December 23, 2009

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20511

Re: Proposed Changes to Closed-End Mortgage Rules (Docket No. R-1366)

Dear Ms. Johnson:

The American Financial Services Association (AFSA) is grateful for the opportunity to comment on the proposed rule amending Regulation Z with respect to closed-end mortgages. 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, credit card issuers, industrial banks and industry suppliers.

AFSA members recognize the need to enhance consumer protection in the residential mortgage loan process. To this end, AFSA members offer the following comments in response to the Federal Reserve Board's request for comments on specific aspects of the Proposed Rule:

> ***Implementation Period. The Board contemplates providing creditors sufficient time to implement any revisions that may be adopted. The Board seeks comment on an appropriate implementation period. (pg. 43237)***

We recommend an implementation period of at least twelve months for most of the proposed amendments. We recommend an extended implementation period of eighteen months for changes to the early and final Truth in Lending disclosures. As described in our responses below, the proposed disclosure requirements will compel lenders to develop new software systems, establish new procedures for data capture and integration, establish new protocols for service providers, and retrain employees to minimize risk of non-compliance. Lenders must concurrently modify systems and procedures for additional extensive regulatory changes, and must reconcile the new data capture and disclosure requirements under the Real Estate Settlement Procedures Act and Regulation X with the Board's new requirements. The proposed changes will be complex and will take substantial time and resources to implement.

> ***Loan Originator Compensation. To address the potential unfairness that can arise with loan originator compensation, the proposal would prohibit loan originators from receiving compensation based on the credit transaction's terms or conditions. This prohibition would not apply to payments that consumers make directly to loan***

> ***originators. The Board solicits comment on an alternative that would allow loan originators to receive payments that are based on the principal loan amount, which is a common practice today. If a consumer directly pays the loan originator, the proposal would prohibit the loan originator from also receiving compensation from any other party in connection with that transaction.***
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> ***The proposal would also prohibit loan originators from directing or "steering" consumers to a particular creditor's loan products based on the fact that the loan originator will receive additional compensation even when that loan may not be in the consumer's best interest.***
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> ***The Board solicits comment on whether the proposed rule would be effective in achieving the stated purpose. In addition, the Board solicits comment on the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects the rule might have.(pg. 43241)***

AFSA members acknowledge that past abuses by some mortgage brokers may have played a role in the subprime mortgage crisis and agree that increased consumer protections could be beneficial. However, AFSA believes that lenders should continue to have flexibility in compensating their own employees. Lender employees, who clearly act on behalf of the lender, do not present the same potential for abuse as mortgage brokers, who are independent third parties, whom consumers generally believe are operating in the consumers' best interest. The Board asserts that its consumer testing on this point shows that consumers do not understand loan originator compensation and that there is potential for abuse and confusion. However, the Board's research on this point is somewhat flawed. Consumer testing focused primarily on brokers, was not extensive, and did not include a statistically significant sample. Therefore, the testing is not a good indicator of the need for extensive reform with regard to how lenders compensate their own employees.

Further, AFSA members also believe that loan originator compensation based on loan terms should not be restricted when the mortgage broker cannot control the loan term in question. For example, brokers cannot control, nor do they have much effect on, whether the borrower obtains a purchase money loan or refinance, whether the loan is secured by a stick-built home, a manufactured home, a condominium or a co-operative, or whether the loan will be secured by a first lien or a subordinate mortgage. Because these loan terms are wholly outside of the control of the loan originator, there is no potential for abuse even if the broker's compensation is based on these terms.

Thus, AFSA members urge the Board to better define the type of terms and conditions that should not constitute a basis for broker compensation. We agree that brokers should not be compensated for steering customers to higher rate products, adjustable rate mortgage loans, stepped-rate products, interest-only loans, loans with negative amortization and balloon payment loans. However, lenders and borrowers should be able to compensate brokers appropriately for products that may require different levels of effort as long as the potential element of steering is absent.

AFSA members also urge the Board to clarify that the borrower's creditworthiness is not a "term or condition" of the loan. It is harder and more time consuming to help applicants with difficult credit histories or that only have thin credit files. This is particularly true today when lenders insist that such applicants be carefully screened to ensure that they are not being placed into loans that they cannot afford. The Proposed Rule should not prohibit lenders from providing additional compensation to a broker that is willing to work harder to ensure that even marginal customers can be placed in loans that they can afford.

The Board has specifically noted that the Proposed Rule may need to accommodate pricing based on loan amount. AFSA members support this alternative. Without the flexibility to pay brokers and loan originators based on loan amount, there will be less incentive to assist applicants that live in areas with lower home prices – such as the inner-city or rural areas – or applicants that need non-conforming loans, which require more work than a loan that can be sold to Fannie or Freddie. Without the ability to vary compensation based on the loan amount, consumers on both ends of the economic scale may suffer.

As noted above, AFSA members do not believe there is any justification for imposing limits on how a lender compensates its own employees. Nevertheless, if the Board believes that some limits are necessary, AFSA members urge the Board to further clarify that the restriction only applies to compensation based on a per loan basis. It is very common in the industry to compensate employees, in part, on how successfully an office, branch or region within a company performs. Often these compensation factors include the overall profitability of the office, branch or region. To some extent, this profitability will be based on the types of loans originated by employees within an office, branch or region. However, the employees generally would not be able to tie any increase in pay to a particular loan transaction. In such a case, which only arises in the context of compensating a lender's own employees, not brokers, there is little danger that customers will be steered to loans that are not suited to their needs. Thus, AFSA members urge the Board to clearly authorize lenders to pay their employees based on the profitability of an office, branch, region or similar corporate division.

If the Board adopts limits on compensation paid to a lender's own employees, AFSA members urge the Board to expand the "steering" safe harbor that currently does not apply to a lender's own employees. The Board correctly notes that steering is not a concern where a mortgage broker presents appropriate loan choices to a borrower and the borrower is permitted to select the loan that best meets the borrower's needs. Likewise, the employees of lenders should be able to avoid any limits on compensation if they offer sufficient loan choices to the borrower. As long as the steering concern is eliminated by offering borrowers sufficient choices, there is no reason that lender's employees should not also be able to utilize this safe harbor.

> ***<u>Scope of Coverage of Closed End Disclosures</u>. As noted in the discussion under §§ 226.19 and 226.38, the Board proposes to require creditors to provide certain disclosures for all closed-end transactions secured by real property or a dwelling, not just principal dwellings. However, the Board recognizes that if personal property that is a dwelling but not the borrower's principal dwelling and secures a $25,000 loan, it is not covered by TILA in the first instance. For example, Regulation Z does not apply to a $26,000 loan that is secured by a manufactured home that is not the consumer's second or vacation home.***
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> ***Notwithstanding this exemption, the Board solicits comment on whether consumers in these transactions receive adequate information regarding their loan terms and are afforded sufficient protections. The Board also seeks comment on the relative benefits and costs of applying Regulation Z to these transactions. (pg. 43241)***

An extension of the proposal to cover loans secured by personal property, which may be used as a dwelling, in excess of $25,000 does not appear to be warranted. In addition to the example provided in the supplemental information in the proposal, this rule would also cover disclosures for credit secured by large recreational vehicles and trailers that are equipped with beds and large boats with sleeping accommodations. We know of no evidence to suggest that consumers have been disadvantaged in shopping for financing for these purchases or in obtaining financing for such purchases. We also note that many dealers for these luxury items are not currently capable of providing the technical disclosures required under the Truth in Lending Act. Without evidence of any consumer confusion or deception related to this market, it appears unwarranted to saddle these dealers with a complex regulatory scheme when the Truth in Lending Act clearly exempts such transactions.

> ***<u>Proposed Redefinition of Finance Charge</u>. The proposed test for determining the finance charge tracks the language of current § 226.4 but excluding § 226.4(a)(2). Specifically, under this test, a fee or charge is included in the finance charge for closed-end credit transactions secured by real property or a dwelling if it is (1) "payable directly or indirectly by the consumer" to whom credit is extended, and (2) "imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." The finance charge would continue to exclude fees or charges paid in comparable cash transactions. See § 226.4(a). The finance charge also includes charges by third parties if the creditor: (1) requires use of a third party as a condition of or incident to the extension of credit, even if the consumer can choose the third party; or (2) retains a portion of the third-party charge, to the extent of the portion retained. See § 226.4(a)(1). Other exclusions from the finance charge for closed-end credit transactions secured by real property or a dwelling would be limited to late fees and similar default or delinquency charges, seller's points, and premiums for property and liability insurance.***
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> ***As new services are added, and new fees are charged, in connection with closed-end credit transactions secured by real property or a dwelling, creditors would have to apply the basic test in making judgments about whether or not new fees must be included in the finance charge. The Board requests comment on whether further guidance is needed to assist creditors in making these determinations, and, if so, what specific guidance would be helpful. (pg. 43244)***

AFSA recognizes that a simplified APR calculation would offer some benefits. However, the Board is not adopting an "all-in" finance charge definition. As noted below, the Proposed Rule leaves some costs out of the finance charge and, thus, fails to offer a real simplification of the APR calculation. However, more importantly, the Proposed Rule is inconsistent with the plain language of Section 106 of TILA and underlying congressional intent. The supplemental information to the Proposed Rule explains the legal authority on which the Board relies to override the statutory exceptions in Section 106(e) of TILA. 74 F.R. 43245 (August 26, 2009). The explanation is helpful and convincing in part. For example, the Board notes that creditors have started to "unbundle" or shift the cost of credit to fees or charges that are excluded from the finance charge. The Board notes:

> Congress did not anticipate how such unbundling would undermine the purposes of TILA, when it enacted the exceptions. For example, fees for preparation of loan-related documents are excluded from the finance charge by TILA Section 106(e), 15 U.S.C. 1605(e); in practice documentation

> preparation fees have become a common vehicle used by creditors to enhance their revenue without having any impact on the finance charge or APR. *Id.*

This type of analysis provides a clear and convincing justification for use of the Board's authority under Sections 105(a) and 105(f) of TILA to include document preparation fees in the finance charge despite the Congressional directive to the contrary. However, the supplemental information provides no clear justification for the exercise of the same exception authority in the context of other settlement fees that Congress excluded by statute from the finance charge on real estate secured loans. Without a stronger foundation on which to override a clear Congressional directive, it does not appear that this portion of the Proposed Rule is supported by adequate statutory authority.

The current regulation identifies specific fees and classes of fees that are either included in, or excluded from, the finance charge. The proposed amendments to the regulation are not only inconsistent with the plain language of the statute, but would eliminate the clear guidance offered under the statute and the regulation. Instead of simplifying the process, the Proposed Rule would leave a creditor to guess how its regulator, or a court, might apply the "basic tests" in § 226.4(a) and § 226.4(a)(1). The first part of the basic test includes fees that are imposed directly or indirectly on the consumer <u>and</u> are "imposed directly or indirectly <u>by the creditor</u>" in connection with the covered transaction. The second part of the test addresses fees or charges assessed by third parties. Under this test, the finance charge includes third-party fees where the <u>creditor requires</u> the use of a third party (even if the consumer can choose the third party) <u>or</u> the creditor retains a portion of the third-party charge, to the extent of the portion retained.

Despite the plain language of the statute and the regulation that the fee must be charged directly or indirectly <u>by the creditor</u>, or that the <u>creditor must require</u> the use of the third party, the Board takes the position that "the definition of finance charge [is] not dependent on whether a charge is voluntary or required." *See* footnote 35, 74 F.R. 43246. The Board takes the position that "charges may be <u>imposed by a creditor</u> even if the services for which the fee is imposed are not specifically required by the creditor." 74 F.R. 43246. We believe that this interpretation is contrary to the plain language of the statute and the regulation, and that it will serve as a barrier to access to voluntary credit-related products and services that provide valuable risk-reducing protections for the consumer.

Additionally, AFSA members believe that all escrow amounts should be excluded from the finance charge. Lenders have no control over the amount of taxes and insurance that will be required on a particular property. Further, escrows provide an important protection for consumers, and lenders should not be penalized for providing this service. Also, note that the Board requires lenders to escrow for taxes and insurance in connection with "higher-priced" mortgage loans. Including escrow amounts in the calculation of the finance charge will likely push many "higher-priced" loans into the more restrictive "high cost" category under HOEPA, while providing no meaningful consumer protection.

> ***<u>Application of Proposed Redefinition of Finance Charge to Other Closed End Credit</u>. Section 226.4 is part of Subpart A, General, as opposed to Subpart C, Closed-End Credit. Nevertheless, the proposed amendments to § 226.4 would apply only to closed-end credit transactions secured by real property or a dwelling, consistent with the general scope of this proposed rule. The Board seeks comment on whether the same amendments should be made applicable to other closed-end***

> ***credit and may consider such amendments under a future review of Regulation Z. (pg 43244)***

For the reasons stated above regarding the proposed elimination of all but the "basic test" to determine whether a fee is a finance charge, the Board should neither (1) adopt a final rule as proposed, nor (2) extend proposed amendments to other credit products.

> ***<u>Impact of Proposed Finance Charge Redefinition on APR</u>. The Board notes that the impact of the proposed finance charge definition on APRs varies among loans based on two significant factors. First, because many of the affected charges are fixed dollar amounts, the impact is significantly greater for smaller loans. Second, the impact likely would vary geographically because some charges, notably title insurance premiums and recording fees and taxes, vary considerably by state. The Board believes the proposal, on balance, would be in consumers' interests but seeks comment on these consequences of the proposal and the impact it may have on loans that could become subject to these various laws. (pg. 43245)***

Including all third-party fees in the APR would have a detrimental impact on consumers in that it would greatly reduce the ability of the consumer to compare interest rates and fees while shopping for credit. This would defeat one of the primary purposes of TILA – to allow consumers to do an "apples-to-apples" comparison of rates and fees related to credit among various creditors. The APR could be identical in two mortgage products, but the third-party services and products could be quite different. Because different creditors offer different voluntary or optional products in connection with their mortgage loans, the proposed finance charge and APR definitions will result in potentially misleading comparisons of products. It is important that the consumer understand what costs the *creditor* is imposing in connection with the loan. If third-party costs are included, it would cloud the consumer's ability to understand what the creditor is charging and therefore would make it difficult to compare one creditor's costs with another.

The Board addressed this problem when it revised the credit card rules. The Board's own consumer research shows that consumers do not understand "APR," and that the consumer frequently thinks that APR means interest rate. In the Supplementary Information to the credit card rules published in the Federal Register on January 29, 2009, the Board said, "[w]ith regard to the effective APR [on periodic statements], testing overwhelmingly showed that few consumers understood the disclosure…" The same principle applies to the APR in closed-end disclosures. The proposed amendments will make the disclosure even less intelligible and less useful to consumers by including in the finance charge and APR third-party fees and fees for voluntary or optional products that will vary from creditor to creditor. In order to understand what each creditor is charging, so as to facilitate shopping, the disclosed cost of the loan should include only the fees imposed by the creditor.

Additionally, as the Board recognizes, the proposed amendments to the definition of finance charge will have a greater impact on smaller loans where there are third-party charges, such as appraisal fees or inspection fees that may be a fixed amount. While the contract rate of interest could be the same regardless of the amount of the loan, the disclosed (and published) APR for such loans would be greater for smaller loans. Some regulators and consumer advocates place great reliance on APRs for evaluating disparate treatment and disparate impact, and rarely recognize mitigating data. This will not change. Since smaller loans are frequently associated with lower income areas, including third-party fixed fees in the APR could create an appearance of disparate treatment by the creditor where no such disparity exists.

AFSA members share this same concern regarding the inclusion of title insurance related costs in the finance charge. Title related charges are not insubstantial and often constitute a significant part of the settlement costs. Including title insurance premiums and related fees in the finance charge will have a substantial effect on the points and fees test under HOEPA and similar state laws. Loans that would not have come close to the HOEPA threshold in the past now will be considered too risky for lenders to contemplate. This is particularly true of smaller dollar amount loans, where the title insurance related costs represent a proportionally larger fractional percentage of the loan amount. Including recording fees and taxes assessed by state and local governments could have a similar impact. Recording fees and taxes vary considerably not only by state, but sometimes also by county and municipality within the state. In some areas, taxes and recording fees are applied in layers by the state and local governments, and the amounts of such assessments may be directly related to the number of layers of government in a particular location. While the impact of such taxes and fees on the finance charge may depend on the language of individual tax and recording statutes, it is likely that the greatest impact on the amount of the disclosed APR will be in urban areas where the number of layers of government is greatest. It would be impossible to be certain of the apparent disparate impact of including recording taxes and fees in the finance charge absent an extensive study. However, there is substantial risk that the greatest disparity in the APR caused by including these government assessments in the finance charge will be in urban areas. Including these charges in the finance charge could create an appearance of disparate treatment by a creditor where no such disparity exists.

> ***<u>Application of Proposed Finance Charge Redefinition To HOEPA loans</u>. The Board is proposing to apply its general exception and exemption authority to enhance the finance charge disclosure for all loans secured by real property or a dwelling, including both HOEPA and non-HOEPA loans, in order to fulfill the statute's purpose of having the finance charge and APR disclosures reflect the total cost of credit. It would not be consistent with the statute or with Congressional intent to interpret the Board's authority under Sections 105(a) and (f) in such a way that the proposed revisions could apply only to mortgage loans that are not subject to HOEPA. Reading the statute in a way that would deprive HOEPA borrowers of improved finance charge and APR disclosures is not a reasonable construction of the statute and contravenes the Congress's goal of ensuring "that enhanced protections are provided to consumers who are most vulnerable to abuse."***
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> ***The Board solicits comment on all aspects of this proposal, including the cost, burden, and benefits to consumers and to industry regarding the proposed revisions to the determination of the finance charge. The Board also requests comment on any alternatives to the proposal that would further the purposes of TILA and provide consumers with more useful disclosures. (pg 43245)***

First, the Board's concern that HOEPA borrowers would be deprived of "improved" finance charge and APR disclosures is somewhat misplaced. Due to the extreme regulatory risk of making a loan subject to HOEPA, or similar state high-cost loan laws, most creditors do not make these loans. Thus, the "all-in" proposal is more likely to deny loans to borrowers than to restrict disclosures. Increasing the number of third-party fees and charges that are included in the finance charge will simply inflate the number of loans that could be subject to HOEPA and state high cost loan laws, and will further "tighten up" that segment of the credit market.

A similar impact could be seen for loans that are considered "higher-priced mortgage loans." Creditors may choose not to make these loans to avoid, for example, the escrow requirements placed on these loans by the Board. We believe that the proposed treatment of finance charge and APR will serve to further "tighten up" available credit to a broader segment of the mortgage market.

The Board underestimates the significant impact of this proposed change. The Board looks at first mortgages with a loan amount of $200,000 as representative of the non-prime market. This is simply not accurate. It is the experience of AFSA members that the non-prime market includes a significant number of junior lien loans and loans of less than $200,000. In addition, the Board notes that its limited study used a database that includes only prime and near-prime loans, the loans least likely to be affected by this change. The impact of the Proposed Rule on non-prime loans is extreme. Based on testing done by one member, AFSA members estimate that loan volumes would be reduced somewhere between 35% and to 90% depending on lien position, geography and loan amount. This estimate is based on loan amounts of $15,000, $75,000 and $150,000. Although loan amounts of $150,000 showed the lowest volume impact at 35%, this is still a startling number.

Another AFSA member looked at a large nationwide sampling of loans originated in 2008 and 2009 to determine the potential impact of the Proposed Rule. The analysis done for these loans looked only at the effect that the increased APR would have in making additional loans subject to the HOEPA rules, the higher-priced mortgage loan rules and similar state laws. This analysis, which is set forth in Appendix A, shows that in this sample the increased APR would cause 2,309 more loans (or 2.2% of the sample) to become HOEPA loans, which would mean the lender would not have approved these loans. The effect varied by jurisdiction. In Oklahoma, over 13% of the loans analyzed would have become HOEPA loans. A much larger percentage of loans is affected when the state high-cost and predatory loan tests are considered. The analysis shows that 11% of the loans (or 11,388 more loans) would become subject to these state laws under the Proposed Rule. This does not mean that all of these loans would have been rejected. Lenders tend to make loans under these laws in some states and not in others. The state laws are generally judged by the severity of the potential penalties and the ambiguity of the substantive provisions in making these decisions. Nevertheless, even in states where these loans would have been made, the loans would have been more complex and costlier to make because the lender would have had to comply with the stringent state substantive and disclosure laws that apply to such loans. Finally, 8.2% (or 8,640) of these loans would have been higher priced mortgage loans under the Proposed Rule. Again, while many lenders make higher-priced mortgage loans, making such loans are more complex and expensive for creditors.

In reviewing the results in Appendix A, the Board should consider that this analysis only used the APR test. It is the experience of AFSA members that more loans become subject to HOEPA under the total points and fees test rather than the APR test. Thus, this analysis significantly underestimates the impact of the Proposed Rule. Finally, the lender that conducted this analysis is primarily a conventional and FHA lender. Its loans are less likely to be affected by the Proposed Rule than many AFSA members that primarily serve the non-prime market and consequently offer loans at higher rates than the lender that performed the analysis shown in Appendix A.

AFSA members considered alternatives to the Proposed Rule that would avoid this unintended effect. It was suggested that the Board adopt the Proposed Rule, but change the regulatory definitions of loans subject to HOEPA and the federal higher priced mortgage loan rules. If the Board increased the thresholds for these tests, the inclusion of most fees and costs in the finance charge would not significantly increase the number of loans that would become subject to these rules. However, most state high-cost and predatory lending laws incorporate the current federal definition of finance charges into the state high-cost tests. Thus, while this suggested alternative would be helpful in certain parts of the country, in other significant areas of the country the Proposed Rule would continue to restrict credit. This is particularly acute with smaller dollar amount loans, which tend to occur most often in areas that have been traditionally underserved, such as rural areas and the inner city.

> ***<u>Proposed Finance Charge Redefinition - Taxes</u>. Comment 4(a)-5 contains guidance for determining whether taxes should be treated as finance charges. Generally, a tax imposed on the creditor is a finance charge if the creditor passes it through to the consumer. If applicable law imposes a tax solely on the consumer, on the creditor and consumer jointly, on the credit transaction itself without specifying a liable party, or on the creditor with direction or authorization to pass it through to the consumer, the tax is not a finance charge. Consequently, an examination of the law imposing each tax that is paid by the consumer is required to determine whether such taxes are finance charges. This examination of laws creates burden for creditors, and may result in inconsistent treatment of similar taxes. The resulting disclosures likely are not as useful to consumers as they might be if all taxes were treated consistently.***
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> ***The Board seeks comment on whether the rules for determining the finance charge treatment of taxes imposed by state and local governments should be simplified and, if so, how. The Board also seeks comment on whether any such simplification should be for purposes of closed-end transactions secured by real property or a dwelling only or should have more general applicability. (pg. 43246)***

The rules for determining the finance charge treatment of taxes imposed by state and local governments should not be changed as proposed (by eliminating the § 226.4(c)(7) exclusion from finance charge), or by changing the treatment of taxes in Comment 4(a)-5. First, the current test is clear. Following the revisions to the regulation made after the *Rodash* case, creditors have not had any difficulty identifying which state and local taxes may be excluded from the finance charge. Second, including government-mandated charges in the finance charge and the APR will create the erroneous perception in the view of the public that creditors are assessing these charges. Third, we note that because recordation taxes vary widely between states and even municipalities, the proposed change would have a disproportionate effect throughout the country. More mortgage loans would become higher priced mortgage loans and loans subject to HOEPA and state high cost loan laws in some states and municipalities than others, thus reducing credit availability in some areas and not in others.

> ***<u>Proposed Finance Charge Definition – Closing Agent and Third Party Fees</u>. The Board believes that fees charged by closing agents, both their own and those of other third parties they hire to perform particular services, should be treated uniformly as finance charges.***
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> ***The Board seeks comment on whether any such third-party charges do not fall within the basic test for determining the finance charge and could be excluded from the finance charge without requiring factual determination in each case. (pg. 43246)***

We disagree with the Board's position that all fees charged by closing agents should be included in the finance charge. The test for inclusion should not be changed in the first instance. This is particularly the case with fees charged by closing agents for non-required services. In many states the borrower has the right to select the closing agent, thus taking from the lender any ability to control the fees that would go into the disclosure of the "cost of credit" offered by the lender. Including charges imposed by third parties for services that the creditor does not require only makes sense if the Board also had the authority to let creditors control the choice of all third party settlement service providers.

> ***<u>Proposed Finance Charge Definition – Finance Charge Tolerance</u>. Requiring third-party charges to be included in the finance charge creates some risk that a creditor may understate the finance charge if the creditor does not know that a particular charge was imposed by a third party. This risk is mitigated to some extent by TILA Section 106(f), which provides that a disclosed finance charge is treated as accurate if it does not vary from the actual finance charge by more than $100 or is greater than the amount required to be disclosed. 15 U.S.C. 1605(f). This tolerance has been incorporated into Regulation Z. See § 226.18(d)(1).***
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> ***The Board requests comment on whether it should increase the finance charge tolerance, for example to $200, in light of its proposal to require more third-party charges to be included in the finance charge. The Board also requests comment on whether the existing or any increased tolerance should be linked to an inflation index, such as the Consumer Price Index. (pg. 43246)***

If the Board ultimately decides to expand the scope of third-party fees that are included in finance charge and the APR, the tolerance must be increased to prevent unintended consequences. Such consequences could include delays or postponements of closings over relatively minor changes in the finance charge due to third-party closing agent or other third-party fees that surface at closing.

> ***<u>Proposed Finance Charge Definition – Credit Insurance</u>. As a practical matter, the primary voluntary third-party charge in connection with a mortgage transaction of which the Board is aware (and that is not otherwise excluded from the finance charge) is the premium for voluntary credit insurance, and creditors generally solicit consumers for such insurance. In fact, under existing § 226.4(d)(1)(ii), creditors historically have had to disclose the premium for voluntary credit insurance to exclude it from the finance charge.***
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> ***The Board nevertheless solicits comment on whether there are voluntary third-party charges the amounts of which cannot be determined three business days before consummation (pg. 43246)***

This proposal, coupled with the proposed early disclosure and subsequent disclosure rules, will have a significant unintended effect on a procedure many creditors have implemented to avoid any potential abuses in the sale of optional products. These creditors do not permit employees to discuss optional products with customers prior to loan approval in order to insure the consumers fully understand that they will receive the loan regardless of whether they elect to purchase optional products. In order to continue to adhere to that practice, it would be impossible for creditors to know or even disclose potential optional product premiums three days in advance of consummation. Requiring creditors to do so would increase the potential for the sale of such products to appear presumptive and a condition of obtaining the loan. The Board's own enforcement actions have historically disfavored the offering of optional products prior to loan approval.

> ***<u>Proposed Finance Charge Definition – Voluntary or Optional Charges</u>. The Board recognizes that creditors may not know what voluntary or optional charges the consumer will incur when providing early TILA disclosures. When providing early TILA disclosures, creditors may rely on reasonable assumptions regarding voluntary or optional charges and label those amounts as estimates. The Board invites comment on whether further guidance is required regarding reasonable assumptions that may be made regarding voluntary or optional charges in early TILA disclosures. (pg. 43247)***

For the reasons explained above, AFSA members do not believe that optional products such as credit insurance or debt cancellation should be included in the early disclosures. Doing so would prevent consumers from being able to comparison shop on an apples-to-apples basis. For example, where one lender offers optional products and another does not, the consumer will see a higher APR for a loan that includes credit insurance, even if the cost of the underlying loan is lower. The consumer will not likely understand that the higher APR loan includes an additional product that they will not be required to purchase. Consumers will have no way to see an apples-to-apples comparison of these two loans. This creates a misunderstanding that the optional products are not separate from the loan itself and may lead consumers to accept higher priced loan offers when less expensive options are available.

Adding to the confusion, the model forms do not include any way for creditors to indicate that credit insurance is included or excluded in the estimates. AFSA members suggest that the forms include a section for "Optional Products" below the "Interest Rate & Payment Summary", along the lines of the following:

The following optional products are available on your loan. You do not have to purchase any of these products to get the loan. See your separate disclosure for more information.

Estimated Cost: Estimated Principal + Interest + Optional Product:

Credit Insurance: $____ per month $________

This type of disclosure will provide the borrower with a clear understanding of the monthly cost of the product, as well as the loan payment with any optional products included. It will further emphasize that these products are voluntary and not required. The borrower will also receive the optional product disclosures required under Regulation Z and applicable insurance law and debt cancellation regulations at the time the borrower purchases the product, typically at loan closing.

> ***<u>Proposed Finance Charge Definition – Seller's Points</u>. The exclusion of seller's points from the finance charge in § 226.4(c)(5) would be retained for closed-end credit transactions secured by real property or a dwelling. Seller's points are not payable by the consumer. Comment 226.4(c)(5)-1 notes that seller's points may be passed on to the buyer in the form of a higher sales price for the property or dwelling. Even then, seller's points are excluded from the finance charge. A different rule would require a fact-specific determination in every transaction involving seller's points regarding whether and to what extent the seller shifted those costs to the borrower. The Board does not believe that such a rule is feasible.***
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> ***The Board seeks comment on the retention of the seller's points exclusion. (pg. 43247)***

We agree with the Board that determining whether the cost of seller's points has been passed on to the buyer in the form of a higher sales price would be virtually impossible to determine. Even though seller's points may influence the sales price, that sales price is negotiated between the seller and the buyer in transactions that frequently require concessions from both parties. And, where a buyer is free to obtain her own financing, the purchase price and the amount of seller points are always established before the lender is selected. In such cases, it makes no sense to treat seller's points as part of the finance charge. These fees simply do not belong in the finance charge or the APR.

> ***<u>Proposed Finance Charge Definition</u> – As amended, § 226.4(c)(7) and the commentary provisions under § 226.4(c)(7) would apply only to open-end credit plans secured by real property and open-end residential mortgage transactions. Thus, for HELOCs, the fees specified in § 226.4(c)(7) would continue to be excluded from the finance charge.***
>
> ***The Board requests comment on whether it should retain § 226.4(c)(7), as proposed to be amended, or delete § 226.4(c)(7) altogether, in light of the proposed changes to the Regulation Z HELOC rules, published today in a separate Federal Register notice. See the discussion under § 226.4 in that notice. (pg. 43247)***

The Board should retain § 226.4(c)(7) for HELOCs and for closed-end mortgage loans as mandated by Section 106(e) of TILA. This would preserve some consistency in the treatment of fees between open-end and closed-end transactions, and would comply with the express requirements of TILA.

> ***<u>Proposed Finance Charge Definition - Insurance Product Enrollment</u>. Proposed comment 4(d)-14 would provide that the creditor could use reasonably reliable evidence of the consumer's age or employment status to satisfy the condition. Reasonably reliable evidence of a consumer's age would include using the date of birth on the consumer's credit application, on the driver's license or other government-issued identification, or on the credit report. Reasonably reliable evidence of a consumer's employment status would include the consumer's information on a credit application, Internal Revenue Service Form W-2, tax returns, payroll receipts, or other evidence such as a letter or e-mail from the consumer or the consumer's employer.***

> ***The Board seeks comment on whether other examples of reasonably reliable evidence of the consumer's age or employment status should be included. (pg. 43248)***

The proposed requirement is not necessary. The required qualifying information already appears on the credit insurance application that the consumer signs. The creditor should not have to "reinvestigate" personal information provided by the consumer.

> ***<u>Proposed Finance Charge Definition - Insurance Product Enrollment</u>. The Board notes that although the proposed rule would require creditors to determine the consumer's age and/or employment eligibility for the product at the time of enrollment, the proposed rule would not affect the creditor's ability to deny coverage if the consumer misrepresented his or her age or employment status at the time of enrollment. Finally, the proposed rule does not require a creditor to determine if a consumer ceases to meet the age or employment eligibility criteria after enrollment.***
>
> ***However, the Board solicits comment on whether creditors should be required to determine whether the consumer meets the product's age or employment eligibility criteria after the product is sold (e.g., before renewing an annual premium), or whether creditors should be required to provide notice when the consumer exceeds the age limit of the product after enrollment. (pg 43249)***

Requiring creditors to determine whether the consumer meets the credit insurance product's age or employment eligibility criteria after the product is sold (e.g., before renewing an annual premium), or whether creditors should be required to provide notice when the consumer exceeds the age limit of the product after enrollment is not only unnecessary and unduly burdensome, but also impossible to comply with.

Such a requirement is unnecessary because eligibility is determined only before the inception of coverage, not upon renewal. Additionally, most state laws require the <u>insurer</u> to track the customer's age and send a termination notice to the customer once the customer reaches the maximum coverage age. Requiring the creditor to do likewise would be duplicative. Similarly, it would be unduly burdensome to require the creditor to keep abreast of the customer's employment status. Creditors do not currently engage in such "job-tracking" and implementing such a requirement would require creditors to dedicate substantial additional resources on an ongoing basis.

> ***<u>Proposed Finance Charge Definition – Property and Liability Insurance</u>. The Board requests comment on the appropriateness of retaining the current exclusion from the finance charge of premiums for insurance against loss or damage to property or against liability arising out of the ownership or use of property. The Board notes that, under current § 226.4(d)(2), the category of property and liability insurance has been interpreted to include coverage against flood risks; the Board seeks comment on whether the reasons for retaining the exclusion discussed above are applicable to flood insurance specifically and, if not, whether it should be subject to separate treatment under Regulation Z. In addition, the Board requests comment on whether including such premiums in the finance charge could have adverse or unintended consequences for consumers and for creditors. (pg. 43250)***

We agree with the Board's determination that consumers typically purchase property and liability insurance to protect against a variety of risks, including loss of or damage to the property, such as damage caused by fire, loss of or damage to personal property kept on the property, such as furniture, and owner liability for injuries incurred by visitors to the property. Although creditors generally require such insurance as a condition of extending closed-end credit secured by real property or a dwelling in order to protect the value of the collateral that is securing the loan, even consumers who do not have mortgages regularly purchase this type of insurance to protect themselves from the risks described above and to protect the large investment they have in their homes.

This type of insurance is best viewed as a hybrid product that protects not only the value of the creditor's collateral, but also protects the consumer from loss or impairment of the consumer's equity in the property, loss or impairment of the consumer's personal property, and personal liability if anyone is injured on the property. Consequently, it is impossible to segregate the portion of the insurance (and the portion of the premium) that protects the creditor from the portion that protects only the consumer. In addition, the Board has not identified significant abuses in connection with the sale or marketing of insurance against loss or damage to property or against liability arising out of the ownership or use of property. The market for these products appears to be competitive. Consumers can purchase this type of insurance from many insurance companies, including companies not associated with mortgage lenders. In addition, policies generally are tailored to the particular risks faced by the consumer. Thus, consumers have choices with regard to how much insurance to purchase to cover various risks and, as a result, have some control over the premiums they pay, and such premiums should continue to be excluded from the finance charge.

Additionally, it is unclear if the Board has the authority to include property insurance premiums in the finance charge. Section 106(c) of TILA states: "Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained." If Regulation Z were changed to include homeowner's insurance in the finance charge, it would be in direct contravention of the express language of TILA. We note that the Board has provided no support for the use of its exception authority with regard to property insurance premiums.

The same analysis for homeowner's insurance applies to flood insurance, a product that is often required by federal law. We believe that the exclusion of homeowner's and flood insurance from the finance charge should remain.

> ***<u>Telephone Purchase Rule</u>. This proposal does not contain a telephone purchase rule for credit insurance or debt cancellation or debt suspension coverage sold in connection with a closed-end credit transaction. The Board seeks comment on this issue. For a discussion of the application of the telephone purchase rule to HELOCs, see the Board's proposal for such transactions published simultaneously with this proposal. (pg. 43251)***

The Board is likely correct that telephone solicitation is more prevalent in the context of open-end loans than with closed-end loans. However, some creditors rely on telephone solicitation to market their closed-end loan products. It is important that those creditors have the same flexibility to offer credit insurance or debt cancellation or debt suspension coverage as is available in the open-end context. Credit insurance and similar products provide a very valuable tool to help consumers manage their debt exposure and to ease their debt when they become disabled or lose their job. Consumers should be allowed to purchase such products with as much flexibility as possible.

Additionally, note that the Office of the Comptroller of the Currency has promulgated Debt Cancellation Rules under 12 CFR Part 37. These rules set forth very clear rules governing telephone solicitations and allow for telephone solicitations on post-close, closed-end transactions. If the Board limits telephone purchases for closed-end transactions, it would be inconsistent with the OCC's rules.

> ***<u>Proposed Finance Charge Definition – General</u>. The Board solicits comment on the benefits and costs of the proposed changes for determining the finance charge for closed-end credit transactions secured by real property or a dwelling. The Board requests comment specifically on whether this approach adequately or appropriately addresses the concerns raised by the "some fees in, some fees out" approach in light of the statute's purposes, the need for consumer protection and meaningful disclosures, and industry concerns regarding complexity and burden. The Board also seeks comment on the benefits and costs of the rules for insurance and related products under the proposed amendments to § 226.4(d). (pg. 43251)***

AFSA members do not believe that any perceived benefits of the proposal to include "all" fees in the finance charge for closed-end transactions secured by real property or a dwelling outweigh the customer confusion that would result from this rule. AFSA members also do not believe the proposed amendments to § 226.4(d) related to insurance and related products provide any meaningful benefits to consumers. These two issues are addressed below.

"All-in" Finance Charge Proposal: First, it is important to note that the Board's proposal will continue a "some fees in, some fees out" approach to the determination of the finance charge. For obvious and good reasons, the Board has decided to continue to exclude some settlement costs, such as property insurance and the premiums for the homeowner's title policy from the finance charge. This means that creditors will continue to struggle to determine which fees are included in the finance charge and which are not. For example, it will be particularly difficult to determine whether costs related to an owner's title insurance policy should be included in the finance charge. Some insurers do not require a survey when only a lender's policy is issued; although others do. Insurers that do not require a survey in this case will require a survey if an owner's policy is requested. Also, some title related costs, such as the title examination fees, vary based on whether an owner's policy is issued. Also, as noted above, the basic finance charge test that the Board would substitute for the current clear exceptions may be interpreted differently by regulators and courts. Thus, the Board is not adopting a simpler test that will reduce complexity and eliminate a burden on creditors.

The Proposed Rule also will not assist consumer shopping. A primary goal of TILA and Regulation Z – and the Proposed Rule – is to assist borrowers in comparing loan costs. However, shopping generally requires that the consumer be able to identify and compare the loan origination fees and interest rates charged by different lenders. The difference between loan offerings would be more apparent if the finance charge test treated separately the fees and charges required by the lender, the fees and charges that are optional and are incurred only at the request of the consumer and the costs for third party servicers that the creditor does not control. For example, lenders do not control title insurance related costs or recording fees and taxes. Lumping such fees into the finance charge (and thus the Annual Percentage Rate) of two similar loans will only tend to mask the difference between the different rates, fees and costs the lenders impose. This will, in turn, make it more difficult for a consumer to decide which lender is offering lower costs loan.

Proposed Amendments Regarding Insurance and Related Products: Under the Board's proposal to add a new §226.4(g), credit insurance premiums must be included in the finance charge for all closed-end transactions secured by real property or a dwelling. This proposal to require credit insurance premiums to be included in the finance charge on all closed-end transactions secured by real property or a dwelling, ***without exception***, contravenes the express language of TILA.

Section 106(b) of TILA provides that charges for credit life, accident, or health insurance written in connection with any consumer credit transaction are expressly excluded from the finance charge if (1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and (2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof. The inclusion of ***voluntarily*** purchased credit insurance premiums in the finance charge does not advance TILA's purpose of enabling consumers to compare more readily the various credit terms available to them, and contradicts the ***express*** language of TILA.

Additionally, under the Board's proposal to add a new §226.4(g), credit insurance premiums must be included in the finance charge for all closed-end transactions secured by real property or a dwelling. There is no exception for credit insurance calculated and paid on a monthly basis, as is typically contained in state predatory lending statutes.[1] Accordingly, under the Proposed Rule, monthly outstanding balance (MOB) credit insurance premiums must also be included in the finance charge calculation. AFSA members believe that even if the Board adopts the "all-in" finance charge rule, it should only include single premium credit insurance where the full cost of the insurance is collected at closing in the finance charge calculation. Any amounts billed on a monthly basis should be excluded from the finance charge.

Many MOB products are monthly renewal term products, meaning that they have a term of only one month and are renewable each month as long as the premium is paid. In its current form, the Board's proposal contains no guidance on whether only the first month of MOB premium must be included in the finance charge or whether the premium for the entire term of the loan must be included.

Even the Departments of Housing and Urban Development and Treasury limited their recommendations to the Board, regarding restrictions on credit insurance sold in connection

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[1] For example, see Illinois 815 ILCS 137/40 and 205 ILCS 635/5-15; Indiana 24-9-3-1, New Jersey 46:10B-25(a); North Carolina: 24-10.2 (b); New Mexico 58-21A-4; New York 6-L(2)(h); Ohio 1345.031 (B)(11); and South Carolina 37-23-70 (B).

with mortgage transactions, to single premium credit insurance.[2] No such restrictions were recommended for MOB credit insurance.

AFSA members recommend at the very least that the Board specifically exclude credit insurance premiums calculated and paid on a monthly basis from its proposed requirement to include credit insurance premiums in the finance charge for all closed-end transactions secured by real property or a dwelling.

To exclude MOB, the commentary on pages 43243 and 43272 at 226.4(d) should state: "premiums or fees paid on a monthly basis are not considered financed." Additionally, to properly reflect the proscription of the statute, the draft rule at 226.4(g) ought to state: "This paragraph (g) shall not apply to voluntary credit insurance premiums, or debt cancellation or suspension products, calculated and paid on a monthly basis."

As an alternative, if the Board ultimately decides to include MOB credit insurance premiums in the finance charge, the Board should provide clarification that only the first month's MOB premium for monthly renewal term policies must be included, since the product is a month-to-month term product.

> ***<u>Credit Insurance Disclosures</u>. The Board proposes §226.38(h) to require creditors to provide certain disclosures, which would be grouped together and substantially similar in headings, content and format to Model Clause H-17(C) in Appendix H to this Part. (pg. 43312)***

The Board is proposing to add a new §226.38, requiring new credit insurance disclosures to be provided on all closed-end credit transactions secured by real property or a dwelling. The Board is also proposing to add new Appendices G and H to Part 226, which are a set of new Model credit insurance disclosures applicable to all open-end or closed-end (not secured by real property) credit transactions. The new disclosures contained in the proposed Models are identical to the new disclosures contained in proposed §226.38.

The proposed disclosure contained in §226.38(h)(3) requires the creditor to provide the consumer with a disclosure stating that if the consumer already has insurance, then the credit insurance policy or coverage may not provide the consumer with any additional benefits. This disclosure is factually inaccurate and is therefore, inappropriate and misleading to the consumer and should not be required.

Because credit insurance, by the very nature of the product, only provides coverage for a specific loan, it will always provide the consumer with additional insurance benefits and coverage that he did not have before he took out the loan. One of the accepted methodologies consumers use for determining how much insurance coverage to obtain is to calculate the total amount of indebtedness they have and secure coverage for at least that amount. If additional indebtedness is subsequently incurred, then the debtor is necessarily short of coverage by the amount of the new indebtedness.

Credit insurance, by definition, ***always*** provides additional benefits and coverage since it provides the consumer with a way to pay for an indebtedness that he did not have when he procured his already existing insurance coverage. Accordingly, we are requesting that the

[2] See 2000 HUD/Treasury Report on Recommendations to Curb Predatory Home Mortgage Lending, Chapter VI., C.1. (g)(i); and Chapter VI., C.2. (a).

Board not adopt the disclosure contained in proposed §226.38(h)(3) and remove it from the Model disclosures in proposed Appendices G and H to Part 226.

The Board's proposed §226.38(h)(2) will require the lender to make the following disclosure: "**STOP**. You do **not** have to buy this product to get this loan." AFSA finds this language too harsh. We suggest that the Board revise §226.38(h)(2), and the Model disclosures, to conform to the language approved in most states: "This product is voluntary and you may cancel it at any time." This is a more affirmative approach to the purchase transaction that informs, but does not berate the consumer.

The Board's proposed §226.38(h)(4) will require the lender to make the following disclosure: "Other types of insurance can give you similar benefits and are often less expensive." This statement is inaccurate because it compares apples to oranges and is based on the erroneous presumption that all insurance is the same.

There is no other insurance product on the market tied to the outstanding balance or decreasing on a scheduled payment basis that covers any remaining outstanding indebtedness. Ordinary life or term insurance is only available in much larger amounts than is necessary to cover the average outstanding consumer indebtedness. The proposed statement presupposes very much more insurance than is needed, which is not a similar benefit. Additionally, ordinary or term life is only less expensive on a unit cost basis. The actual amount required to be expended for a typical credit insurance policy is, in reality, extremely small when compared to the hundreds and thousands of dollars required to purchase the typical ordinary or term life product. Accordingly, AFSA recommends deletion of the disclosure contained in §226.38(h)(4) and the accompanying Model disclosures.

The disclosure required by proposed §226.38(h)(4) also ignores a critical distinction between credit life insurance and ordinary or term life insurance that makes comparing the two inappropriate; no medical examination or underwriting is required to purchase credit insurance. Purchasers of ordinary term life insurance almost universally must undergo a medical examination, including blood tests. The results of those tests and underwriting greatly impact the amount of coverage that the insurer is willing to offer and the price that it will charge. Conversely, the cost of credit insurance is the same for all eligible customers, with the premium rate set by the state department of insurance.

The Board's proposed §226.38(h)(9) requires the lender to disclose the term of the credit insurance policy in years. Most credit insurance policies sold in connection with real estate loans are MOB products. As previously stated, MOB products have a month-to-month term, not an annual term. Accordingly, it is not possible to state the term of the policy in years. AFSA recommends that §226.38(h)(9) and the Model disclosures be revised to allow for the disclosure of the insurance term in months or years, as applicable.

The Board's proposed §226.38(h)(8) requires the lender to refer the consumer to the Board's website for additional information about credit insurance. The Consumer Credit Industry Association (CCIA) is the national trade association representing a majority of the credit insurers in the country and it maintains a web site dedicated to providing consumers with factual information about credit insurance. We suggest that §226.38(h)(8) and the Model disclosures be revised to also include the CCIA website at www.cciaonline.com as a resource from which the consumer may gather additional information.

We also request that the Board refrain from using its rulemaking authority to require translations of credit disclosures.

> ***Early Disclosures – Temporary Loans*. Section 226.18 currently contains requirements for the content of transaction-specific disclosures secured by real property or a dwelling, whether or not creditors are required to provide that content in early disclosures. Although under the proposed rule § 226.38 rather than § 226.18 would contain requirements for disclosure content for transactions secured by real property or a dwelling, the content required in early disclosures is the same as the content of disclosures provided in cases where early disclosures are not required. Applying the requirement to provide early disclosures to all transactions secured by real property or a dwelling would simplify creditors' determination of the time by which creditors must make the disclosures required by § 226.38. The Board requests comment about operational or other issues involved in providing early disclosures for temporary loans, however. The Board also solicits comment on whether there are other types of loans exempt from RESPA to which it is not appropriate to apply proposed § 226.19(a). (pg. 43258)***

To some extent the suggestion to extend the early disclosure requirements to all loans secured by real estate or a dwelling would simplify compliance. However, in many situations extending the requirement to temporary loans secured by real estate or a dwelling would impose a completely new and unwarranted burden on creditors. Often the application, processing and documentation systems used for transactions such as construction financing and bridge loans are separate and apart from the systems creditors use for standard mortgage financing, and the personnel that handle such transactions are also specifically trained for such specialty financing. Creditors already face a significant compliance burden in preparing their standard mortgage lending systems and staffs for the new rules. Updating additional systems and training additional staff would be an unwelcome cost and distraction at a time when so many other compliance changes must be implemented. We recommend that the Board give creditors the leeway to follow the new proposals for any transaction secured by real estate or a dwelling, but not mandate such compliance for transactions that are outside of the scope of RESPA.

> ***Final Disclosures – Receipt 3 Business Days Prior to Consummation Requirement*. The Board solicits comment on the operational and other practical effects of requiring that consumers receive final TILA disclosures for closed-end loans secured by real property or a dwelling no later than three business days before consummation. (pg. 43260)***

The "all inclusive" finance charge proposal will complicate the delivery of accurate disclosures three business days prior to closing. This is particularly true for costs that have generally been controlled by independent settlement agents. Any change by an unrelated settlement servicer provider may require the creditor to halt the closing; provide new disclosures and reschedule closing. Some AFSA members already report significant backlash from consumers over the delays imposed by the similar requirement under the Mortgage Disclosure Improvement Act. Consumers are very upset with these delays and are complaining that they want their loan closed quickly. Such delays will only become more prevalent under the proposal, and there may now be series of delays prior to closing as settlement agents adjust and readjust minor closing costs that are not in the control of the lender. As more closings are delayed, the consumer backlash can be expected to escalate. AFSA requests, first, that the Board reject the proposal to add third party costs and other settlement charges in the finance charge, and second, that the Board limit, to the extent possible, the need for creditors to provide disclosures prior to settlement.

> ***Final Disclosures – Corrected Disclosures. The Board is proposing two alternative requirements for creditors to provide corrected disclosures after making the final disclosures required by § 226.19(a)(2)(ii), to be designated as § 226.19(a)(2)(iii). Consumers would have to receive the corrected disclosures required by proposed § 226.19(a)(2)(iii) no later than the third business day before consummation.***
>
> ***Alternative 1. The first alternative would require that a creditor provide corrected disclosures if any terms stated in the final disclosures required by proposed § 226.19(a)(2)(ii) change.***
>
> ***Alternative 2. It is not clear that it is always in a consumer's interest to delay consummation until three business days after the consumer receives corrected disclosures if any terms or costs change. Thus, the Board proposes an alternative § 226.19(a)(2)(iii) that incorporates the existing tolerance for APR changes under § 226.22 and incorporates an additional tolerance discussed under § 226.19(a)(iv). If the APR changes beyond the specified tolerances, creditors would be required to provide corrected disclosures that the consumer must receive no later than three business days before consummation.***
>
> ***The Board solicits comment on whether, under Alternative 2, changes other than APR changes in excess of the specified tolerance or the addition of an adjustable-rate feature after the creditor make the new disclosures should trigger an additional three-business-day waiting period. For example, should the addition of a prepayment penalty, negative amortization, interest-only, or balloon payment feature trigger a waiting period requirement? (pg. 43261)***

As noted above, the need to provide corrected disclosures should be as limited as possible. Consumers find delays frustrating, and potentially costly. Some consumers may lose the opportunity to consummate the purchase of a new home if the closing for their current house is delayed. AFSA urges the Board to adopt Alternative 2 with the proposed changes:

(i) There should be a larger tolerance for an under disclosure of the finance charge. If the definition of finance charge is expanded to include fees that the lender cannot control, more leeway is needed in the disclosures. We recommend that the Board adopt the APR tolerance rules imposed by Congress under the Mortgage Disclosure Improvement Act as the sole numerical criteria for determining when a redisclosure must occur.
(ii) The substitution of a variable rate transaction for a fixed rate transaction is a significant change that the consumer should be made aware of prior to closing. We agree that the Board should include this as a trigger for new disclosures.
(iii) The Board should consider the addition of a balloon payment as a trigger for new disclosures. Again, this change is a significant factor that the consumer should consider prior to closing.

> ***Alternative 2 – Finance Charge/APR Discrepancies. In some transactions, the finance charge at consummation might be lower than the amount previously disclosed, for example, if the parties agree to a smaller principal loan amount after early disclosures were made. In the same transaction, the APR might increase***

> ***because of an increase in the interest rate after the early disclosures were made. In this transaction, at consummation the previously disclosed finance charge would be overstated and the previously disclosed APR understated. The Board believes the APR in this case is not accurate. The Board believes an APR "results from" an overstated finance charge only if the APR also is overstated. The Board solicits comment on whether, should Alternative 2 be adopted, the Board also should adopt commentary under § 226.22(a)(4) to clarify this interpretation. (pg. 43261)***

AFSA members believe that a redisclosure that would delay settlement should not be required where a finance charge discrepancy is caused by a third party. AFSA members further believe that what should matter to the consumer is the overall cost the lender imposes on the loan. If one change causes the APR to rise, but another causes the APR to be reduced, there should be no redisclosure as long as the resulting APR remains within tolerance.

> ***<u>APR Accuracy</u>. Under proposed § 226.19(a)(2)(iv), an APR disclosed under proposed § 226.19(a)(2)(ii) or (iii) is considered accurate as provided by § 226.22, except that the APR also is considered accurate if the APR decreases due to a discount (1) the creditor gives the consumer to induce periodic payments by automated debit from a consumer's deposit account or (2) the title insurer gives the consumer on owner's title insurance. Thus, such APR changes would not trigger a new three-business-day waiting period. Comment 19(a)(2)(iv)-1 clarifies that if a change occurs that does not render the APR inaccurate under § 226.19(a)(iv), the creditor must disclose the changed terms before consummation, consistent with § 226.17(f).***
>
> ***The Board solicits comment on whether a disclosed APR that is higher than the actual APR at consummation should be considered accurate in other circumstances. (pg. 43261)***

AFSA believes that for the purposes of APR accuracy, a disclosed APR that is higher than the actual APR at consummation always should be considered accurate. An over-disclosed APR only serves to disadvantage the creditor by making the creditor's product appear to be more expensive than it is. An over disclosure never harms a consumer. Thus, an over-disclosed APR should be considered accurate. The delay caused by redisclosure is likely to cause more harm to consumers than any "protection" they might receive by having an over-disclosed APR "corrected" before closing.

> ***<u>Loan Program Disclosures</u>. The Board solicits comment on whether loan program disclosures should be given at the time an application form is provided to a consumer or before the consumer pays a non-refundable fee, whichever is earlier, for transactions other than ARMs. (pg. 43262)***

First, there is no need to provide a loan program disclosure for a fully amortizing, fixed rate mortgage loan. Consumers understand these products and more disclosures may only serve to complicate the application process. Second, for applications taken over the phone, creditors should be allowed to mail the ARM program disclosures.

> ***<u>Risk Factors to be Disclosed</u>. Proposed § 226.19(b)(2)(ii) would require the creditor to disclose information about the following six terms, but only if they are applicable to the loan program: (1) interest-only payments, (2) negative amortization, (3) balloon payment, (4) demand feature, (5) no-documentation or low-documentation***

> ***loans, or (6) shared-equity or shared-appreciation. The "Key Questions about Risk" disclosure would be subject to special format requirements, including a tabular format and a question and answer format, as described under proposed § 226.19(b)(4). The Board believes it is critical that consumers be alerted to certain risk factors before they have applied for an ARM, so that they can decide whether they want a loan with those terms.***
>
> ***The Board solicits comment on whether there are other risk factors that loan program disclosures or publications should identify. (pg. 43266)***

AFSA members do not believe that there are other risk factors that that loan program disclosures or publications should identify.

> ***<u>Loans Requiring Loan Program Disclosures</u>. The Board solicits comment on whether there are other loan types for which loan program publications should be given at the time an application form is provided to a consumer or before the consumer pays a non-refundable fee, whichever is earlier. (pg. 43268)***

AFSA believes that the program disclosures already provided to consumers at the application stage, as a result of Regulation Z, changes to Regulation X and for those state licensed creditors, state law disclosures, are adequate for other loan types.

> ***<u>ARM Adjustment Disclosures at least 60 days prior to Payment Change</u>. The Board solicits comment on the operational changes creditors and servicers would need to make to provide disclosures at least 60 days before payment at a new level is due. Are there indices that are published at times that would make compliance with such a rule difficult? Are reported levels for particular indices difficult to confirm within a few days? The Board requests comment on whether requiring creditors to provide 45, rather than 60, days' advance notice of a payment change better balance concerns about providing sufficient notice to consumers and sufficient time for creditors to verify reported indices and prepare disclosures. (pg. 43271))***

AFSA members strongly oppose a 60-day advance notice requirement for ARM adjustments. Creditors and servicers would have to implement significant operational changes to comply with the 60-day minimum advance notice requirement for ARM adjustments. Further, AFSA members estimate that the 60-days notice requirement would be unworkable in roughly 32% of current ARMs.

The 60-day advance notice may not provide the borrower with a clearer perspective of rate trends. For example, in the case of a 1-year ARM, in order to allow for a 60 day advance notice, the creditor would need to schedule the rate adjustment period at least 75 days prior to the scheduled rate adjustment. By the time the rate actually changed, it would have been based on a 75-day old market index value. If rate values changed, consumers may be confused as to why their loans reflect such an old index value.

AFSA members believe that 45 days is a more appropriate time period for the ARM adjustment disclosures. This would allow creditors sufficient time to verify reported indices and to prepare the required disclosure, and would allow consumers sufficient time to plan for an increased payment or obtain a refinancing of their loan.

If the Board adopts the 60-day notice requirement, AFSA members request that the Board apply the 60 days rule for loans originated after the rule's effective date, and have a more flexible standard for current loans, such as sending the disclosure as soon as operationally possible.

> ***Determination of Maximum Prepayment Penalty*. Proposed § 226.20(c)(4)(i) provides that the creditor shall disclose the maximum prepayment penalty possible if the consumer prepays in full between the date the creditor delivers or mails the ARM adjustment notice and the last day the creditor may impose the penalty.**
>
> ***The Board requests comment on whether creditors should determine the maximum prepayment penalty during some other period, for example between the date the creditor prepares the ARM adjustment notice and the last day the creditor may impose the penalty. (pg. 43273)***

As noted in more detail later in this letter, AFSA members believe that the burden of requiring creditors to undertake complex calculations to determine a penalty amount that may not be imposed far outweighs any benefit to the consumer from such a disclosure. In the context of the ARM adjustment notice, a prepayment penalty disclosure is intended to notify the consumer that, if the consumer refinances the loan in order to avoid the interest rate adjustment, she will be liable for this sum in addition to any unpaid amounts. This goal can be achieved just as well with generic warning language, such as "If you refinance or otherwise prepay this loan before [date prepayment penalty expires], you may have to pay a large prepayment penalty in addition to any outstanding principal, interest or other charges that are due." Requiring a creditor to calculate and disclose a dollar amount that is unlikely to be imposed provides minimal benefit to the consumer and increases the cost of providing home loans.

> ***Creditor-Placed Property Insurance*. Proposed § 226.20(e)(1) would define "creditor-placed property insurance" as "property insurance coverage obtained by the creditor when the property insurance required by the credit agreement has lapsed." Section 226.20(e) would apply to secured closed-end loans, including mortgage and automobile loans.**
>
> ***The Board solicits comment as to whether this rule should also apply to HELOCs. (pg. 43275)***

AFSA members do not believe that this rule should apply to HELOCs.

> ***Creditor-Placed Property Insurance*. The Board believes that a 45-day notice period would allow the consumer reasonable time to shop for and provide evidence of insurance. The Board recognizes that it may take several days for the consumer to receive a notice sent by mail, but the consumer would still have at least one calendar month in which to shop for and purchase property insurance.**
>
> ***Comment is solicited, however, on whether a different time period would better serve the needs of consumers and creditors.(pg. 43276)***

Although AFSA members agree that consumers would benefit from advance notice of a creditor's intent to place insurance, the 45-day notice period could be problematic if the replacement insurance policy has a cancellation period of less than 45 days. Lapse of property insurance is risky for creditors. Upon learning of such a lapse, creditors must act immediately to obtain replacement insurance in order to protect their interest; they cannot wait until the 45-day notice period has passed. If a creditor places insurance at the beginning of the 45 day period, and the consumer reinstates his insurance policy or obtains a new policy, but does not provide the creditor with evidence of coverage until the end of the 45-day notice period, a 30-day cancellation period on the creditor's policy would have lapsed and the creditor would be unable to charge the consumer for the amount.

Further, it may be difficult for loan servicers to provide the borrower with a copy of the forced place insurance certificate within 15 days after the creditor had charged the borrower for this coverage. Loan servicers would need sufficient lead time to implement the new adjustment forms and complete system testing.

> ***<u>Creditor-Placed Property Insurance – Notice Contents</u>. Under proposed § 226.20(e)(ii)-(viii), the notice would also need to contain the following statements: (1) that the consumer is obligated to maintain insurance on the property securing the credit transaction; (2) that the required property insurance has lapsed; (3) that the creditor is authorized to obtain the property insurance on the consumer's behalf; (4) the date the creditor can charge the consumer for the cost of the creditor-placed property insurance; (5) how the consumer may provide evidence of property insurance; (6) the cost of the creditor-placed property insurance stated as an annual premium, and that this premium is likely significantly higher than a premium for property insurance purchased by the consumer; and (7) that the creditor-placed insurance may not provide as much coverage as homeowner's insurance.***
>
> ***The Board solicits comment on whether the notice should also contain statements, if applicable, that the creditor will receive compensation for obtaining creditor-placed property insurance and that the creditor will establish an escrow account to pay for the creditor-placed insurance premium. (pg. 43276)***

AFSA members do not oppose the inclusion of these statements if the Board adopts the creditor-placed insurance notice requirements. However, AFSA respectfully requests that the Board provide for preemption of state creditor-placed notice requirements. Some states require specific creditor-placed insurance notices that differ from the Board's proposed notice. It is possible in states that require specific language to appear in a notice, that consumers could receive both a federal and a state notice. In addition to the burden on creditors and servicers to comply with dual notice regimes, it would be confusing for consumers to receive two notices that are intended to achieve the same purpose.

> ***<u>Disclosure – Translation to Languages Other than English</u>. The Board solicits comment on whether it should use its rulemaking authority to require creditors to provide translations of credit disclosures. Comment is requested on whether the failure to provide credit disclosure translations is unfair or deceptive, or impedes the informed use of credit. Comment is also requested on potential litigation issues, such as whether a translation would be admissible into evidence or whether an inaccurate translation would toll TILA's statute of limitations or extend the right of rescission. Finally, comment is requested on the effectiveness of state laws that require translations of disclosures or documents and whether the Board should adopt similar regulations.***

The Board requests comment on the following translation issues:

• What is the scope of the problem? That is, approximately how many consumers do not understand TILA disclosures because of language barriers?
• Should creditors be required to provide consumers with translations of required TILA disclosures? If such translations were required, what should be the trigger for such disclosures (e.g., the language of the negotiation, the language of the creditor's presentation, the language of the creditor's advertisement, a consumer request)?
• Should there be an exception for consumers who are accompanied by an interpreter?
• Would a translation requirement negatively affect consumers and the type and terms of credit offered because creditors would be reluctant to risk liability for engaging in transactions in a language other than English?

Finally, the Board solicits comment on the following coverage issues:

• Should a translation requirement apply only to mortgages loans, or also to other types of credit products, such as auto loans or credit cards?
• Should a translation requirement apply only to the TILA disclosures provided before or at consummation, or to any credit disclosures or documents provided before, at, or subsequent to consummation?
• Should a translation requirement apply to Web sites that provide early TILA disclosures?
• Should a translation requirement apply only to one or a few languages, or should it apply to any foreign language? (pg. 43277)

There should be no change to the current TILA provisions regarding use of translated disclosures.

The cost of requiring foreign language disclosures would be prohibitive. It is very expensive to translate disclosures and contracts. Creditors generally outsource this work to a third-party translation service. Using foreign language disclosures requires that creditors maintain a dual set of forms. Every time the English form changes, the foreign language form must also change. This adds cost in terms of translations and loading and mapping forms on the system.

Mandating translated disclosures would effectively require creditors to provide bilingual support throughout the customer relationship. In other words, creditors would not only have to offer translated disclosures and forms, but also would have to have multi-lingual employees to interact with customers and explain these forms, which other employees would not be able to read. Failing to provide such support, while simultaneously providing limited disclosures in languages other than English, could potentially increase the risk of claims for unfair and deceptive practices.

We believe that the Board should permit disclosures to continue to be made in English or a foreign language, and if a foreign language is selected, an English translation should be required if requested by the consumer. Since different segments of U.S. consumers are fluent in different non-English languages, and because there are so many such non-English languages used, we do not support a requirement that creditors would have to make disclosures available in any language requested by a consumer. At the same time, should creditors wish to make non-English languages available, then they should be free to do so, but if they do, they should also be required to provide English language material should they be requested by the consumer. Consider the large number of languages that are spoken in the U.S. Some languages have limited or no written language. It will be extremely burdensome and costly for lenders to develop the capability to print documents in any language that the consumer requests. This significant cost would have a disproportionately harsh impact on smaller lenders, who may not be able to sustain the cost.

With respect to whether this requirement should apply to other disclosures, note that some forms, like the HUD-1 Settlement Statement required under RESPA, have specific formats that may not work with non-Roman alphabets and some concepts may take longer to explain in other languages and so may not fit on the prescribed forms. Also it may be difficult to translate some concepts accurately, especially for cultures that don't use interest rates.

> ***<u>Loan Originator Payments based on Principal Amount of Loan</u>. The Board is soliciting comment on an alternative that would allow loan originators to receive payments that are based on the principal loan amount, which is a common practice today. The Board is also soliciting comment on whether it should adopt a rule that seeks to prohibit loan originators from directing or "steering" consumers to loans based on the fact that the originator will receive additional compensation, unless that loan is in the consumer's interest. The Board is expressly soliciting comment on whether the rule would be effective in achieving the stated purpose. Comment is also solicited on the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects the rule might have. These proposals and alternatives are discussed more fully below. (pg. 43279)***

For the reasons discussed above, AFSA members believe that the proposed regulations limiting compensation based on the terms and conditions of a loan should not apply to employees of creditors. However, as also noted below, we believe the rule, as it applies to mortgage brokers should not limit compensation based on loan amount or other terms that the broker generally cannot control.

Also, as noted above, if the Board imposes compensation limits on creditor's employees, AFSA members believe that employees should be able to use the safe harbor suggested by the Board to avoid these limits since the Board recognizes that there is no "steering" concern where the borrower is given sufficient loan choices and selects the loan best suited for the borrower's own situation.

This provision is a particular concern because the Board is proposing to include this restriction under Section 226.36 of Regulation Z under its authority under Section 129(l)(2) of TILA.

Section 129 generally pertains to HOEPA covered loans. However, TILA also gives the Board the right to prohibit acts or practices in connection with: (a) mortgage loans that the Board finds to be unfair, deceptive or designed to evade the requirements of Section 129 of TILA; and (b) refinancing of mortgage loans that the Board finds to be associated with abusive lending practices, or that are otherwise not in the best interest of the borrower.

The fact that the Board acted under this section is important as it expands the potential civil liability damages for a violation of certain new Regulation Z requirements to also include an "amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material". This component of damages is normally limited to HOEPA covered loans. The inclusion of this item as special statutory damages for certain non-HOEPA covered loans raises the creditor's overall liability exposure for non-compliance.

> ***Loan Originator Payments – Alternative based on Loan Amount*. Alternative to permit compensation based on loan amount. The Board is also publishing for comment a proposed alternative that would allow loan originator compensation to be based on the loan amount, which would not be considered a transaction term or condition for purposes of the prohibition in § 226.36(d)(1). Currently, the compensation received by many mortgage originators is structured as a percentage of the loan amount. Other participants in the mortgage market, such as creditors, mortgage insurers, and other service providers, also receive compensation based on the loan amount.**
>
> ***The Board is therefore seeking comment on whether prohibiting originator compensation on this basis might be unduly restrictive and unnecessary to achieve the purposes of the proposed rule. (pg. 43284)***

The Board has solicited comment on whether compensation that is based on loan amount should be considered a "payment that is based on a term or condition of the loan." AFSA members do ***not*** believe that loan amount should be considered a loan term for these purposes.

As the Board points out, virtually all participants in the mortgage market—including institutional investors, mortgage insurers and the GSEs themselves—pay and receive compensation based on the loan amount. Prohibiting loan originators from being paid based on loan amount, while compensation in every other part of the mortgage supply chain is based on loan amount, would indeed be unduly restrictive.

In purchase money and refinance transactions, the amount needed to pay off the borrower's loan is determined before the loan originator becomes involved. And in the case of cash-out refinances, the borrower normally determines how much cash is needed, often based on the amount of existing debts. There is actually little opportunity for a loan originator to influence the amount of the loan. In addition, underwriting guidelines limit the amount of the loan for which the borrower will qualify.

> ***Loan Originator Payments – Alternatives*. The Board is publishing two alternative versions of proposed § 226.36(d)(1). The first alternative would consider the loan amount as a term or condition of the loan, thereby prohibiting the payment of originator compensation as a percentage of the loan amount. The second alternative provides that the loan amount is not a term or condition of the loan, and would permit such payments. The second alternative would be accompanied by proposed comment 36(d)(1)-10 to provide further guidance. Under proposed comment 36(d)(1)-10, a loan originator could be paid a fixed percentage of the loan amount even though the dollar amount paid by a particular creditor would vary from transaction to transaction and would increase as the loan amount increases. Comment 36(d)(1)-1 also permits compensation paid as a fixed percentage of the loan amount to be subject to a specified minimum or maximum dollar amount. For example, a loan originator's compensation could be set at one percent of the principal loan amount but not less than $1,000 or greater than $5,000.**

> ***The Board seeks comment on the two alternatives. Further, if the final rule permits compensation based on the loan amount, should creditors be permitted to apply different percentages to loans of different amounts? Should creditors be allowed to pay a larger percentage for smaller loan amounts, which could be an incentive to originate loans in lower- priced neighborhoods that ensures that the originator receives an amount that is comparable to loans originated in high-priced neighborhoods? If so, should creditors also be permitted to pay originators a higher percentage for larger loan amounts? (pg. 43284)***

In addition to allowing creditors to pay originators more for higher loan amounts, the Board should specifically allow creditors, if they so choose, to pay a higher commission rate for lower loan amounts. As the Board surmises, this would provide an incentive for loan originators to originate loans in lower-priced neighborhoods by ensuring that the originator would receive an amount that is comparable to loans originated in higher priced neighborhoods.

> ***<u>Loan Originator Payments - Record Retention Requirements</u>. Creditors are required by § 226.25(a) to retain evidence of compliance with Regulation Z for two years. Proposed staff comment 25(a)-5 would be added to clarify that, to demonstrate compliance with § 226.36(d)(1), a creditor must retain at least two types of records. First, a creditor must have a record of the compensation agreement with the loan originator that was in effect on the date the transaction's rate was set. The Board believes this date is most likely when a loan originator's compensation was determined for a given transaction.***
>
> ***The Board seeks comment, however, on whether some other time would be more appropriate, in light of the purposes of the proposed rule. (pg. 43285)***

This will create various operational issues as more information would need to be tracked and retained resulting in additional operating costs which would likely be passed on to the consumer in form of higher loan costs.

Existing disclosures would appear to be sufficient as the creditor/mortgage broker currently has to disclose its fees/charges to the consumer which enables the consumer to shop for competitive loan rates and fees. Requiring the creditor to further explain its internal allocation of fees/charges appears unnecessary and would further add to the costs of originating the loan.

> ***<u>Loan Originator Payments - Record Retention Requirements</u>. Proposed comment 25(a)-5 would state that a creditor must retain a record of the actual amount of compensation it paid to a loan originator in connection with each covered transaction. The proposed comment would clarify that, in the case of mortgage brokers, the HUD-1 settlement statement required under RESPA would be an example of such a record because it itemizes the compensation received by a mortgage broker. The Board solicits comment on whether any comparable record exists for loan officer compensation that should be referenced in proposed comment 25(a)-5.***
>
> ***The Board solicits comment on whether there are other records that should be subject to the retention requirements. The Board also seeks comment on whether***

> ***the existing two-year record retention period is adequate for purposes of the rules governing loan originator compensation.***
>
> ***The current record retention requirements in § 226.25 apply only to creditors. Although loan originator compensation has historically been paid by creditors, the prohibitions in §226.36(d) apply more broadly to any person to prevent evasion by restructuring of payments through non-creditors. Accordingly, the Board expects that payments to loan originators will continue to be made largely by creditors.***
>
> ***The Board seeks comment on whether there is a need to adopt requirements for retaining records concerning originator compensation that would apply to persons other than creditors, including the relative costs and benefits of that approach. (pg. 43285)***

Although the Board notes that mortgage broker compensation would be noted on the HUD-1, this may not always be the case under the new RESPA rules as the loan originator's compensation would reflect a composite amount of the lender and mortgage broker's compensation.

> ***Optional Proposal on Steering by Loan Originators. The Board is also soliciting comment on whether it should adopt a rule that seeks to prohibit loan originators from directing or "steering" consumers to loans based on the fact that the originator will receive additional compensation, when that loan may not be in the consumer's best interest. (pg. 43285)***

AFSA members agree that it is indefensible for mortgage brokers to "steer" consumers toward loans with higher interest rates or other less favorable terms based solely on the fact that the broker will receive additional compensation. The Board appropriately notes that the steering provisions in the Proposed Rule are inappropriate for lender employees, and AFSA supports that position.

> ***Safe harbor re: Steering by Loan Originators. The Board is also publishing provisions that would facilitate compliance with the prohibition in proposed § 226.36(e)(1). Under proposed § 226.36(e)(2) and (3), a safe harbor would be created, and there would be no violation if the loan was chosen by the consumer from at least three loan options for each type of transaction (fixed-rate or adjustable-rate loan) in which the consumer expressed an interest, provided the following conditions are met. The loan originator must obtain loan options from a significant number of creditors with which the originator regularly does business. For each type of transaction in which the consumer expressed an interest, the originator must present and permit the consumer to choose from at least three loans that include: the loan with the lowest interest rate, the loan with the second lowest interest rate, and the loan with the lowest total dollar amount for origination points or fees and discount points. The loan originator must have a good faith belief that these are loans for which the consumer likely qualifies. If the originator presents more than three loans to the consumer, the originator must highlight the three loans that satisfy the lowest rate and points criteria in the rule. Proposed comments 36(e)(2)-1 and 36(e)(3)-1 though -4 would provide guidance on the application of the rule.***

> ***Comment is expressly solicited on whether the proposed rule in § 226.36(e) and the accompanying commentary would be effective in achieving the stated purpose. Comment is also solicited on the feasibility and practicality of such a rule, its enforceability, and any unintended adverse effects the rule might have. (pg. 43286)***

If the Board adopts the safe harbor as proposed, it also should be available for loan originators that offer the three required loan options for each type of transaction. If the loan originator proceeds under the safe harbor, the concerns about steering are eliminated. Given that there are no concerns about steering in this situation, the creditor should be able to compensate the loan originator in any way the creditor deems appropriate when the loan originator proceeds under the safe harbor.

> ***Application of 226.36 to HELOCs. The Board requests comment on whether any or all of the protections in § 226.36 should apply to HELOCs. Specifically, what evidence exists that shows whether loan originators unfairly manipulate HELOC terms and conditions to receive greater compensation, injuring consumers as a result? What evidence is there as to whether appraisals obtained for HELOCs have been influenced toward misstating property values? To what extent do creditors contract out HELOC servicing to third parties, thus undermining the Board's premise regarding aligned interests between servicers and consumers? Whether third parties or the original creditors primarily service HELOCs, what evidence shows whether they engage in the abusive servicing practices addressed by § 226.36(c)? (pg. 43286)***

AFSA members believe that the provisions of § 226.36 should not apply to HELOCs.

> ***Timing of Insurance/Debt Cancellation Disclosures. The Board seeks comment on whether it should continue to permit creditors to make the insurance or debt cancellation disclosures under proposed § 226.4(d) together with or separately from other required disclosures. Consumer testing showed that many participants found these disclosures too long and complex, and as a result they do not read or only skim the disclosures. The Board is concerned that adding the insurance information to the information about loan terms required by proposed § 226.38 will result in "information overload." (pg. 43288)***

AFSA members share the Board's concern that requiring the insurance or debt cancellation disclosures to be made as part of the required disclosures would increase the chance consumers would not carefully read all of the required disclosures. Thus, we urge the Board to continue to permit creditors to make the insurance and debt cancellation disclosures together with or separately from other required disclosures. Some creditors make these disclosures separately from the other required disclosures and generally only include these disclosures in the "federal box" when the disclosures are simple and concise.

> ***Customized vs. Multipurpose Disclosure forms. The Board seeks comment, however, on whether creditors already provide consumers with customized disclosures forms for mortgage loans in the regular course of business, or the extent to which creditors rely on multi-purpose forms.***
>
> ***The Board seeks comment on potential operational changes, difficulties, or costs that would be incurred to implement the requirement to have transaction-specific disclosures for transactions secured by real property or a dwelling. (pg. 43289)***

Many AFSA members currently use multi-purpose forms. This is particularly true for smaller business where mortgage lending may not be a significant portion of their operations. For these creditors in particular it is important to retain the ability to use multi-purpose disclosure forms.

We also note some lenders will take a lien on real estate as an abundance of caution, where the real estate is not considered the primary collateral on the loan. For these transactions it is also helpful to be able to use multi-purpose forms to take the real estate collateral when these relatively rare situations occur.

> ***<u>Disclosure Font Sizes and Graphic vs. Text Based</u>. The Board seeks comment on whether the APR should be made more or less prominent using a larger or smaller font-size, and whether different graphs or visuals could be used to provide better context for the APR. The Board also seeks comment on the relative advantages and disadvantages of a graphic-based versus text-based approach to disclosing the APR, and the potential operational changes, difficulties, or costs that would be incurred to implement the graphic-based APR disclosure requirement for transactions secured by real property or a dwelling. (pg. 43291)***

Font-Size: AFSA does not object to a requirement that the APR to be in a larger font-size than the accompanying text. However, mandating a specific font size is problematic for two reasons. First, this could take us back to the pre-Simplification days when lawsuits were filed challenging whether a particular type was fractionally too small. Second, an exact font size has less meaning today than it has in the past. Today, disclosure documents are often displayed on various electronic screens, printed by customers on a variety of printers or received by means of fax. All of these disclosures methods may reproduce documents in varying ways and distort the intended font size.

Graphic-Based Display: We do not support the use of a graphical display for the APR. The cost of developing a variable chart is significantly greater than providing specific information to complete a form, and presents significant challenges with respect to programming. Also, we are concerned what standard our members would be held to in achieving an accurate graphical display. Would a creditor be subject to civil money penalties, or even rescission, for producing a chart that places the offered APR slightly too close or too far away from "the high cost zone"? We believe providing information in a textual form is sufficient for disclosure purposes.

> ***<u>Prepayment Penalty Fees</u>. Proposed comment 38(a)(5)-2(iii) states that origination or other charges that a creditor waives on the condition that the consumer does not prepay the loan are prepayment penalties, for transactions secured by real property or a dwelling. Fees imposed for a preparing a payoff statement and performing other services when a consumer prepays the obligation would not be considered a prepayment penalty under the proposed rule, however. Such fees are not strictly linked to a consumer's prepaying the obligation, as they are charged at the end of a loan's term as well.***
>
> ***The Board solicits comment on this distinction. (pg. 43295)***

AFSA members oppose including reimbursement of waived closing costs in the calculation of the finance charge. By waiving closing costs, the creditor has provided a benefit to the consumer at the cost of the creditor. If this exception is eliminated, creditors will likely stop offering no-closing-cost loans. Potential borrowers who are unable to produce thousands of dollars up-front to pay for closing costs will not be able to obtain mortgage loans.

AFSA members do acknowledge that there is a distinction between reimbursement of waived closing costs and other types of fees. Nonetheless, AFSA members, for the reasons stated above, request that reimbursed closing costs be excluded from the calculation of the finance charge.

> ***Prepayment Penalty Fees**. If the penalty amount depends on both the loan balance and the time at which the consumer prepays, under the proposed rule creditors would disclose the greater of (1) the penalty charged when the balance is the highest possible and (2) the penalty charged when the penalty rate is the highest possible (two-stage penalty calculation).*
> ***The two-stage penalty calculation produces an amount that approximates, but does not necessarily equal, the maximum prepayment penalty. The Board believes, however, that the amount determined using the two-stage penalty calculation ordinarily will be sufficiently close to the actual maximum prepayment penalty that it would be appropriate for creditors to use the method in complying with §§ 226.38(a)(5) and (d)(1)(iii).***
>
> ***The Board solicits comment on whether the Board should permit creditors to use the two-stage penalty calculation where the penalty rate increases. Will this "two-stage penalty calculation" method produce a prepayment penalty amount that sufficiently approximates the maximum prepayment penalty possible for a loan? Are there cases where there will be a significant disparity between the maximum penalty determined using the two-stage penalty calculation and the actual maximum penalty? (pg. 43296)***

It is inappropriate to require creditors to undertake complex calculations that represent theoretical possibilities, at best. The point of the prepayment penalty disclosure is to give the consumer some understanding that a large payment may become due when it is not expected. It would be just as effective to use generic warning language, such as "If you prepay this loan within the first two years, you may have to pay a large prepayment penalty in addition to any outstanding principal, interest or other charges that are due." Requiring a creditor to calculate and disclose a dollar amount that is unlikely (or in the case of the two-state calculation) will not be imposed provides no benefit to the consumer and increases the cost of providing home loans. If a dollar amount is required, it should be based on a simple calculation, such as the amount due if the loan was repaid on day one.

> ***Graph of Rates including APR**. The Board requests comment on any potential operational difficulty in producing the graph proposed in § 226.38(b)(2) in an accurate and timely manner. Comment is also sought on whether a different graphical device would better draw consumers' attention to the APR and illustrate the APR's utility to consumers. (pg. 43298)*

As noted above, a graphical presentation of the APR is expensive and could produce needless litigation. It is also unclear how it helps to tell a consumer about a "best" rate for which the consumer does not qualify. If the Board is concerned that borrowers are paying rates that are higher than they are qualified for, the Board should consider incorporating this proposed disclosure into a finalized Risk Based Pricing Notice that has yet to be adopted under the

FACTA, and which was the law Congress intended to inform consumers about higher credit costs. In addition, enforcement of unfair pricing practices is best handled under the Equal Credit Opportunity Act and other fair lending laws.

Additionally, the graphic display may imply that the lender is offering a 1% discount. It is a confusing and misleading disclosure and should be eliminated.

> ***<u>Calculation of 1 percentage-point Reduction in APR</u>. The Board notes that the proposed method does not result in an exact 1 percentage-point reduction in APR, but is likely to be within a few basis points of a 1 percentage-point reduction. The results would be sufficiently accurate to show consumers that a lower APR will yield savings. Methods that might result in an actual 1 percentage-point reduction in the APR would likely be more complicated and would vary depending on the terms of the loan, such as whether the rate is variable and whether the payments amortize the loan. The Board believes that any additional consumer benefit from disclosing the precise 1 percentage-point APR reduction would not be sufficient to offset the costs of a more complex calculation method.***
>
> ***The Board seeks comment, however, on its proposed method and whether another method would achieve the objectives of the disclosure without imposing undue compliance burdens. (pg. 43298)***

Neither a precise nor an approximate one-percentage point reduction calculation method is appropriate. This disclosure presumes that the borrower qualifies for such a reduction. Most borrowers will not. If borrowers are being assigned higher rates than those they otherwise qualify for then this is an Equal Credit Opportunity Act enforcement matter. At most, the Board should consider a statement that applicants should ask their lender about options for obtaining a lower rate.

Further, the example in the model form is not reflective of a 1 percentage point reduction in APR, rather it is reflective of a 1 percentage point drop in interest rate. Should the Board insist on this disclosure, the model form should be revised so that the proposed disclosure is accurate.

> ***<u>Exemptions from APR Plotting</u>. Proposed section 226.38(b)(5) would exempt construction loans, bridge loans, and reverse mortgages from the requirement to show the APR plotted on a graph (§ 226.38(b)(2)) and the statement of the APOR and the higher-priced loan threshold (§ 226.38(b)(3)). The exempted transactions are also exempt from the definition of a higher-priced mortgage, under § 226.35(a)(3) in the Board's 2008 HOEPA Final Rule. The Board does not publish an average prime offer rate for construction, bridge, or reverse mortgage loans. Thus, an exemption seems appropriate.***
>
> ***The Board seeks comment, however, on whether these transactions should nevertheless be subject to § 226.38(b)(2) and (3). (pg. 43298)***

As noted above, no loans should be subject to this meaningless disclosure.

> ***<u>Disclosures of escrows for Taxes and Insurance</u>. The Board solicits comment on whether premiums or other amounts for credit life insurance, debt suspension and***

debt cancellation agreements and other similar products should be included or excluded from the disclosure of escrows for taxes and insurance. (pg. 43302)

AFSA believes that it would be inappropriate for credit insurance to be included in the amount escrowed by the creditor. Most state laws require lenders to immediately forward to the insurer any credit insurance premiums received; therefore the lender would not be allowed to deposit such premiums into escrow. Additionally, MOB credit insurance is now almost exclusively the only type of credit insurance written on real estate loans. After a majority of the states adopted predatory lending legislation, single premium credit insurance is, by and large, no longer written on real estate loans. Accordingly, there is no need to escrow for credit insurance because the premium payments are made monthly, to match the monthly term of the product, rather than in a single premium. The premiums are also paid in arrears, not in advance, for coverage already provided.

Escrow is appropriate for taxes and homeowner’s insurance because those annual costs are typically very substantial and escrowing ensures their payment, protecting the customer from inadvertent default on her real estate loan. The cost of credit insurance, on the other hand, is minimal. Failure to pay for credit insurance will not cause the customer to be in default on his or her loan. Additionally, the creditor requires the borrower to pay taxes and maintain homeowner’s insurance. Those expenditures are not optional. Conversely, credit insurance is almost always an optional product. To mix optional, voluntary credit insurance with required escrow amounts for taxes and homeowner’s insurance will create consumer confusion as to what insurance is required and what is optional.

Escrow disclosures are regulated under the Real Estate Settlement Procedures Act and are subject to extensive disclosure requirements issued by the Department of Housing and Urban Development, which disclosures are being revised and enhanced as of January 1, 2010. The preamble to the proposed regulation notes that “The Board anticipates working with the Department of Housing and Urban Development (HUD) to ensure that TILA and Real Estate Settlement Procedures Act of 1974 (RESPA) disclosures are compatible and complementary . . . .” 74 FR 43232, 43233 (Aug. 26, 2009). The Board should give meaning to this platitude and avoid duplicative disclosures, particularly when these disclosures are the subject matter of a federal statute for which the Board has been given no regulatory authority. To justify its intrusion in another area governed by RESPA, the Board merely submits that “Total settlement charges would be added to the TILA form because consumer testing conducted by the Board found that consumers wanted to have settlement charges disclosed on the TILA form.” 74 FR 43232, 43234 (Aug. 26, 2009).

It is AFSA’s understanding that the consumer testing was limited to evaluating consumer comprehension of the current TILA disclosures. A more meaningful test would have been to evaluate the consumer’s level of comprehension of the loan terms after having received all legally required mortgage disclosures, including those outside of TILA. Limiting the Board’s review to the disclosures required under Regulation Z ignores the value of the disclosures consumers receive under RESPA, FCRA and ECOA regarding the mortgage lending process. Further, a study from 2008 cannot account for the enhanced understanding customers will have from the soon to be effective RESPA rules, as well as the redisclosure requirements under the MDIA and RESPA, which serve to highlight changes to the consumer in advance of loan closing. In addition, pending regulations regarding the risk-based pricing notice that have been in development for 5 years under the FACTA would significantly address the Board’s concern that consumers do not fully understand the way mortgage loans are priced.

AFSA agrees that a consolidated mortgage disclosure regime is needed. At the moment, HUD and the Board are attempting to impose contradictory consolidated disclosure regimes. These conflicting disclosures will confuse, not help consumers. AFSA looks forward to working both with the Board and HUD to either jointly issue regulations to improve the home financing experience or to address these issues with Congress.

Note that credit insurance and debt protection are optional products that can be cancelled at any time, unlike taxes and insurance. If the credit insurance premiums are escrowed, then they would fall under the escrow requirements of RESPA. As explained more fully earlier in this letter, AFSA members suggest a separate line or section for disclosure of credit insurance/debt cancellation premiums.

> ***<u>Fixed Rate Payment Option Mortgages</u>. The Board developed and tested an interest rate and payment summary table designed to inform consumers about the risks of a payment option loan. The proposed rules would also require disclosure of the interest rate and payment for a loan with negative amortization that is not an adjustable rate mortgage. However, the Board found no examples of such loans in the marketplace, and seeks comment on whether such loans are offered and if so, whether § 226.38(c) provides sufficient guidance on disclosing such loans. (pg. 43304)***

AFSA is indifferent to this regulation. To the best of our knowledge, our members do not offer payment option loans. We also do not believe that payment option loans are generally available from lenders, or acceptable to Wall Street or other purchasers.

> ***<u>Disclosure Verbiage re: Further Assistance</u>. To improve consumers' ability to make informed decisions about credit, the Board proposes § 226.38(f)(5) to require the creditor to disclose that if the consumer does not understand any of the disclosures, then the consumer should ask questions. The creditor would also disclose that the consumer may obtain additional information at the Web site of the Federal Reserve Board and disclose a reference to that Web site. The Board will enhance its Web site to further assist consumers in shopping for a mortgage. Although it is hard to predict from the results of the consumer testing how many consumers might use the Board's Web site, and recognizing that not all consumers have access to the Internet, the Board believes that this Web site may be helpful to some consumers as they shop for a mortgage.***
>
> ***The Board seeks comment on the content for the Web site. (pg. 43311)***

AFSA has consistently supported efforts to educate the public regarding consumer financial products – and no financial product is more important than home mortgage loans. We support the Board's efforts to provide information to consumers through all available channels, including the use of the Board's Web site.

> ***<u>Disclosure of Creditor Contact Information</u>. Proposed § 226.38(g)(1) would require the same disclosure. In addition, proposed comment 38(g)(1)-1 would parallel existing comment 18(a)-1 to clarify that use of the creditor's name is sufficient, but the creditor may also include an address and/or telephone number. In transactions with multiple creditors, any one of them may make the disclosures, but the one doing so must be identified.***

The Board solicits comment on whether the creditor making the disclosures should be required to disclose its contact information, such as its address and/or telephone number. (pg. 43311)

AFSA does not object to requiring this contact information, provided that a toll free number is not required. A number of AFSA's members are not centralized, so providing a toll free number would be problematic.

<u>Loan Originator Identity</u>. The Board notes that the Board, FDIC, OCC, OTS, NCUA, and Farm Credit Administration have published a proposed rule to implement the SAFE Act. See 74 FR 27386; June 9, 2009. In this proposed rule, the federal banking agencies have requested comment on whether there are mortgage loans for which there may be no mortgage loan originator. For example, the agencies query whether there are situations where a consumer applies for and is offered a loan through an automated process without contact with a mortgage loan originator. See id. at 27397.

The Board solicits comments on the scope of this problem and its impact on the requirements of proposed § 226.38(g)(2). (pg. 43312)

No AFSA members reported the use of such automated mortgage origination systems at present. However, with the growth of high-speed Internet access, enhanced interactive web sites and expanded customer acceptance of Internet transactions, the development of such systems seem inevitable. Thus, we believe the agencies should consider the possibility that such systems may be used in the near future. It would neither be informative to the regulator, nor helpful to the consumer, to require a mortgage loan originator to include their number on mortgage forms if they were not involved in the origination system. AFSA encourages the agencies to consider adopting a requirement that when no individual is involved in the loan origination process that a descriptor, such as "automated process" be substituted for a mortgage loan originator identification number. That would permit regulators to identify whether such automated systems create issues in the loan origination process.

<u>Timing of Itemization of Amount Financed v. RESPA HUD-1</u>. The Board believes that to permit substitution of the HUD-1 settlement statement for the itemization without requiring that it be delivered three business days before consummation would be inconsistent with the purposes of the MDIA amendments. The Board seeks comment on whether creditors would continue to make significant use of this alternative as proposed § 226.38(j)(1)(iii) would implement it and, if not, whether the alternative should be retained. If it should be retained, the Board seeks comment on how it might be structured without requiring that the HUD-1 settlement statement be received by the consumer earlier than RESPA requires while also preserving the purposes of the MDIA. (pg. 43314)

The ability to satisfy the Itemization of Amount Financed disclosure requirement through use of the GFE and HUD-1 should be retained. Presumably if redisclosure of the TILA is required 3 days in advance of closing under MDIA, redisclosure of the GFE would also be necessary. Since the GFE is used for initial disclosures, AFSA believes the GFE should continue to acceptable as an alternative to the Itemization of Amount Financed up to the closing date. This would enable the HUD-1 timing requirements to be unchanged.

> ***<u>Relationship to State High Cost Laws</u>. The Board also is aware that many states regulate "high-cost" or "high-priced" mortgage loans, under laws that resemble HOEPA. Many such state laws set their coverage tests in part on the APR of the transaction. The proposed rule would overlap with these laws indirectly by virtue of the proposal to modify the definition of the finance charge for closed-end mortgage transactions, which would result in APRs being higher generally and potentially more loans being covered under such state laws.***
>
> ***The Board seeks comment regarding any state or local statutes or regulations that would duplicate, overlap, or conflict with the proposed rule. (pg. 43320-21)***

As to state high cost loans, we believe that the Board's research may have understated the impact of the proposed changes. The research described by the Board utilized a database of prime and near prime loans, and therefore did not gauge the impact on subprime loans. A $200,000 loan amount was used, but the impact of the Board's changes will be much greater on smaller loan sizes. Most importantly, the Board's research focused only on the APR thresholds of state high cost loan laws but did not consider how many loans would exceed the points and fees thresholds of these state laws. While only a few states have APR thresholds lower than the HOEPA APR thresholds, there are 20 states that have high cost loan law thresholds lower than HOEPA's 8% points and fees threshold. Furthermore, many state high cost loan laws incorporate Regulation Z's definitions of points and fees, finance charges, and exclusions from the finance change so the proposed changes if enacted will dramatically increase the number of loans that exceed the states' points and fees threshold. This will result in a dramatic decrease in the availability of credit in these states, particularly in the non-prime marketplace as the market for high-cost loans is practically non-existent due to liability provisions under high-cost loan laws and the stigma attached to those loans.

As to HOEPA loans made under section 226.32 of Regulation Z, the Board's research did not consider the impact of the HOEPA points and fees threshold. If the Board decides to eliminate most finance charge exclusions, at a minimum it should amend the definition of "points and fees" under section 226.32(b)(1) to continue to exclude all or most of the third party fees currently excluded from that definition. The charging of customary fees by third parties is not an indication that the creditor is charging excessive fees and should not cause a loan to become a HOEPA loan. In light of the fact that the definition of points and fees under Section 103aa(4) envisioned that these third party fees would be excluded provided that they met certain conditions, we believe that the Board has the authority to continue to exclude these fees from the points and fees.

Further, in states with a law that sets forth a specific APR calculation or trigger, rather than incorporating Reg Z by reference, lenders will have to make two separate APR calculations. This will be overly burdensome and confusing.

We also note that the state statutes more than likely refer to the "Truth-in-Lending Act" rather than Reg Z. This would cause problems because the Board's proposed re-definition of finance charge in Reg Z conflicts with TILA's definition. So, a state lender could, arguably, continue calculating APR under the TILA definition. But to do so would cause confusion and uncertainty as to the proper calculation. This does not benefit the consumer, and only increases creditors' regulatory and litigation risk.

AFSA appreciates the opportunity to comment on the Proposed Rule. Please feel free to contact me with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.

Respectfully submitted,

Bill Himpler
Executive Vice President
American Financial Services Association

Appendix A

HOEPA (Section 32) Mortgage Rules

Original APR Figures*

	Number of Loans	Average Loan Amount
High Cost	17**	$87,924
Not High Cost	105,936	$202,703
Total Loans	**105,953**	**$202,684**

Recalculated APR Figures

	Number of Loans	Average Loan Amount
High Cost	2,342	$111,328
Not High Cost	103,611	$204,749
Total Loans	**105,953**	**$202,684**

State High-Cost and Predatory Rules

Original APR Figures

	Number of Loans	Average Loan Amount
High Cost	208***	$142,409
Not High Cost	105,745	$202,803
Total Loans	**105,953**	**$202,684**

Recalculated APR Figures

	Number of Loans	Average Loan Amount
High Cost	11,795	$141,898
Not High Cost	94,158	$210,299
Total Loans	**105,953**	**$202,684**

Federal Higher-Priced Mortgage Rules

Original APR Figures

	Number of Loans	Average Loan Amount
High Cost		
Not High Cost	105,953	$202,684
Total Loans	**105,953**	**$202,684**

Recalculated APR Figures

	Number of Loans	Average Loan Amount
High Cost	8,640	$149,700
Not High Cost	97,313	$207,388
Total Loans	**105,953**	**$202,684**

* The analysis of whether loans would become HOEPA loans or become subject to state high-cost or predatory loan rules was based on the APR triggers only. The total fees and costs tests were not used in this analysis.

** As with most, if not all, AFSA members, It was against this lender's policy for any loans to be made subject to HOEPA. However, mistakes by closing closing agents (such as the inclusion of an unauthorized fee) will occasionally cause a loan to become subject to HOEPA.

*** Lenders determine on a state-by-state basis whether to make loans subject to state high-cost and predatory loan laws. These decisions are made based on the clarity of, and sanctions in, the various state laws. Thus, while this lender made 208 loans that were subject to these state laws, it would not have made all of the 11,795 loans that would have been subject to these states laws under the Proposed Rule.

State by State Shift from Not High Cost to High Cost Based on APR Tests

Sorted by percent of loans that would become High Cost via HOEPA (Section 32)

State	Total Loans	VIA HOEPA (Section 32) Would Become High Cost	VIA HOEPA (Section 32) % to Become High Cost	VIA STATE REGULATIONS Would Become High Cost	VIA STATE REGULATIONS % to Become High Cost	VIA Higher Priced Regulations Would Become High Cost	VIA Higher Priced Regulations % to Become High Cost	State Has High Cost Regulations
OK	1,206	158	13.1%	168	13.9%	195	16.2%	YES
FL	3,635	363	10.0%	309	8.5%	392	10.8%	YES
ND	171	16	9.4%	-	0.0%	33	19.3%	NO
NY	4,361	399	9.1%	2,830	65.2%	640	14.7%	YES
TX	4,146	185	4.5%	184	4.4%	332	8.0%	YES
LA	1,232	50	4.1%	-	0.0%	159	12.9%	YES
AL	2,204	84	3.8%	-	0.0%	267	12.1%	NO
PA	6,062	210	3.5%	88	1.5%	533	8.8%	YES
NE	516	17	3.3%	-	0.0%	78	15.1%	NO
VA	4,896	131	2.7%	202	4.1%	334	6.8%	YES
IA	691	18	2.6%	-	0.0%	84	12.2%	NO
MI	5,340	119	2.2%	-	0.0%	487	9.1%	NO
AR	1,109	24	2.2%	124	11.2%	145	13.1%	YES
KS	1,075	23	2.1%	-	0.0%	161	15.0%	NO
MT	540	11	2.0%	-	0.0%	50	9.3%	NO
MO	1,846	37	2.0%	-	0.0%	177	9.6%	NO
MS	857	17	2.0%	-	0.0%	132	15.4%	NO
TN	2,073	40	1.9%	291	14.0%	201	9.7%	YES
IN	2,166	41	1.9%	199	9.2%	233	10.8%	YES
AZ	3,002	55	1.8%	-	0.0%	182	6.1%	NO
ID	717	13	1.8%	-	0.0%	69	9.6%	NO
SD	229	4	1.7%	-	0.0%	24	10.5%	NO
WV	1,046	17	1.6%	-	0.0%	161	15.4%	YES
NV	1,309	21	1.6%	-	0.0%	70	5.3%	NO

MD	3,449	50	1.4%	108	3.1%	150	4.3%	YES
AK	504	7	1.4%	-	0.0%	46	9.1%	NO
VT	710	9	1.3%	-	0.0%	44	6.2%	NO
UT	648	8	1.2%	8	1.2%	70	10.8%	YES
NH	1,047	12	1.1%	-	0.0%	40	3.8%	NO
DE	795	8	1.0%	-	0.0%	49	6.2%	NO
WA	3,276	32	1.0%	-	0.0%	135	4.1%	NO
WY	522	5	1.0%	-	0.0%	51	9.8%	NO
DC	315	3	1.0%	16	5.1%	10	3.2%	YES
CO	1,840	17	0.9%	119	6.5%	101	5.5%	YES
OR	1,244	9	0.7%	-	0.0%	84	6.8%	NO
OH	4,247	30	0.7%	1,445	34.6%	508	12.0%	YES
RI	430	3	0.7%	59	13.8%	19	4.4%	YES
MN	789	5	0.6%	90	11.4%	57	7.2%	YES
KY	1,031	5	0.5%	106	10.3%	105	10.2%	YES
CA	9,258	36	0.4%	490	5.3%	330	3.6%	YES
WI	723	2	0.3%	72	10.0%	78	10.8%	YES
IL	1,931	5	0.3%	355	18.5%	162	8.4%	YES
MA	3,244	7	0.2%	354	11.0%	101	3.1%	YES
HI	513	1	0.2%	-	0.0%	19	3.7%	NO
CT	1,960	3	0.2%	-	0.0%	82	4.2%	NO
NJ	5,374	7	0.1%	963	17.9%	191	3.6%	YES
GA	4,098	4	0.1%	1,505	36.9%	423	10.3%	YES
NM	1,141	1	0.1%	277	24.3%	111	9.7%	YES
NC	3,715	3	0.1%	573	15.5%	289	7.8%	YES
SC	1,948	1	0.1%	533	27.6%	182	9.3%	YES
ME	755		0.0%	121	16.0%	64	8.5%	YES
Grand Total	**105,936**	**2,326**	**2.2%**	**11,589**	**11.0%**	**8,640**	**8.2%**	