

February 28, 2011

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

**Re: Interim Rule revising the Interim Rule published on September 24, 2010
Under Regulation Z, which Implements the Truth in Lending Act
(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").¹ We submit these comments as a follow-up to our previous comments dated November 23, 2010 and on behalf of a client of our firm that is a residential mortgage lender that offers a range of residential mortgage products.

Background

The Original Interim Rule² implemented certain requirements of the Mortgage Disclosure Improvement Act of 2008, which amended TILA and became effective on January 30, 2011. Generally, the Original 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. "Special

¹ This Interim Rule was published in the Federal Register at 75 Fed. Reg. 81836 (December 29, 2010) and is referred to herein as the Interim Rule. This Interim Rule revises the Interim Rule that was published in the Federal Register on September 24, 2010 and is referred to herein as the Original Interim Rule.

² 75 Fed. Reg. 58470 (September 24, 2010)

disclosure requirements are imposed for adjustable-rate or step-rate loans to show the interest rate and payment at consummation, the maximum interest rate and payment at any time during the first five years after consummation, and the maximum interest rate and payment possible during the life of the loan.”³ Further, the Original Interim Rule imposes special disclosures for negatively amortizing loans, loans with introductory rates, and loans with interest-only or balloon payments.

These interest rate and payment summary tables replace the payment schedule previously required as part of the TIL disclosure for mortgage transactions. 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.

Interim Rule Clarifications

The more recent Interim Rule, published in December of 2010 attempts to clarify the requirements for adjustable-rate and step-rate loans. It also clarifies the interest-only loan disclosures by requiring creditors to disclose the date that the interest rate change will apply rather than the actual date the first payment is due under the new rate. Finally, this Interim Rule revises the definition of “negative amortization loans” to clarify which transactions are covered by the special disclosure requirements for such loans.

The Interim Rule modifies the Original Interim Rule in a number of ways. First, creditors must base their disclosures on the first five years after the first regular periodic payment due date, rather than the first five years after consummation in order to reflect the manner in which payments are typically structured for adjustable-rate transactions that are “5/1 ARM” loans.

³ 75 Fed. Reg. 81836, 81837 (December 29, 2010).

Second, and among other changes, the Interim Rule clarifies the requirements for disclosing the payments on an interest-only loan. Under the Original Interim Rule, for each interest rate disclosed, the creditor was to disclose the earliest date that rate may apply as well as the corresponding periodic payment. Originally, creditors were also required to disclose the earliest date that such payments will be required; however, this Interim Rule clarifies this disclosure to require only that creditors disclose the earliest date that the interest rate becomes effective rather than the date that the first payment is due under the new rate. We have sought and received confirmation from the Board, verbally, that such a disclosure of the earliest date that the interest rate becomes effective also applies to loans that are not interest-only loans. Through this comment letter, we seek formal confirmation from the Board of that interpretation.

“Effective Date” of the Rate Change

The Board’s clarifications to the Original Interim Rule also indicate that the date to be disclosed with respect to an interest-only loan, or other loan where the interest rate may change, is the date on which the rate adjustment *becomes effective*. It appears now that this means the earliest date that the rate may apply to the mortgage loan, notwithstanding that the first due date for a payment from the borrower based on that new interest rate would likely not be the same date that is disclosed in the new TIL disclosure.

Unfortunately, while the Board’s interpretation of this requirement now appears to be clear, the effect of such clarification may be to cause confusion to borrowers as to the date on which an increased *payment* for a different amount will be first due. Where consumers see the disclosed date on which their interest rate change will become effective, we believe that the consumer’s assumption will be that the corresponding payment change will be effective on the same date. Of course, as we have indicated, and as the Board is aware, this is typically not the case. Typically, the effective date of an interest rate adjustment will precede the due date of the new corresponding payment by roughly 30 days. We believe this clarification from the Board should be reviewed for its actual effect on consumers.

Required Estimates for Property Taxes and Insurance

Where an escrow account will be established, the Original Interim Rule requires the creditor to disclose the estimated payment amount for taxes and insurance, including any mortgage insurance.⁴ Therefore, creditors no longer have the flexibility to exclude escrow amounts. The Board indicated in the Original Interim Rule that for “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.”⁵ In this regard, the new tabular format was developed 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 our previous comments on the implementation issues facing residential mortgage lenders, we noted that the Original Interim Rule does appear to provide an accounting of what is and is not to be included in the estimate for an escrow account, where so established. We noted that the Original Interim Rule and the Commentary do not provide sufficient or detailed guidance for creditors estimating these amounts. For example, the Original Interim Rule was not clear as to whether and what particular interest rate index might be utilized to develop these estimates.

We also understand from verbal comments from Board staff that such disclosures of taxes and insurance should be made by disclosing the *current* estimates for taxes and insurance as the *same number* in all columns of the tabular disclosure, where required, instead of adjusting the taxes and insurance payment disclosure to conform with an index or other calculation. Through this comment letter, we seek formal confirmation from the Board of that interpretation.

While this verbal confirmation of informal guidance is helpful to our client, the risk of factual inaccuracy in the payments that actually are disclosed to consumers is great. There is a great concern here again that consumers may be getting a compliant disclosure, but one that will provide inaccurate estimates inconsistent with the intent of these interim rules and the TIL disclosure itself.

⁴ New Section 226.18(s)(3)(i)(C).

⁵ 75 Fed. Reg. 58470, 58476 (September 24, 2010).

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 we previously requested more detailed guidance from the Board with respect to the use of a particular index or calculation to provide more accurate estimates to borrowers. However, it also appears that there is a risk that consumers may be confused or misled by the disclosure of the same taxes and insurance payment in each of the columns. Further clarification in these areas is, again, respectfully requested.

Lingering Questions and Uncertainties with Respect to the Interim Rule

As we previously noted, there are a number of lingering questions and uncertainties that remain under the Interim Rules. For example, we respectfully recommend that the Board clarify how the accuracy of the new TIL disclosures will be evaluated in a compliance or regulatory examination or review. Also, the Board may wish to clarify what liability may exist, if any, where a creditor's accurate disclosure (according to the Interim Rules) becomes, in fact, significantly underestimated in year five because of an unforeseen substantial increase in property taxes and insurance.

In sum, and respectfully, without additional guidance in the areas discussed herein, consumers remain at risk of receiving accurate, yet misleading disclosures, especially with respect to the estimates for the "Total Estimated Monthly Payment." Such disclosures also run the risk of distracting the consumer's focus away from what our client believes to be perhaps the most important criteria for a consumer to consider, the "Principal + Interest Payment," driven by the interest rate and interest-related costs being offered.

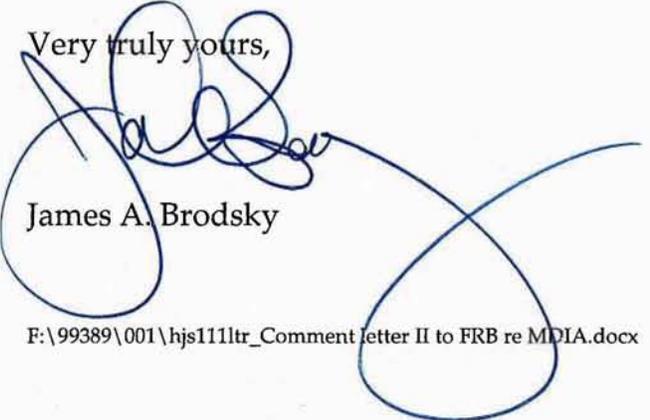
Under these circumstances, and respectfully, it appears that additional attention of the Board, and in the future, the Bureau of Consumer Financial Protection, should be directed to these disclosures and their accuracy in order to allow creditors to effectively and consistently implement both of these interim rules.

Conclusion

The law firm of Weiner Brodsky Sidman Kider PC and its client appreciate the opportunity to comment on this 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

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