American Financial Services Association

May 2, 2011

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

Re: ***Proposed Escrow Rule***
Regulation Z
Docket No. R-1406 [RIN 7100-AD 65]

Dear Ms. Johnson and Ms. Ayouch:

The American Financial Services Association ("AFSA") appreciates the opportunity to comment on the Proposed Escrow Rule ("Proposed Rule") by the Board of Governors of the Federal Reserve System ("Board") to amend Regulation Z to implement to implement certain amendments to the Truth in Lending Act ("TILA") made by the Dodd–Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") relating to escrow accounts. AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

Implementation Will Take Significantly Longer than the Proposed Rule Estimates

According to the Proposed Rule, the Board estimates that regulated entities would take an average of 40 hours to update their systems and procedures and train staff to comply with the new disclosure requirements. AFSA respectfully disagrees with this assessment.

The Proposed Rule requires the implementation of three different forms: Model Form H-24 or Model Form H-25 to be provided within three business days before consummation of the transaction; and Model Form H-26 to be provided no later than three business days before closure of an escrow account. To comply with the Proposed Rule, creditors will first have to program new disclosure requirements at times for which creditors currently do not have to provide other TILA disclosures, and then also program for capture of new information to fill blanks that may not currently be captured. Finally, whether a creditor gives Model Form H-24 or H-25 is contingent upon a determination under the Proposed Rule of whether a consumer will be required to have escrow, which is based on a calculation of a "higher-priced mortgage loan" that requires a comparison to a new "transaction coverage rate" that will also require new programming. The assumption that all of this will take an average of 40 hours to update creditor systems is naïve. AFSA's member companies believe it will be significantly longer by an order of magnitude.

AFSA Questions the Wisdom of the "Transaction Coverage Rate" Test

The Proposed Rule would require creditors to determine whether a transaction is a higher-priced mortgage loan by comparing the loan's rate without third-party fees (the "transaction coverage rate") to the average prime offer rate. The transaction coverage rate would be calculated using the loan's interest rate, points and any other origination charges the creditor keeps for itself.

AFSA appreciates the Board's acknowledgement that many states regulate "higher-priced" mortgages using coverage tests that depend upon the APR of the transaction, thereby creating overlapping thresholds under the Proposed Rule. If the Board wishes to avoid capturing an unnecessarily broad range of loan products under the Proposed Rule, this approach would seem to be counterproductive. However, the Board does not offer any remedy.

Even within its own regulations, the Board would establish multiple thresholds for capturing higher-priced jumbo mortgages for the purposes of various protections under TILA. This includes a transaction coverage rate that exceeds the average prime offer rate by 2.5 percentage points where it relates to the escrow requirements under the Proposed Rule, but only 1.5 percentage points where it relates to ability-to-pay considerations and prepayment penalties covered elsewhere in Regulation Z.

If the Board seeks to reduce the compliance burden, especially for smaller lenders, the Board should employ a unified standard to capture higher-priced loans for disclosures and other consumer protections. Adding layers of complexity to loan transactions simply increases the likelihood that creditors will make innocent mistakes while attempting to comply with disclosure and other requirements.

Imprudent to Require New Disclosures prior to Integration of TILA and RESPA Disclosures

The Consumer Financial Protection Bureau ("Bureau") Implementation Team has signaled that one of the Bureau's first priorities will be to integrate the mortgage disclosures required under the Truth in Lending Act and the Real Estate Settlement Procedures Act. Given the proximity of the Bureau's Designated Transfer Date of July 21, 2011, it would be premature and potentially counterproductive for the Board to issue new escrow rules prior to the completion of the mortgage disclosure reform process currently being conducted by the Bureau. Given that the Dodd-Frank Act provides a clear mandate for the Bureau to design integrated mortgage disclosure forms, AFSA believes it would be prudent for the Board to delay finalization of the Proposed Rule indefinitely – thus giving the Bureau an opportunity to incorporate any needed escrow reforms into the new mortgage disclosure format that it will ultimately produce, as well as to ensure that disclosures provided under Regulation Z prior to integration are not duplicative of disclosures already provided under Regulation X.

Substantive Clarifications Requested

AFSA respectfully requests that the Board address the below substantive concerns relating to the duration of the escrow account to ensure that the Proposed Rule, while implementing the consumer protections required by the Dodd-Frank Act, does not create unnecessary compliance burdens:

- *Sufficient Equity in the Property:* AFSA agrees with the Board's approach of adopting a straightforward equity-to-value ratio test that does not require loan amortization calculations to determine whether the borrower has sufficient equity in the property for escrow cancellation. AFSA fully supports consistency between the Proposed Rule and requirements under the Homeowners Protection Act of 1998 ("HPA") to simplify compliance for lenders servicing loans with private mortgage insurance, but requests that the Board continue to avoid the need for lenders that do not require private mortgage insurance to establish full HPA compliance programming.

- *Charged-Off Accounts:* AFSA appreciates that maintaining escrow when a borrower is delinquent ensures that a borrower experiencing financial difficulties is not left in an un-escrowed status if loss mitigation efforts are successful. This is exactly the type of borrower who most needs an escrow account. However, lenders need the ability to cancel the escrow in cases of severe delinquency where the lender has decided to charge off the mortgage loan balance rather than foreclose. There is no purpose served in requiring a lender to continue to maintain the "shell" of an escrow account in such cases. AFSA suggests that this could be accomplished by deeming a mortgage to be terminated for the purposes of escrow cancellation when the account is reported to credit bureaus with a charged-off status, and allowing lenders to cancel the escrow account at this point without a customer request.

- *Escrow Advances:* AFSA respectfully requests a clarification that the Proposed Rule's requirement to maintain an escrow account when a borrower is delinquent or otherwise in default neither creates an affirmative obligation to advance funds nor alters the RESPA regulations (24 CFR 3500.17(k)(2)) governing timely disbursements and escrow advances.

Conclusion

AFSA thanks the Board for the opportunity to comment on the Proposed Rule and commends the Board for its work in protecting consumers. Please feel free to contact me with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.

Respectfully submitted,

Bill Himpler

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American Financial Services Association