

American Financial Services Association
Consumer Mortgage Coalition

September 13, 2010

The Honorable Ben S. Bernanke
Chairman, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20051

Sandra F. Braunstein
Director, Division of Consumer and Community Affairs
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20051

Re: Implementation Period for Interim Final Regulation

Dear Mr. Bernanke and Ms. Braunstein:

The American Financial Services Association (AFSA), the national trade association for the consumer credit industry, and the Consumer Mortgage Coalition (CMC), a trade association of national consumer mortgage lenders, servicers, and service providers, appreciate the opportunity to comment on the new interim final regulation that the Federal Reserve Board (Board) released on August 16, 2010 (the Interim Final Rule or rule). The Interim Final Rule is issued under the Mortgage Disclosure Improvement Act (MDIA), which is part of the Truth in Lending Act (TILA). The Interim Final Rule changes the format and content requirements for certain disclosures in connection with the origination of closed-end mortgage loans.

We have long advocated for improved consumer mortgage disclosures. This rule includes several model forms and clauses for closed-end loans that make clear to consumers important information about variable interest rates and payment amounts.

While we support the need for improved consumer mortgage disclosures, we respectfully request a revision to the implementation period. It will not be feasible for creditors to fully comply with the new rule by January 30, 2011, as the Interim Final Rule requires.

More importantly, the disclosures that the MDIA requires and that the Interim Final Rule will implement are already required under the regulation that implements the Real Estate Settlement Procedures Act (RESPA). The Department of Housing and Urban Development (HUD) promulgated its final RESPA rule after the MDIA was enacted. The RESPA rule requires creditors to provide maximum rate and payment examples on the good faith estimate (GFE) and on the HUD-1 settlement statement.

To the extent that the Board believes that it is compelled to implement the MDIA requirements by January 30, 2011, it could do so by permitting creditors to meet these requirements by providing the GFE and HUD-1. This approach would reduce regulatory burden.

This approach has the added benefit of avoiding the creation of a new disclosure that overlaps, but is not integrated with, RESPA disclosures. The Dodd-Frank Act requires that TILA and RESPA disclosures be integrated, so incorporating the RESPA disclosure would implement that Congressional intent. There are additional reasons why we do not believe that Congress mandates that the rule become final in January, as we discuss more fully below.

Background

The MDIA amended TILA to require certain changes to consumer mortgage disclosures. The Board has been actively implementing the MDIA requirements through rulemakings, and has been actively improving its TILA rules more broadly. The Board states that it will continue to conduct additional consumer testing of the quality and clarity of consumer disclosures. More rule changes are also coming as a result of the Dodd-Frank Act.

The Interim Final Rule arises out of a notice of proposed rulemaking the Board published in August 2009.¹ The Interim Final Rule implements part of the MDIA. The Board explains:

The Board does not expect to finalize that [August 2009] proposal, however, before the January 30, 2011 statutory effective date of the MDIA requirement to disclose examples of payment adjustments. Accordingly, this interim rule implements the MDIA requirements now, so that mortgage creditors will have the guidance necessary to comply with them by January 30, 2011.²

Technology Systems Cannot Implement a Rule Change in Six Months

We are concerned about the very short implementation period because the loan origination technology systems cannot adapt as quickly as the Board appears to assume.

Consumer mortgage disclosures are produced electronically because automation very substantially reduces the chance for inaccurate disclosures, reduces costs, improves data security, and vastly shortens the time required to produce individualized disclosures.

The technology systems that produce the disclosures are interactive rather than isolated, so that making one change may affect other processes and results. To prevent unintended effects as systems changes are implemented, systems change projects must be made in a predetermined, rather than a random, order.

To address regulatory burden, the best approach would be for rule changes to share implementation dates. In this way, systems changes can be made together in an organized,

¹ 74 Fed. Reg. 43232 (August 26, 2009).

² Interim Final Rule at page 7.

planned manner. This would be preferable to making systems changes continuously as final rules are announced, on an unpredictable and sometimes unrealistic schedule.

Due to the large number of changing legislative and regulatory requirements, creditors today have systems change projects ongoing at a rapid pace, and have queues of projects to be implemented in the future. It is simply not feasible to insert a new project into a queue outside of the predetermined order for each project. Before a project can be put into the queue, its ramifications on the systems, and on other ongoing and planned systems change projects, must be mapped, planned, and managed.

Ongoing systems change projects cannot feasibly be interrupted and placed aside while a new project is implemented. The various projects affect each other, and must proceed in an order that permits management of the interaction of the projects and systems.

For these reasons, a new systems change project cannot be started as soon as the need for the project is learned. Creditors simply cannot fully implement the Interim Final Rule by January 30, 2011.

The Board states in its Paperwork Reduction Act analysis in the Interim Final Rule:

The Board estimates that 1,138 respondents regulated by the Federal Reserve would take, on average, 120 hours (three business weeks) to update their systems and internal procedure manuals and to provide training for relevant staff to comply with the new disclosure requirements in § 226.18(s) and (t).³

We respectfully suggest that this estimate is extremely low. As the CMC explained in a December 24, 2009 comment letter, in response to the Board's estimate that the August 2009 proposal would require 200 hours on average to implement:

For some perspective, we note that at one large lender, implementing the Regulation Z amendments that became effective October 1, 2009 required over 70,000 hours. Implementing the recent amendments to Regulation X took twice that amount of time, and those rules are still changing. Implementing the present rulemaking will likely require more resources than the October 2009 rulemaking but less than Regulation X.

Certainly implementing the Interim Final Rule will require more than 120 hours for most creditors. But the more immediate concern is the Board's apparent assumption that the industry is able begin implementing the systems change projects immediately, which is not an accurate assumption.

Further, there are issues with understanding what the Interim Final Rule requires, which this letter describes below. One example of the lack of clarity concerns the number of "columns" the new rule will require. It is difficult to design systems changes without knowing the number of columns the systems must populate with data in preparing the new disclosures.

³ Interim Final Rule at page 38.

There is an Urgent, Increasing Need For a Reasonable Approach to Regulatory Changes

The Board has been changing, and continues to change, its TILA rules for some time. Many of the changes are major, and require significant implementation resources. At the same time, RESPA rules have also been changing. Additionally, the Dodd-Frank Act will require a number of very major changes in TILA and RESPA rules, as well as in many other rules.

We urge a coordinated approach to the various regulatory changes to at least attempt to lessen the regulatory burden of constantly changing rules. We urge that, in issuing each rule or proposed rule, the Board and other regulators work together to try to minimize the impact on implementation resources.

RESPA Rules Already Require the Disclosures the MDIA Requires

The Interim Final Rule implements an MDIA provision that requires the following in connection with loans on which the interest rate or required payment amount can adjust. The MDIA requires:

- (i) Label the payment schedule as follows: ‘Payment Schedule: Payments Will Vary Based on Interest Rate Changes’.
- (ii) State in conspicuous type size and format examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required to be provided under this clause is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract, in accordance with the rules of the Board.⁴

The MDIA further requires that, prior to issuing implementing rules, the Board must conduct consumer testing to determine the appropriate format for these disclosures.⁵

RESPA and its implementing Regulation X require, within three days of a loan application, delivery of a GFE that discloses loan terms and estimated settlement costs. The GFE is based on extensive consumer testing.⁶

The GFE must disclose the interest rate for fixed rate loans. For loans in which the interest rate or payment may change, the GFE is also required to disclose maximum rate and payment examples that meet the MDIA requirements.

The GFE must disclose whether the interest rate can rise. If it can, the GFE must disclose the maximum possible rate, the date on which the rate may first change, how frequently the rate can

⁴ MDIA § 2502(a)(6), codified at 15 U.S.C. § 1638(b)(2)(C).

⁵ *Id.*

⁶ “The revised GFE form in today’s rule is the result of an iterative testing process, comprised of six rounds of consumer testing of the form during the period 2003 through 2007. An additional round of testing was conducted in the summer of 2008.” 73 Fed. Reg. 68204, 68225 (November 17, 2008).

change, the amount by which the rate may change on every “change date,” the life-of-loan interest rate floor, and the life-of-loan interest rate cap.

The GFE must also disclose whether the payment can change, either because of an adjustable rate or for reasons other than an adjustable interest rate. The GFE must also disclose whether the required payment amount for principal, for interest, or for mortgage insurance can increase even if the borrower makes timely payments. If so, the GFE must disclose when the required payment amount can first change, the most it may increase to at that date, and the most it can increase during the life of the loan.

In addition, the GFE must be accompanied by a disclosure that “When faced with “payment shock,” you may discover too late that the loan payments no longer fit within your budget and that the loan is difficult to refinance. You may then be in danger of losing your home.”

The GFE thereby implements the MDIA requirement that the Interim Final Rule is designed to implement. The form of the disclosures is different, but the substance is the same. *The Interim Final Rule will have no substantive impact on consumers.*

The agency that conducted the underlying consumer testing is not the Board. However, the staffs of both agencies are in the process of being merged into the Bureau of Consumer Financial Protection, so the difference between which agency did the testing, even if it ever had meaning, is no longer relevant.

For these reasons, providing the GFE should be deemed to meet the MDIA requirements for providing maximum rate and payment examples. This would be consistent with other provisions of TILA and Regulation Z, which incorporate RESPA requirements. For example, footnote 40 of Regulation Z permits creditors to substitute the GFE for the itemization of amount financed.⁷ Permitting creditors to substitute the GFE for the Interest Rate and Payment Summary would provide consumers with the information required by the MDIA while allowing creditors sufficient time to implement the new disclosure requirements.

Given that the GFE disclosures overlap and repeat the MDIA requirements, and given the extraordinary difficulty, or the impossibility, of complying with the Interim Final Rule by January 30, 2011, we believe the enormous cost and potential exposure to creditors for failure to meet the January 30, 2011 compliance date outweighs any possible benefit of providing consumers with a repetitious disclosure differing in form but not substance from RESPA disclosures.

Legal Authority to Extend the January 30, 2011 Compliance Date

The Board did address in the Interim Final Rule its legal basis for the January 30, 2011 compliance date.⁸ The Board believes that the MDIA requires the effective date for the new disclosures to be no later than January 30, 2011. The Board also believes that the effective date for the specific disclosures that the MDIA requires override TILA section 105(d), which

⁷ 12 C.F.R. § 226.18(c)(1).

⁸ Interim Final Rule at pages 8 – 9.

normally requires changed disclosure requirements to “have an effective date of that October 1 which follows by at least six months the date of promulgation[.]”

We respectfully suggest that this reasoning does not address other applicable laws, and does not address the Board’s authority to avoid imposing unreasonable implementation requirements. We also suggest that Congress, in enacting the MDIA, intended to improve consumer disclosures and did not intend to require the industry to abandon the use of the technology systems that ensure the disclosures are suitably produced.

One law the Board did not address in its Interim Final Rule is TILA section 105(b). It requires the Board to “publish model disclosure forms and clauses for common transactions to **facilitate** compliance with the disclosure requirements of this title In devising such forms, the Board shall consider the use by creditors or lessors of data processing or similar automated equipment.” (Emphasis added.)

The January 30, 2011 compliance date for the Interim Final Rule’s new model forms and clauses does not “facilitate” compliance, as Congress requires, it makes full compliance impossible. Further, the January compliance date ignores the fact that disclosures are made by “automated equipment” that cannot be adapted in less than six months, again against Congressional direction that the Board consider the use of technology systems.

Another law the Board did not address in its Interim Final Rule requires the Board to permit reasonable implementation periods:

In determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency shall consider, consistent with the principles of safety and soundness and the public interest—

- (1) any administrative burdens that such regulations would place on depository institutions, including small depository institutions and customers of depository institutions; and
- (2) the benefits of such regulations.⁹

It does not appear that the Board considered the “benefits of” its Interim Final Rule on consumers. The rule will provide them with information that overlaps RESPA disclosures. This lack of consumer benefit, alone, should be sufficient reason to avoid a substantial regulatory burden.

It also does not appear that the Board followed the Congressional mandate to consider the safety and soundness aspects of requiring a large number of creditors nationwide to make systems changes in less than six months that they are not equipped to make on such short notice. Further, it does not appear that the Board has followed the Congressional mandate to consider the administrative burden on creditors who will need to implement the required systems changes in an unreasonably short period of less than six months.

⁹ 12 U.S.C. § 4802(a).

Moreover, the Board has broad TILA authority to make exemptions for:

[t]ransactions for which the Board, by rule, determines that coverage under this title is not necessary to carry out the purposes of this title.¹⁰

TILA does indeed give the Board the authority to make exceptions that are reasonable, even if just for a temporary period of time.

We certainly respect the Board's desire to move as fast as possible in improving TILA disclosures. And we believe the Board has been doing just that. Since January 1, 2009, the Board has published an astonishing seventeen Truth in Lending items in the Federal Register, some of them in very comprehensive and complex rulemakings such as the rulemaking that has produced the Interim Final Regulation.¹¹ The Board published an additional two final rules and two proposed rules on August 16, which are too new for Federal Register publication. One of these proposals exceeds 900 pages. The Board has been more than prolific in updating its TILA rules.

Effect on Creditors Who Currently Use the Same Regulation Z Disclosures for All Closed End Credit Transactions

There are many creditors who currently use the same Regulation Z "TILA Box" for both closed-end transactions that are secured by real property or a dwelling ("real estate secured transactions") and for transactions not secured by real estate. The impact of this Interim Rule is even greater for those who make both types of loans. These creditors will now have to program their systems to select the correct TILA Box disclosure, based on the types of collateral. Something as simple as no longer allowing the number of payments in the TILA Box for a real estate secured transaction is problematic for those creditors who have forms that use the TILA Box as part of their loan agreement. For those state licensed creditors that do business in multiple states, not only will the Interim Final Rule impact the TILA Box disclosure, it will require most of their real estate secured loan agreements to change, requiring review of all loan agreements for real estate secured transactions and changes to all of those loan agreements for real estate secured transactions. This is not a 120-hour project. Compliance in a few months is not possible.

Early Implementation Should Not Apply to Loans That the MDIA Does Not Cover

The Interim Final Rule applies to some loans that the MDIA provision underlying the Interim Final Rule does not, and for these loans there seems no need for an unreasonably short implementation period.

¹⁰ TILA § 104(5).

¹¹ 75 Fed. Reg. 46837 (August 4, 2010); 75 Fed. Reg. 44093 (July 28, 2010); 75 Fed. Reg. 37526 (June 29, 2010); 75 Fed. Reg. 12334 (March 15, 2010); 75 Fed. Reg. 7925 (February 22, 2010); 75 Fed. Reg. 7658 (February 22, 2010); 74 Fed. Reg. 60143 (November 20, 2009); 74 Fed. Reg. 54124 (October 21, 2009); 74 Fed. Reg. 43232 (August 26, 2009); 74 Fed. Reg. 43428 (August 26, 2009); 74 Fed. Reg. 41194 (August 14, 2009); 74 Fed. Reg. 40477 (August 12, 2009); 74 Fed. Reg. 36077 (July 22, 2009); 74 Fed. Reg. 23289 (May 19, 2009); 74 Fed. Reg. 20784 (May 5, 2009); 74 Fed. Reg. 12464 (March 24, 2009); and 74 Fed. Reg. 5244 (January 29, 2009).

Creditors that use combined forms for both real estate secured and non-real estate secured lending generally do not offer variable rate products or products where the payment amounts would otherwise vary. These creditors generally focus on providing fixed-rate, fixed-payment products to their customers. The statutory mandate underlying the Interim Final Rule does not require any changes to the payment disclosure for fixed-rate, fixed-payment products. Due to the excessive burden these creditors will face, it seems appropriate to reconsider including all closed-end mortgage loans in the Interim Final Rule. The Interim Final Rule should be limited to loans where the interest rate or payments may vary, which is what Congress intended.

Short of excluding fixed-rate, fixed payment loans altogether from the Interim Final Rule, creditors should at least have a longer implementation period for loan products that are not addressed by the MDIA provision.

The Interim Final Rule Requires Clarification

In addition to the challenges posed by the short implementation period, creditors are faced with difficulties in applying the substance of the Interim Final Rule. There are some areas in which the new rule appears to have drafting errors that we believe need to be changed because they would fail to require important disclosures that the Board intended to require. The rule requires clarification in some areas, as we note below.

We are not sure this list is exhaustive of issues that may arise as creditors go through the implementation process.

The Rule Does Not Require Intended Disclosures for Interest-Only Loans that Convert to Amortizing Loans

The preamble discusses loans that have an interest-only period followed by a period of principal and interest payments. It says, “the creditor must include a column that discloses the interest rate that would apply at the time the adjustment [to amortization] is scheduled to occur, and the date on which the increase would occur.”¹² The Interim Final Rule does not appear to require this. The problem can be stated in steps:

- Paragraph (s)(3) of the new rule requires disclosures about payments “for each interest rate disclosed under paragraph (s)(2)(i)[.]”¹³ This means the paragraph (s)(3) disclosures only arise when (s)(2) requires disclosure of an interest rate.
- A loan may change from interest-only to interest and principal payments without a change in the interest rate. In the absence of a rate change, does (s)(2) require a column showing the change from interest-only payments to interest and principal payments? For a fixed rate loan, (s)(2)(i)(A) requires disclosure of the interest rate.¹⁴ For an ARM, (s)(2)(i)(B) requires disclosure of the rate at consummation, the maximum rate during the

¹² Page 23 of the Interim Final Rule.

¹³ 12 C.F.R. § 226.18(s)(3)(i) and (ii).

¹⁴ 12 C.F.R. § 226.18(s)(2)(i)(A).

first five years, and the maximum rate ever.¹⁵ So far, nothing requires a new column to show the beginning of amortization.

- Paragraph (s)(2)(i)(C) sometimes requires disclosure of payment changes in the absence of a rate change. It applies to both fixed-rate and adjustable rate loans if the loan has “payment increases as described in paragraph (s)(3)(i)(B)[.]” But paragraph (s)(3)(i)(B) applies only when “**all** periodic payments will be applied to accrued interest and principal,” and therefore does not apply to loans that have an interest-only period.¹⁶

Paragraph (s)(3)(ii) triggers disclosures of the payment amount for “each interest rate disclosed under paragraph (s)(2)(i)” but does not appear to require a new column independently of a rate change. As written, the Interim Final Rule does not appear to require that a change from interest-only payments to interest and principal payments, without a rate change, be disclosed in a separate column.

Uncertainty About the Required Number of Columns

If a change from interest-only to interest and principal payments happens to coincide with a change in interest rate, and if that rate is disclosed under paragraph (s)(2)(i), then paragraph (s)(3)(ii) would apply. But the language is not clear:

If the loan is interest-only, for each interest rate disclosed under paragraph (s)(2)(i) of this section, the corresponding periodic payment and . . . **if the payment will be applied to accrued interest and principal**, the earliest date that such payments will be required and an itemization of the” principal and interest payment amounts.¹⁷

This language is confusing because it talks of a principal payment “if the loan is interest-only[.]”

An example will demonstrate the problem. Suppose a loan has a fixed rate, and an interest-only period followed by amortizing payments. There is only one rate disclosed under (s)(2)(i) because the rate cannot change. For that interest rate, (s)(3)(ii) requires disclosure of “the corresponding periodic payment” in the singular. It is unclear which singular payment this references, the payment for the interest-only period or for the amortization period.

The paragraph also requires disclosure if “the payment[.]” again in the singular, will be applied to both principal and interest. It is unclear which payment this references.

It may be that the intent is to require a separate column when an interest-only loan begins amortizing regardless of whether the rate changes at that time, and to require a separate column every time the payment amount changes for reasons other than the beginning of amortization or a rate change. If so, why does paragraph (s)(1) limit the number of columns to five?

¹⁵ 12 C.F.R. § 226.18(s)(2)(i)(B).

¹⁶ 12 C.F.R. § 226.18(s)(3)(i) (emphasis added).

¹⁷ 12 C.F.R. § 226.18(s)(2)(ii) and (s)(2)(ii)(B) (emphasis added).

It may be the case that five columns can be required only on negative amortization loans, but because the rule does not say that, it is uncertain.

For a fixed-rate loan where all payments will be applied to principal and interest and whose payments increase more than once, how many columns are required?

- Paragraph (s)(2)(i)(A) requires the first column to include the interest rate at consummation. Paragraph (s)(3)(i)(A) requires the first column to include the corresponding payment.
- Paragraph (s)(2)(i)(C) requires a “first increase” column. Paragraph (s)(3)(i)(B) requires disclosure of “the payment that corresponds to the first such increase and the earliest date on which the increase could occur[.]”

In contrast to the Payment Schedule for a fixed-rate graduated payment loan, where a consumer sees the highest scheduled payment, nothing in the Interim Final Rule seems to require disclosure of any increased payment after the first increase for such loans.

Some loans have an adjustable rate but cannot have any rate or payment adjustment within the first five years. The rule requires one column showing the introductory rate and payment, and the date through which the introductory rate and payment last, such as for the first seven years. Including next to it a column that shows what the maximum rate and payment could be during the first five years may cause consumers to believe it is designed to give them information when it is merely redundant.

The commentary states that for amortizing ARMs, if there are no interest rate caps, other than the maximum rate required under § 226.30, the disclosure would only have two columns.¹⁸ By the same reasoning, does this mean that more than two columns are required if there are additional interest rate caps that apply only to adjustments after the first five years? How many columns are required if there is an interest rate adjustment during the first five years, but the interest rate cap on that adjustment is the same as the lifetime interest rate cap so that the maximum-five year column would be the same as the maximum-ever column? What if the only interest rate cap is a lifetime interest rate cap but the loan also has caps on the amount by which a payment may change at each adjustment?

Effect on Other Regulation Z Calculations

The Interim Final Rule requires “Interest Rate and Payment Summary” disclosures. Among other things, these require disclosure of “worst case scenario” maximum rates and maximum payments that could be required during the first five years, and at any time during the life of the loan.

Other Regulation Z provisions require creditors to calculate and disclose an annual percentage rate (APR), finance charge, and a total of payments. We request clarification that the new

¹⁸ Comment 18(s)(2)(i)(B).

“worst-case” disclosures required by 12 C.F.R. § 226.18(s) are not intended to alter any other Regulation Z calculations and disclosures.

For example, the new disclosures must include the cost of any mortgage insurance. The amount of mortgage insurance premiums affects the finance charge. The cost of mortgage insurance may be affected by a lengthened or shortened amortization period, and a longer amortization period may increase the length of time mortgage insurance is required. The new disclosures under the Interim Final Rule require “worst-case scenario” disclosures, assuming a loan amortizes over the longest period of time permitted by the loan obligation. We request clarification that the new rule does not affect the calculation of the finance charge as defined in § 226.4 and as required to be disclosed by § 226.18(d).

Rate Change Dates and Payment Change Dates

A rate changes on the rate change date, which precedes the date the payment amount changes, the payment change date.

For ARMs, creditors must disclose the maximum rate possible during the first five years, and the “earliest date on which that rate may apply[.]”¹⁹ This appears to mean the rate change date. Similarly, creditors must disclose the “maximum ever” rate and “the earliest date on which that rate may apply[.]”²⁰ This also appears to mean the rate change date.

Suppose an interest-only loan has an initial rate of 5%, the rate can increase to a maximum of 6% during the first five years, and can reach 6% as early as January 1 in the third year. Its first payment of principal and interest is required February 1 of the third year.

The disclosure would read in the first column that the initial rate is 5%. The second column would disclose that the rate may reach as high as 6% during the first five years, and can reach 6% as early as January 1 in the third year. January 1 is the “earliest date” on which the rate may reach 6%.

Now the creditor must populate the second column with the corresponding payment amount. For interest-only loans, “for each interest rate disclosed” the column must include the corresponding periodic payment.²¹ “If the payment will be applied to accrued interest and principal, the earliest date that such payments will be required” must be disclosed.²² The earliest date that a payment of principal and interest will be required is February 1, not January 1. Which date should go in the second column?

Rate Change Date At Month 60

The Interim Final Rule requires creditors to disclose the maximum rate that may apply during the first five years.

¹⁹ 12 C.F.R. § 226.18(s)(2)(i)(B)(2).

²⁰ 12 C.F.R. § 226.18(s)(2)(i)(B)(3).

²¹ 12 C.F.R. § 226.18(s)(ii).

²² 12 C.F.R. § 226.18(s)(3)(ii)(B).

A loan may have a rate that changes for the first time on the date (rate-change date) that is five years after consummation, and a payment amount that changes one month after the rate-change date. In this case, the most meaningful disclosure to consumers about the maximum rate during the first five years would be the initial rate, not the rate as it changes at the five-year anniversary and that the consumer does not pay until after five years. We request confirmation that this is what the Interim Final Rule requires.

Date of Consummation Unknown When Preparing Disclosures

There needs to be some flexibility with three-day waiting periods in the disclosures because when creditors prepare them, they do not know when consummation will occur. If a closing date changes such that the disclosures need to be amended, there would need to be a three day waiting period even though the substance of the disclosures – the loan terms – remain the same. Unnecessary waiting periods to “review” redundant disclosures hurt consumers rather than help them.

Mid-Month Consummation

For loans that close on the first of a calendar month, it is easy to know when the five-year anniversary is, but most loans close mid-month. When preparing Regulation Z disclosures, creditors are not certain the exact date consummation will occur. We request confirmation that, for purposes of § 226.18(s), a creditor may “disregard any irregularity in the first period” within the meaning of § 226.17(c)(4) if a creditor uses a “first period shorter than or not more than 32 days longer than a regular period” under § 226.17(c)(4)(iii).

Escrow Disclosures

The new disclosure tables include a row for disclosure of estimated taxes and insurance, and mortgage insurance. We request that for loans that have no escrow the creditor may put none, N/A, or something similar, rather than a number. This will not affect the quality of the disclosures but it would be easier to implement.

If a loan has an escrow for only taxes or insurance but not both, we request confirmation that a creditor may include an estimate only for the item that will be escrowed.

A creditor may give a disclosure showing an estimated escrow, but thereafter, and before consummation, may agree to waive an escrow. This event does not change any costs of taxes or insurance. We request confirmation that an escrow waiver alone will not require a new three-day waiting period.

Mortgage insurance premiums are not necessarily escrowed. The premiums are not necessarily fixed. The Interim Final Rule will require differing disclosures based on whether the premiums are escrowed, a fact that does not affect the loan terms, the loan cost, or the mortgage insurance cost. If the premiums are escrowed, the creditor must disclose the amount that will go into escrow each month, which is an average for a year, includes an escrow cushion, and is an

estimate. If the premiums are not escrowed, the disclosure would be a lower amount. This will be confusing to consumers.

Mortgage Insurer Status

We request confirmation that creditors may delete the word “private” in the disclosure “Includes [Private] Mortgage Insurance”. Consumers need to know the cost of the insurance, but they have far less interest in whether the insurer is private. For creditors to implement the ability to make this distinction would be an unnecessary regulatory burden of no consumer benefit.

Material Disclosures

The Interim Final Rule does not make clear whether the disclosures it requires are material disclosures within the meaning of TILA § 103(u). Changes to § 226.15(a)(5) that the Board has proposed in a separate pending rulemaking would seem to define the interest rate and payment summaries as material disclosures, although this is not entirely clear. We believe this needs clarification.

Examples Would Be Helpful

The Interim Final Rule would be clearer if it were to include examples of completed disclosure forms for a variety of loan products. We urge the Board to demonstrate what it intends through examples.

The Dodd-Frank Act Requires Integrated TILA and RESPA Requirements

The approach HUD took towards providing maximum rate and payment examples in the GFE and HUD-1 and the approach that Board took on providing these examples in the TILA disclosures are both reasonable. However, inconsistent examples of the same information are likely to baffle or mislead consumers. The Dodd-Frank Act requires that the overlapping TILA and RESPA disclosures be integrated.²³ The Interim Final Rule would not integrate TILA and RESPA requirements. Rather, it would create yet another overlapping, nonintegrated disclosure, adding to the problem Congress thought it had addressed.

It would be logically inconsistent to cite a provision in the MDIA that Congress enacted more than two years ago as requiring a rule that would increase the divergence between TILA and RESPA disclosures, when Congress just weeks ago required that these divergent disclosures be integrated.

Conclusion

For the reasons stated above, we strongly urge the Board to either deem the provision of the GFE and HUD-1 to meet the MDIA requirements, or to incorporate into its Interim Final Rule a temporary, optional exemption from the MDIA requirements for interest rate and payment

²³ Dodd-Frank Act, Pub. L. No. 111-203, requires integration in each § 1032(f), § 1098(2)(A), as well as in § 1100A(5).

disclosures for 13 months. This is the same amount of time the industry had to come into compliance with the new GFE, the disclosure that, indirectly, implements the MDIA requirements that are the subject of the present rulemaking.

If the Board were to adopt either approach to reducing regulatory burden, creditors should have the option to use either the new or old disclosures during an implementation period. That is, once a creditor is able to begin using the new Interest Rate and Payment Summaries on at least some loans, the creditor should not be required to revert back to old disclosure forms for a temporary period, only to have to change once again to the new disclosures later.

We look forward to the integration of TILA and RESPA disclosures.

Sincerely,



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