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May 2, 2011

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

RE: FRB Docket No. R-1406; RIN No. 7100-AD 65— Regulation Z Proposed Rule on Escrow Accounts

Dear Ms. Johnson:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations and savings banks located in communities throughout the state. In addition, WBA has a wholly-owned subsidiary, Financial Institution Products Corporation (FIPCO®), which has provided for nearly three decades loan documentation forms and software to financial institutions located in numerous states. WBA appreciates the opportunity to comment, from the perspective of both a trade association and a forms/software vendor, on the Federal Reserve Board's (FRB) proposed rule on escrow accounts under Regulation Z. Some of the provisions of the proposed rule are intended to implement amendments to the Truth in Lending Act made by the Dodd-Frank Act (DFA).

Summary of WBA's Request

WBA shares the goal of Congress and FRB to improve mortgage loan disclosures; however, we believe the current rulemaking process poses a significant impediment to achieving that goal. For the reasons detailed below, WBA respectfully urges FRB to employ a more orderly and coordinated effort in mortgage regulatory reform. To that end, WBA urges FRB to delay this current rulemaking until after integration of Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) disclosures has been fully completed, as mandated under the DFA. WBA ardently believes this is critical to carryout the intent of Congress to provide consumer's with improved disclosures in mortgage transactions.

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<u>This Rulemaking Should Not Be Advanced Until After the Integrated Disclosure is Final Because Doing Otherwise is Contrary to Congressional Intent.</u>

One of the mandates of the DFA is to improve disclosures consumers receive in mortgage loan transactions by making them shorter and easier to understand rather than voluminous, confusing, duplicative or in conflict with one another. Upon passage of the DFA, Congress mandated the Bureau of Consumer Financial Protection (CFPB) to create a single streamlined integrated disclosure that satisfies the requirements of both TILA and RESPA. Clearly, Congress placed a high priority on this mandate because it is set forth in several different sections of the DFA.

WBA applauds this effort and understands that this process is already well underway. WBA strongly believes that the stakeholders involved in this process must make the integrated disclosure their first priority to carryout Congress' intention to improve mortgage loan disclosures. WBA is very concerned that stakeholders could lose sight of this universal mandate if their efforts are divided among other piecemeal rulemaking initiatives. WBA believes it is absolutely critical to take an orderly and coordinated approach in rulemaking to achieve the intention of Congress.

It appeared that FRB also shared a similar view when it announced on February 1, 2011, that it would not adopt regulatory provisions in a piecemeal fashion since the integrated disclosure may be issued before any of its own rulemakings could be fully-implemented. However, issuance of this proposed rulemaking seems to contradict FRB's position, particularly given that there is no imminent effective date under DFA that would otherwise be motivation for this current rulemaking.

WBA believes that advancement of the current rulemaking could very well impede integration rather than foster integration of disclosures. While work on the integrated disclosure is clearly underway, we do not yet know what information will be included in the disclosure. WBA fails to understand why FRB would undertake this rulemaking when it does not know if its requirements will result in inconsistent, redundant or overlapping disclosures. Clearly, such an approach is not what Congress intended when it passed the DFA. WBA does not believe moving forward in the absence of this knowledge is appropriate and is concerned that doing so is contrary to Congressional intent.

<u>This Rulemaking Should Not Be Advanced Until After the Integrated Disclosure is Final Because of Difficulties And Costs Associated With the Current Pace, and Volume of Regulatory Reform Efforts That Are Not Harmonized.</u>

For the past two years, FRB and other federal agencies have engaged in massive reformation of mortgage lending regulations including major changes under TILA, HOEPA, RESPA, S.A.F.E. Act and now the DFA. These initiatives have stretched compliance capabilities in institutions to the limit, and are greatly increasing compliance and operation costs. In fact, over the last year, the number of member calls WBA has received concerning mortgage compliance matters alone has more than tripled. A common theme expressed by member institutions of all sizes is uncertainty, frustration and confusion resulting from the pace, volume and piecemeal fashion with which mortgage rules are changing. We routinely hear that it is difficult, if not impossible, to track, analyze, and implement these very complex and sometimes conflicting changes. Compliance can be extremely difficult to achieve in the moving target environment created by this tidal wave of changes.

Adding even more layers of regulation to this already challenging environment, again, makes implementation difficult and costly. Advancing the current rulemaking before the implementation of the integrated disclosure will only serve to impose greater implementation difficulties and increased costs, as it is very possible that the disclosures advanced under this proposal would be in place for only the very short period of time before they would be replaced by the integrated disclosure. Again, WBA believes that we all must wait to see exactly what information will be included in the integrated disclosure before a proper evaluation can be undertaken to determine whether further rulemaking concerning mortgage disclosures is warranted. Thus, WBA cannot support advancement of the rule, even on the premise that the integrated disclosure might not include some of the information set forth in the current rulemaking.

In addition, FRB must understand that the proposed changes generate substantial costs and require significant implementation resources including programming modifications to loan origination software systems and core systems that support the servicing of loans originated. The systems upon which financial institutions heavily rely cannot be adapted as quickly as, nor are they as agile as, is often assumed. Systems that ensure proper compliance with regulations and generation of the disclosures are interactive rather than isolated; making one change, regardless of how limited, will affect other processes and results, and produce varying difficulties across product lines.

As a software and forms vendor, FIPCO can attest to the complexity of preparing for and implementing regulatory changes. While we would love to simply “flip a switch” to produce immediate, compliant results with new regulations, that is far from the reality of achieving compliant results.

The proposed rule provides an example of the complexities that are associated with preparing software for a regulatory change. In this case, new programming code and calculations along with new data entry fields must be developed and tested to ensure compliance with the new requirements. And, of course, existing programming code and calculations that are not to be affected by the new changes must be tested to ensure that they have not been improperly affected (regression testing). Because of the interactive nature of software design regression testing is far reaching rather than isolated to a specific form, calculation or regulation.

Furthermore, the proposed rule would necessitate numerous new disclosures. The development of disclosures begins with research of a new rule, review of the existing rules, drafting and re-drafting of forms, and analysis of the technical capabilities to generate and populate such forms.

Disclosure of transactions is extremely complicated from FIPCO's perspective. The plethora of law and rules that are applicable in mortgage loan transactions ultimately drive which forms must be used in a transaction and what information must flow into them. Ensuring the proper form appears in the software for the particular terms and features of a given transaction is an extremely complicated, time-consuming undertaking. Making certain that proper and accurate information flows into the proper document is an even more complicated, time-consuming undertaking.

For a recent example, one need only consider that FIPCO has spent well over ten thousand hours to develop forms and programming in connection with the Interest Rate and Payment Summary interim rule implementing the Mortgage Disclosure Improvement Act (MDIA). In fact, that number continues to increase because of the lack of guidance provided by the interim rule, and clarifications issued in a subsequent interim rule issued by FRB. These estimates do not include the time spent by our vendor in developing and delivering the product to us for our own programming process. Nor does it include the time our users will spend on loading the software, setting up new values in the software, testing the software, and training personnel to use the software. WBA and FIPCO would like to share that, from recent past experience with MDIA and RESPA, we are absolutely certain that the estimate FRB has calculated for institutions to update their systems and internal procedure manuals, and to provide training in connection with this rulemaking is not grounded in reality and is woefully low.

While it is not possible to describe in this forum every machination a software vendor employs and the difficulties it encounters in making changes to software, it takes significant time and resources to bring such changes to market. The time, effort and complexity of this process is obviously compounded when changes take place concurrently or within a relatively short period of time, as could very well be the case if the current rulemaking is advanced prior to the implementation of the integrated disclosures.

As stated earlier, WBA believes that implementation of the current rulemaking in advance of the integration of TILA and RESPA disclosures, is contrary to Congressional intent to provide consumers with streamlined mortgage disclosures that are easy to understand, and will cause substantial increases in costs which will be passed on to consumers.

If FRB Advances this Rulemaking, it Should Not Expand Escrow Disclosure Requirements Beyond Those Mandated by the DFA.

The DFA requires escrow accounts be established for certain loans secured by a first-lien on the consumer's principal dwelling, and further requires specific escrow disclosures be given in connection with such transactions. The proposed rule goes beyond the DFA by requiring these same escrow disclosures in connection with the establishment of an escrow account for <u>any</u> closed-end consumer loans secured by a first lien on the consumer's real property or dwelling.

Separately, the DFA also requires certain disclosures be given to a consumer in a closed-end loan secured by real property when an escrow account is not established or is cancelled. The proposed rule requires these same disclosures be given in connection with loans secured by a first lien on the consumer's real property or dwelling where an escrow account is not established or is cancelled.

WBA believes that if this rulemaking is advanced, the rule should not expand upon the disclosure requirements mandated by the DFA. WBA further suggests the rule specify that if an escrow account is not required by law, and the creditor does not offer or does not require an escrow account to be established and no escrow account is establilshed, then disclosures regarding the non-establishment of an escrow account under 229.19(f)(2)(ii) are not required.

<u>If FRB Advances this Rulemaking, it Should Not Adopt the "Transaction Coverage Rate" as the Benchmark Used to Determine Whether an Escrow Account Is Required in a Higher-Priced Mortgage Loan.</u>

FRB has resurrected the concept of "transaction coverage rate" (TCR) from its 2010 Mortgage Proposal, one of the proposals FRB noted it would not act on in its February 1, 2011 announcement. FRB's purpose in reintroducing the TCR in the current rulemaking is to attempt to address the over-inclusive coverage of the higher-priced mortgage loan (HPML) protections, which were intended to apply only to subprime loans. In particular, the proposal would replace the Average Prime Offer Rate (APOR) with the TCR for purposes of determining whether an escrow account must be established in connection with an HPML.

WBA appreciates FRB's attempt to address the over-inclusiveness, even if limited to the determination of when an escrow account is required for an HPML. However, WBA believes that adoption of the TCR at this time is premature given that many other provisions of the DFA use the APOR as the benchmark for comparison. For example, the APOR is used for: the definition of interest rate for a high-cost mortgage; ability to repay balloon loans; the definition of qualified mortgage; and others.

These DFA provisions, including the escrow provisions must be implemented consistently and in a coordinated manner. WBA is certain that the CFPB will take this into account as they continue to develop the integrated disclosure. If the current rule adopts the TCR, WBA is fearful that the TCR would only be in place for a short period of time before the integrated disclosure is finalized, and would have to be removed and possibly replaced in light of the integrated disclosure. Therefore, WBA recommends that FRB not adopt the TCR at this time and instead retain the APOR as the benchmark for determining whether an escrow account is required in connection with an HPML.

If FRB Advances this Rulemaking, it Should Amend the Exemption by Broadening the Definition of "Rural", Increasing the Loan Threshold Number and Eliminating the Provision Regarding Maintaining Escrow Accounts.

WBA very much appreciates that FRB has proposed an exemption to the HPML escrow account requirement for creditors that operate in rural or underserved areas, as provided for in the DFA. WBA believes however, that the proposed rule as it is currently written will not provide a real opportunity for many of its members to qualify for exemption even though such members serve areas that are clearly rural by any definition other than the one provided by the proposal.

The proposed rule states that the exemption applies if all of the following three conditions are met:

(1) During the preceding calendar year, the creditor extended more than 50% of its total first-lien higher-priced mortgage loans in counties designated by the Board as "rural or underserved";

(2) During either of the preceding two calendar years, the creditor and its affiliates together originated and retained the servicing rights to 100 or fewer loans secured by a first lien on real property or a dwelling; and

(3) Neither the creditor nor its affiliate maintains an escrow account of the type described for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services.

For purposes of this discussion, a county is "rural" during a calendar year if it is not in a metropolitan statistical area or a micropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget, and: (1) it is not adjacent to any metropolitan area or micropolitan area; or (2) it is adjacent to a metropolitan area with fewer than one million residents or adjacent to a micropolitan area, and it contains no town with 2500 or more residents. A micropolitan statistical area contains an urban core of at least 10,000 (but less than 50,000) population. A metropolitan statistical area contains a core urban area of 50,000 or more population.

A county is "underserved" during a calendar year if no more than two creditors extend consumer credit five or more times secured by a first lien on real property or a dwelling during the calendar year in the county.

WBA is gravely concerned that few of its members will qualify for this exemption because the definition of rural is too restrictive, the threshold number of 100 loans is similarly restrictive, and the prohibition on maintaining escrow accounts in connection with HPMLs cannot be met given the current requirement to maintain such accounts for certain HPMLs. WBA makes the following recommendations, with the intention of striking a better balance between qualifying for exemption and not qualifying for exemption.

First, WBA recommends that the definition of rural be amended to exclude any reference to a micropolitan statistical area. This improves the possibility of exemption for some institutions without making the exemption available to all.

Second, WBA recommends the threshold number of 100 be increased to 750. This also improves the possibility of exemption for some institutions without making the exemption available to all.

Finally, WBA recommends that FRB eliminate the requirement that neither the creditor nor its affiliate maintains an escrow account of the type described for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services. If this provision is retained, it renders the exemption virtually meaningless because creditors have had to comply with the requirement to maintain escrow accounts in connection with certain HPMLs since April 1, 2010. If FRB is unwilling to remove this provision in its entirety, WBA recommends the provision be amended to establish a cut-off date of April 1, 2010. Thus the exemption would potentially be available if, prior to April 1, 2010, a creditor or its affiliate did not maintain an escrow account for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate serviced.

Conclusion

WBA believes advancing the current rulemaking before implementation of the integrated disclosures is premature, and is contrary to the intent of Congress in enacting the DFA. In addition, WBA believes the current rulemaking exceeds the mandate by the DFA in requiring escrow disclosures to be provided in transactions secured by the consumer's real property or dwelling rather than the principal dwelling. WBA further believes that the resurrection of the "transaction coverage rate" as the benchmark for determining whether an escrow account is required, is premature. For these and other reasons detailed above, WBA strongly urges FRB not to advance the current rulemaking until after the integrated disclosure mandated by the DFA have been implemented. However, if FRB advances this rulemaking WBA urges FRB to heed the recommendations made today, including the recommendations made to provide a better-balanced exemption.

WBA would like to acknowledge the significant effort FRB has set forth in issuing the proposed rule in this very challenging time of massive legislative and regulatory change. WBA appreciates the opportunity to comment on this very important matter.

Sincerely,

Rose M. Oswald Poels
Interim President and CEO