HOUSING POLICY COUNCIL
THE FINANCIAL SERVICES ROUNDTABLE

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December 20, 2010

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551

Re: Regulation Z; Truth in Lending; Docket No. R-1390;

Dear. Ms. Johnson:

The Housing Policy Council[1] of The Financial Services Roundtable ("HPC") is pleased to submit its comments on the Federal Reserve Board's (the "Board") proposed changes in Regulation Z, Truth in Lending ("TILA") rules on a consumer's right to rescind, disclosures for modifications, refunds of fees, credit protection products, and other changes to open-end and closed-end credit ("Proposal").

I. GENERAL COMMENTS

In a letter to the Board on November 10 signed by 8 trade associations, we expressed the necessity for the Board to take into consideration the current environment surrounding the industry. Defaults of debtors of residential mortgage loans are at all time highs, and attempts to modify loans so that consumers can remain in their homes are being undertaken in massive numbers by the industry. None of this is easy, and all of it is both time-consuming and people intensive.

At the same time, the Board has proposed and finalized several hundreds of pages of Regulation Z rules, covering very complicated and difficult issues. In addition, HUD undertook basic changes in its Good Faith Estimate and accompanied it with regulations that generated hundreds of questions from the industry, many, but not all, of which were eventually answered by HUD through the publication of Frequently Asked Questions.

The Dodd-Frank Act created the Bureau of Consumer Financial Protection and authorized it to harmonize the requirements of RESPA and TILA, a challenge HUD and the Board have not been able to accomplish in the many years they have tried to do so. Meetings have already been held with Treasury representatives, under the transition authority it has been granted in the Act, to discuss how to proceed with that assignment.

[1] The Housing Policy Council of The Financial Services Roundtable is a trade association which represents 32 of the leading national mortgage finance companies. HPC members originate service and insure mortgages. We estimate that HPC member companies originate approximately 75% of mortgages and two-thirds of mortgages serviced in the US.

All of this is related, but it has not been coordinated so that the regulated companies can make the fewest possible changes in their systems. In fact, due to the development and effective dates of the rules, often expensive, time-consuming changes in systems and training are scrapped soon after implementation due to new rules.

We urge the Board to delay implementation of all the changes in Regulation Z, including this Proposal, until the regulations under the Dodd-Frank Act can be coordinated and scheduled with the changes in Regulation Z not yet made effective. This will lead to all of the related regulations being implemented in a rational systematic way. This coordinated approach will be significantly less confusing to the industry and consumers.

II. RESCISSION

While we have not noticed substantial problems hindering the customer's rescinding when he wished and had the right to do so, we appreciate the efforts of the Board to systemize the process in the Proposal. There are a few problems created by the proposed rules, however.

For example, eliminating the second copy of the Right of Rescission (“ROR”) form is a plus, but having a tear-away portion of the disclosure for exercising the rescission may create some operational issues. Less than full size documents are easily misplaced and are challenging to image. We appreciate the intent of the Board, but urge them to consider the implications of using a tear-away form while still eliminating the requirement to provide two copies to each consumer.

Servicers must receive the notice of rescission to initiate necessary actions generated by the notice. To ensure that communication is not lost, it would be helpful if servicers were provided a means of designating an address to which borrowers must send rescission notices and requests for the contact information of the owner of the loan. For example, the Board could permit servicers to place that information in periodic statements or in the service transfer notice. In addition, it would be helpful to the borrower and the servicer alike if the borrower were required to include the loan number in its rescission notice. These changes would result in a more prompt and complete response to the borrower's notice to rescind, and would eliminate time consuming and expensive searches or even worse, failure of actual notice to the servicer of the borrower's intent to rescind.

The ability of the courts to modify the rescission process is problematic, and we would like to see it limited, especially as it relates to tender requirements. For example, letting a borrower tender in installments would be a problem, particularly if the security interest would be extinguished prior to payment of the final installment. Even absent that complication, tender in installments creates yet another set of record-keeping requirements, and introduces another opportunity for a mistake to be made.

III. LOAN MODIFICATIONS

The HOPE NOW Alliance reports that from January to October 2010, there were nearly 1,540,000 loans modified either under HAMP or under proprietary systems. This translates to an average of 154,000 homeowners per month who have been able to remain in their homes with an affordable loan modification solution. While every effort will be made to ensure that modifications proceed as smoothly as possible, recent pressures have resulted in some changes in systems used by servicers to modify loans, and there are likely to be additional changes in the process going forward resulting in an increase in time needed to successfully modify loans. At the same time, and in direct conflict, investors have increased pressure on servicers to accelerate the pace of decisions on modifications and foreclosures.

To the extent that TILA disclosures are required in modifications, they will extend the time needed to complete the modifications, and will increase the possibility of mistakes being made by either the consumer or the servicer. Such delays will increase the time before borrowers and investors can feel comfortable that the modification is in place. We would urge the Board to change its Proposal, not in a way that would compromise disclosure of the terms of the modification, but in a way that the full gamut of TILA disclosures, waiting periods and re-disclosures would not be required.

The consumer in this setting is different from the consumer in a normal refinancing. In a normal refinancing, the consumer decides of his own volition that he wishes to change the terms and conditions of his loan and approaches the servicer to do so. A modification is a distressed situation for a borrower, one in which he is in default or in imminent danger of default. In such a situation, the array of TILA disclosures does not mean as much to him. The consumer wants a speedy resolution of his serious problem, as he may lose his house; he is not in a position to shop for better deals elsewhere so providing a period for him to do so is not meaningful to him.

The Board has provided an exception to the requirement of providing TILA disclosures when a borrower is in default. We urge the Board to provide an additional exception when a borrower is in imminent default. The Board argues that new disclosures give the borrower the opportunity to shop around. When a borrower is in imminent default he rarely has options other than to work with the servicer who manages his loan. Providing this exception would ensure that more borrowers obtain loan modifications in a speedy and efficient manner.

That being the case, what is important is that the terms and conditions of the modification are clear and tailored to only the information the consumer needs to understand the modification. There are ample statutory and regulatory protections in place now to avoid inappropriate terms and conditions in rate and fees. Certainly fees that are not retained by the creditor should not be included as fees that would mandate full TILA disclosures.

The Board should also consider that in the past, creditors sometimes offered beneficial modifications to borrowers it wanted to keep. Requiring full disclosures and a right to cancel will greatly curtail these beneficial programs and make a process that is simple, cheap, easy to understand and beneficial to both parties become complex, expensive and confusing.

The Board may wish to adopt rules that are temporary in nature and take into account the expectation that the most serious phase of loan modifications will be completed in the next few years.

IV. DISCLOSURES AND REFUND OF FEES

The proposed rule would give the consumer the right to receive a refund of fees if he decides not to proceed with the transaction within three business days of receipt of the early disclosures. As the Board rightly points out in its staff memorandum, creditors will refrain from imposing fees until four days after disclosures are received to avoid refunding fees. In addition, creditors will not order an appraisal or lock-in a rate during that period because no non-refundable fees will have been received to fund those expenses. The net result will be a delay in processing applications, regardless of whether the applicant wants to shop during the three day period after early disclosures are received.

We believe that is a major delay that obtains no added disclosure value. For those few creditors who decide to impose fees during the three day period, it creates operational issues that will likely increase costs and create the possibility of compliance errors. This is particularly true with respect to closing dates. In a purchase transaction, adding three days to the time between a completed application and a closing date may make it impossible for the creditor to be ready to close on the date selected by the buyer and the seller.

Additionally, in light of the fact that TILA and RESPA are being integrated, the timing requirements for charging fees under those two statutes should be the same.

V. CREDIT PROTECTION PRODUCTS

We urge the Board to reconsider its Proposal to the extent that it covers credit insurance, debt suspension and debt cancellation products ("credit protection products"). Additional consideration should be given to both Congressional language and intent that conflict with the Board Proposal. In addition, the proposed disclosures by their nature are unfairly intrusive and make it difficult for a consumer to make a fair and informed decision to buy the product or not.

As presently drafted, the disclosure language mandated is purposefully and directly designed to deter any consumer from buying credit protection products. In fact, the intent of the drafters is clear from the method by which they tested alternative products; they ultimately settled on a disclosure only after they found that all consumers would fail to buy the product if that disclosure was made. Yet Congress itself has demonstrated no desire to ban those products; it appears only to be this Proposal that is specifically designed to do so. We urge the Board to withdraw the Proposal and to develop and test disclosures which provide clear information to consumers that will assist them in deciding whether or not to purchase debt protection products.

The Dodd-Frank Act adds a new provision to TILA which states that "insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis

shall not be considered financed by the creditor."[2] If not financed by the creditor, it is illogical that they should be considered as part of the "finance charge." We urge the Board to exclude credit protection product premiums and fees from calculation of the finance charge for closed-end credit secured by real property.

In addition, the proposed disclosures for credit protection products are confusing, inaccurate, and misleading. The purpose of TILA is to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit…." (15 USC 1601(a)). The proposed disclosures are biased and misleading and do not present the information about credit protection products in an accurate and even-handed method. For example, statements such as "other types of insurance can give you similar benefits and are often less expensive" is inaccurate and there are no other products that can provide the benefits that credit protection products provide. We urge the Board to withdraw these proposed disclosures. We also urge the Board to remove the requirement that credit protection product fees be included in the finance charge for closed-end home secured loans.

VI. TRANSACTION COVERAGE RATE

While we are neither supportive nor opposed to the use of a transaction coverage rate, if the Board proceeds to make it available, we urge that its use be mandatory, not optional. This is essential to create uniformity and permit comparisons of higher priced mortgage lending across the industry. In addition, many of our members deal with a variety of third parties, and will face operational and compliance problems if those with whom they do business are not mandated to use the same measuring rate but may use more than one at their option. If a transaction coverage rate is used, the Board should consider applying it not just to HPML but to all situations in which rate spreads are relevant, such as HMDA, HOPEPA and several of the Dodd-Frank Act provisions.

VII. PREPAYMENT PENALTIES ON LOANS SUCH AS FHA LOANS

Under this Proposal, charges calculated by applying the interest rate to the days after the prepayment date and before the end of the prepaid period are prepayment penalties. The FHA does not treat this amount as a prepayment penalty; therefore, this Proposal will increase the differences among the agencies, causing confusion and significant compliance burden. It also may create more high cost loans under the Dodd-Frank Act, and since that Act only permits prepayment penalties during the first three years of the loan, creditors will be unable to make an FHA loan without potentially violating TILA once that Act's provisions become effective. We urge the Board to withdraw this part of the Proposal.

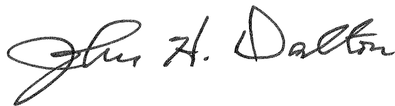
If the Board chooses to adopt the Proposal as final nevertheless, we urge the Board to clarify that the Proposal is prospective only. Since the industry does not currently treat these payments as prepayment penalties, applying this rule retroactively will create class action

[2] Section 1414 of Dodd-Frank Act, adding 129C(d)(1) to TILA.

lawsuits in situations in which those being sued will not have had an opportunity to change their systems to avoid the lawsuits. We urge the Board to withdraw this portion of the Proposal, or at the very least, apply it prospectively only.

Thank you for the opportunity to provide comments on this proposed rule.

With best wishes,



John H. Dalton