ability to repay, mandatory escrow accounts and prepayment penalties may render Section 226.35 obsolete, or replace it. A short-lived TCR would result in valuable resources being spent unwisely.

In addition to the above concerns, retaining the current definition of points and fees under Section 226.32 and using TCR under Section 226.35 would not resolve all of the state high cost issues that result from the all-in APR and finance charge. For example, while points and fees tests in 11 jurisdictions (CO, DC, FL, IL, IN, MD, NY, OH, PA, TN, TX) are based on the tests and definitions in Section 226.32, that is not the case in all states. Four states (CT, KS, NC, OK) base their points and fees tests on the finance charge definition in Section 226.4. Thirteen additional jurisdictions (AR, CA, GA, IL (Chicago and Cook County), KY, ME, MA, NJ, NM, RI, SC, WI) use the Section 226.4 definition but have state specific inclusions and exclusions. In states that have a points and fees test based on finance charge as defined in Section 226.4, the steps that Board proposes with respect to points and fees under 226.32 would not help.

Likewise, seven states (CO, KY, MD, NJ, OH, PA, TX) base their APR tests on 226.32. Fourteen states (CA, CT, DC, FL, GA, KS, ME, MA, NM, NY, NC RI, SC, TN) use APR as defined in Regulation Z without reference to Section 226.32. One state, Arkansas, uses APR as defined in Regulation Z with state-specific limitations. The introduction of TCR would not address the impact of all-in APR under most state high cost tests.

We urge the Board to defer the implementation of TCR as well as the all-in APR and finance charge until it can be done in co-ordination with regulations under DFA and in a manner that better coordinates with state law.

## V. REFUNDABLE FEES

The Board has proposed amending Section 226.19(a) of Regulation Z to prohibit creditors from collecting non-refundable fees until 3 business days after the borrower has received the 3 day disclosures. Chase does not believe that borrowers would benefit from an additional 3 day waiting period. HUD already requires creditors to ascertain the borrower's intent to proceed ("ITP") after disclosures have been provided and before collecting fees.

Inability to collect fees delays loan processing because creditors are generally unwilling to order third party services, such as appraisals, until funds are available to pay for them. Such delays put closing dates at risk and increase the likelihood that rate locks will expire.

Chase does not believe that the introduction of additional waiting periods is the solution. We again urge the Board to work with HUD and the Bureau to simplify disclosures and the closing process to enhance consumer understanding and make it easier to close mortgage loans.

## VI. SERVICER RESPONSES TO REQUESTS FOR INFORMATION

Section 1463 of DFA amended RESPA to require the servicer to provide contact information for the owner/assignee of a federally related mortgage loan. The Board now proposes to add an overlapping and somewhat inconsistent requirement to Regulation Z to require the servicer to provide contact information for the owner <u>and</u> master servicer within 10 business days on all mortgage loans.

Aside from our overall concern with duplicative and inconsistent legislation, Chase has a few comments on the Proposal. First, providing contact information for the master servicer is not helpful. A master servicer acts as a conduit between the servicer and investors. It is not equipped to be in contact with borrowers and would not be able to provide information about specific loans. Only the servicer can do that. Second, complying with the 10 business day response time is dependent on the borrower submitting the request to the right place. Servicers must have the ability to specify, such as on the back of the periodic statement, where borrowers should submit their requests. If requests are not submitted to the correct place, the servicer should not be held to the 10 business day response time.

## VII. FHA PREPAYMENT PENALTIES

On September 29, 2009, the Board issued an interpretive letter stating that creditors would not be required to treat the full month of interest collected on repayment of an FHA loan as a prepayment penalty for purposes of Regulation Z. The Board now proposes to reverse that position. We believe it should not do so.

Most creditors will not make high cost loans because of the restrictions associated with them and because they cannot be sold in the secondary market. Creditors generally will, however, make higher priced loans. If an FHA loan is a higher priced loan based on APR or points and fees tests, the Board's proposed re-classification of the last month's interest payment as a prepayment penalty would result in the loan being in violation of existing Section 226.35. Such a loan would have to be declined and the availability of credit would be restricted as a result.

Moreover, Section 1431 of DFA defines a high cost loan as one in which the APR exceeds a certain threshold; the points and fees exceed a certain threshold; or the loan documents permit the creditor to collect prepayment penalties more than 36 months after the loan closing or such penalties could exceed 2 percent of the amount prepaid. The DFA high cost test is drafted disjunctively; if any one criterion is met, the loan fails the test. This, coupled with the Board's new definition of prepayment penalty, could cause all FHA loans to be deemed high cost.

Finally, Congress instructed FHA, not the Board, to define "qualified mortgage" for purposes of FHA loans. The Board should withdraw its proposal and let the regulations implementing DFA determine how interest on FHA loans should be classified.

## VIII. OPEN END ADVERTISING

Chase does not object to the Board's proposal to apply the HOEPA closed end advertising requirements to HELOCs. We believe the requirements are reasonable and would not be problematic for responsible creditors.

We believe, however, that the Board should re-examine its HELOC advertising requirements. They are far too complicated. The list of "trigger terms" under Section 226.16 is extensive, including any statement that affirmatively or negative sets forth or implies any of the following:

- Circumstances under which a finance charge will be imposed;
- How the finance charge will be determined;
- When finance charges begin to accrue;
- Whether any time period exists within which credit extended may be repaid without a finance charge;
- Any periodic rate that may be used to compute the finance charge;
- The range of balances to which any periodic rate applies;
- Any annual percentage rate;
- The types of transactions to which any periodic rate applies;
- The method used to determine the balance on which finance charges may be computed;
- An explanation of how the amount of the finance charge will be determined;
- A description of how any finance charge other than the periodic rate will be determined;
- The amount of any charge other than a finance charge that may be imposed under the plan or an explanation of how the charge will be determined;
- How the minimum payment will be determined;

- The timing of payments;
- The minimum periodic payment required when the maximum APR is reached for a specific outstanding balance;
- Any statement of the earliest date or time that the maximum rate could be imposed;
- Any example illustrating how payments would be affected by index value changes;
- Disclosures described in Section 226.5b(d) regarding statement of conditions under which the creditor can take certain actions; payment information for draw and repayment periods; negative amortization; transaction requirements; tax implications; a statement that APR does not include costs other than interest; variable rate disclosures.

Any of those would trigger disclosure in the advertisement of all of the following:

- Any maximum charge, fixed fee, transaction fee, activity fee, or similar charge that could be imposed;
- Any periodic rate that may be applied, expressed as an Annual Percentage Rate;
- The fact that the rate is variable, if applicable;
- Any membership or participation fee that could be imposed;
- Any loan fee that is a percentage of credit limit;
- An estimate of any other fees imposed for opening the plan, stated as a single dollar amount or reasonable range;
- The maximum annual percentage rate that may be imposed in a variable rate plan.

The result is that a very simple advertisement by a creditor such as "Our home equity lines of credit have reasonable rates. Interest is only charged on money you borrow and may be tax deductible" would require a long list of disclosures, included rate related disclosures. Since rates and other terms often vary from state to state, a different advertisement may be required for each state because of the sheer volume of disclosures required and the space they take up. This is burdensome to creditors and not particularly beneficial to consumers. There are better ways, and more appropriate times, to educate consumers such as through the Key Questions to Ask About Home Equity Lines of Credit document included in the Board's 2009 Proposal. We urge the Board to reconsider its open end advertising requirements.

## IX. INTEREST RATES

The Board proposes revising Section 226.5b of the Commentary to prohibit increases in APR unless based on an index that is beyond the creditor's control. Control would be deemed to exist if the creditor dictates a floor or if the rate can be based on any index value that existed during a particular time frame. Chase does not object to the proposal provided that it applies prospectively only to loans closed after the effective date of the revision. The Board should also clarify that a margin that operates as a floor (e.g., if the index is 0 and the margin is 2, the interest rate would never be less than 2) would not constitute a floor dictated by the creditor.

Similarly, Chase would not object to requiring creditors to use a publicly available index beyond their control for adjustable rate closed end loans.

## X. IMPLEMENTATION AND EFFECTIVE DATE

In our comment letter on the 2009 Proposal, Chase suggested implementation time frames ranging from 6 to 18 months. Assuming that the subject Proposals and the 2009 Proposals would be implemented in conjunction with one another, we urge the Board to provide an ample implementation period. The Board should also take into account that creditors will be implementing DFA at the same time and that ample time is required to coordinate all changes and implement them in a consistent manner.

## XI. CONCLUSION

Chase appreciates the opportunity to provide comments on the changes proposed by the Board and the critical issues they raise. We urge the Board to consider that consumers are best protected by clear and concise disclosures and a simple, straight forward closing process. To that end, we urge the Board to work with HUD and the Bureau so that the extensive studies that were conducted in preparing the subject Proposals and the 2009 Proposals can serve as the basis for a new, coordinated disclosure and closing process. We believe this is the only way the Board's goal of creating clear and meaningful disclosures can be achieved.

If you have any questions, please contact Garry R. Seligson at 732-452-8752.

Sincerely,

David C. Schneider