



December 22, 2009

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

Re: Proposed Rule Under Regulation Z Addressing Open-End Credit Published in the Federal Register on August 26, 2009 (Docket No. R-13671)

Dear Ms. Johnson:

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to comment on the above referenced proposed rule (the Proposal or Proposed Rule).²

The Proposal constitutes a major revision of Regulation Z,³ the implementing regulations under the Truth in Lending Act (TILA).⁴ It would significantly revise consumer disclosures for open-end home-secured credit or home-equity lines of credit. The Proposal is part of a comprehensive review of the Board's TILA rule. The Proposal was published along with the Federal Reserve Board's (Board) Proposal regarding rules for disclosures of closed-end credit secured by a consumer's dwelling for which MBA provides comments separately today.

More specifically, the Proposal would amend open-end home equity lines of credit (HELOC) requirements governed by Regulation Z and provide new disclosures including: (1) disclosures at application; (2) disclosures within three days after application; (3) disclosures at account opening; (4) periodic statements; and (5) change-in-terms notices. Also, the Proposal addresses disclosure requirements concerning

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

² 74 Fed. Reg. 43,428 (Aug. 26, 2009).

³ 12 C.F.R. §§ 226.1 *et seq.*

⁴ 15 U.S.C. §§ 1681 *et seq.*

account terminations, suspensions and credit limit reductions, and reinstatement of accounts.

MBA has long supported far greater transparency in the mortgage process and greatly appreciates the outstanding work the Board has done over the last several years to develop its important initiatives to improve consumer disclosures. We believe that many of the disclosures that have been proposed represent improvements over those that are currently required and others would establish new disclosures to address significant issues.

We are concerned that, while many aspects of this Proposal are beneficial, some provisions may increase costs unnecessarily unless they are revised. Accordingly, our comments address these matters and seek to improve the Proposed Rule, including the new disclosures to avoid unintended consequences. In this comment letter, we offer general and specific comments on these subjects:

- I. **General Comments**
- II. **Disclosure at Application**
- III. **Disclosure within Three Days after Application**
- IV. **Disclosures at Account Opening**
- V. **Periodic Statements**
- VI. **Change-in-Terms Notices**
- VII. **Account Terminations, Suspensions and Credit Limit Reductions**
- VIII. **Reinstatement of Accounts**

I. General Comments

MBA has several general comments on the Proposed Rule, which are discussed below.

Considering the Unparalleled Length and Detail in this Proposal and the Fact that So Much Energy Has Been Directed to Other Regulatory Efforts, Including the Closed End Proposal, the Board Should Extend the Comment Period to Obtain Further Input From Stakeholders – While MBA appreciates the opportunity to comment, no stakeholder can adequately review a proposal of this size during the comment period provided considering the other rules and laws that have been proposed or become effective during this same period, including the Board's closed end proposal.⁵ Considering the length of this Proposed Rule, MBA urges the Board to extend the comment period and consult more aggressively with stakeholders before the Proposal is finalized to assure that unwise provisions are not adopted precipitously.

These Extensive Changes Will Require Considerable Implementation Time – The changes proposed, particularly the new transaction-specific disclosures, will require extensive changes in loan origination systems and numerous business processes.

⁵ 74 Fed. Reg. 43,232 (Aug. 26, 2009) (Board's closed-end proposed rule). The mortgage industry also is grappling with implementing the Department of Housing and Urban Development's new RESPA rule: www.hud.gov/respa.

MBA would urge that, considering the breadth and scope of the proposed changes as well as other pending regulatory changes, the implementation period of the changes contained in the Proposal should be at least 18 months from finalization.

II. Disclosures at Application

Proposal – The Proposal would require lenders to provide a new, shorter generic disclosure in question and answer format entitled “Key Questions to Ask About Home Equity Lines of Credit.”⁶ The lengthier, generic disclosure currently provided at application would be replaced with this new, one-page disclosure summarizing basic information and risks about HELOCs.

Comment

MBA supports the use of the new generic information. MBA suggests that the Board carefully review comments from lenders to improve the form.

III. Disclosures Within Three Days after Application

Proposal - The Proposal would replace the HELOC disclosure of generic rates and terms with a new transaction-specific disclosure that must be given within three days after application that includes transaction specific information on rates and fees, payments, and risks in a tabular format.⁷ The disclosure would also highlight whether the consumer will be responsible for a balloon payment and present payment examples based on both the current rate available and the maximum possible rate for the HELOC.

Comments

1. MBA is concerned that the new transaction specific disclosures at application will be costly and may not be as effective as lower cost alternatives. In order to comply, lenders will need to obtain information and data from third parties, such as title agents, to provide the requisite disclosures to consumers. Generic disclosures, developed for a range of HELOCs would provide sufficient information at less cost to consumers at the application stage. Following application and underwriting, at the application stage, the creditor will be prepared to provide more definite information on the exact rate and terms of the HELOC offered.
2. If the Board determines to go forward with requiring new transaction-specific disclosures at application, MBA has the following specific comments:

⁶ 74 Fed. Reg. at 43,531 (to be codified as 12 C.F.R. § 226.5b(a)(1)).

⁷ 74 Fed. Reg. at 43,532 (to be codified as 12 C.F.R. § 226.5b(b)).

- a. The G-14 form provides a comparison in the box designated “Payment Plans” designed to compare HELOC products from a single lender.⁸ In most instances, lenders have only one HELOC product with two or three payment options. The form would be easier to provide to the consumer and less costly, if the form did not include this section and creditors were permitted to provide separate forms describing each product. The creditor should be permitted the flexibility to provide applicants with information relating to more than two payment plan options if the creditor offers more than two such options. The consumer is better served when they are provided information about all of the options available to them.
- b. Because the information the creditor provides to the borrower at this early stage will frequently change based on underwriting, it should be clarified that the rules do not require redisclosure but rather an update before the account is opened.
- c. The requirement that the consumer may receive a refund of all fees paid if a disclosed term changes and the consumer decides not to open the account should be dropped.⁹ The Proposal makes the credit limit one of the disclosed terms. However, because the creditor will not have completed an appraisal and may not be able to verify the amounts of any prior liens on the property, the amount of the credit limit will ordinarily be based on the applicant’s estimate of the value of the property and the applicant’s estimate of the amount of the prior liens. If the creditor offers a lower credit limit than the amount disclosed, following appraisal and title search, the creditor should not be required to refund the amount charged to the consumer for the cost of the appraisal or other collateral evaluation.
- d. The disclosure should contain a clear statement that the disclosure is not a commitment by the creditor and that the disclosures are based on information provided by the consumer.¹⁰ On the model form after the statement “You have applied for a home equity line of credit” we recommend adding the following sentence: “This form is not a commitment by the creditor and reflects your estimate of the property value and other information provided in your application.”
- e. The rules should clarify that the creditor need not disclose any fees and charges that are paid by the lender and not passed on to the borrower. This is consistent with how fees relating to HELOCs are disclosed today.

⁸ 74 Fed. Reg. at 43,550.

⁹ 74 Fed. Reg. at 43,593 (to be codified as 12 C.F.R. § 226.5b(d)).

¹⁰ 74 Fed. Reg. at 43, 583 (to be codified as 12 C.F.R. § 226.5b(c)(3)).

IV. Disclosures at Account Opening

Proposal

The Proposal would retain the present requirements to provide consumers with transaction-specific information about rates, terms, payments and risks at the time of account opening. However, to enhance the comparison of options, the Proposal would prescribe formatting for this information similar to that of the proposed disclosure provided within three business days after application.¹¹ The Proposal regarding account opening disclosures amends current requirements in two significant ways: (1) requires a tabular summary of key terms similar to specific early disclosure format except that the opening statement includes only the payment plan chosen by the consumer and transaction fees would be included here (they are not included in the early disclosure); (2) describes how and when cost disclosures made are amended. Under the Proposal, the creditor must specify precisely the charges that creditors must disclose in writing at account opening to include interest, account opening fees, transaction fees, annual fees and penalty fees.

Comments

1. Again, the Board should clarify that the creditor need not disclose any fees and charges which the creditor pays and does not charge to the consumer. This is consistent with how HELOC fees are disclosed today.
2. The new form (G-15 in the Federal Register)¹² should not require the listing of all originators on the form. Because more than one loan originator may work on a HELOC account, it is burdensome and not helpful to consumers to list the ID's of all of them. A better approach would permit the creditor to determine which loan originator is the primary loan originator whose ID should be listed.
3. The new form to be given at account opening (see G-15 in the Federal Register)¹³ includes the phrases, "You have no obligation to accept these terms. Use this statement to confirm that these are the terms for which you applied." But such instruction is more appropriate at an earlier time. At account opening, it would be more appropriate for the disclosure to state: "Do not sign the account agreement if you do not want to accept these terms."

¹¹ 74 Fed. Reg. at 43,596 (to be codified as 12 C.F.R. § 226.6)).

¹² 74 Fed. Reg. at 43,560-8.

¹³ 74 Fed. Reg. at 43,560-8.

4. On the third page of the G-15 type-form there is a box labeled, “fixed interest rate option,”¹⁴ but that option is only one type of option or feature offered by creditors. Examples of other options are set forth below. Clarification on how to disclose other options is needed. Accordingly, the heading of the “Fixed Interest Rate Option” section of the early and account opening form should be entitled “Options” and the creditor should be permitted to list in this section any options that affect rates, fees, borrowing and repayment terms or payments together with a statement that that “Details on these options are provided on a separate form.” On that separate form, the creditor could list options that might include, as examples:
- a. **Convertibility Option** – Some creditors allow the consumer to convert all or a portion of the existing HELOC balance from a variable rate of interest to a fixed rate of interest, which balance is then paid down separately from the variable rate balance. As the fixed rate balance is paid down, it replenishes the line.
 - b. **Reduced Rate for ACH Payments** – Some creditors may provide a reduced interest rate for accounts where the consumer provides for preauthorized transfers from the consumer’s deposit accounts. If the consumer subsequently cancels the authorization, the rate will typically revert back to the unreduced rate.
 - c. **Relationship Discounts** – A creditor may provide a reduced rate to the consumer provided that the consumer establish or maintain a deposit account or other relationship with the creditor.
 - d. **Discount if Initial Draw is Taken** – A creditor may provide a lower rate if the consumer agrees to take an initial draw of a specified amount.
 - e. **Differences in Rates if Consumer or Creditor Pays Closing Costs** – A creditor may offer the consumer different rates depending upon whether the consumer will pay the closing costs or the creditor will pay the costs.

V. Periodic Statements

Proposal -The Proposal would change the format and content of the periodic statement for HELOCs, largely conforming to the periodic statement¹⁵ provisions finalized in the December 2008 final rule for credit cards (December 2008 Open-End Final Rule).¹⁶ The proposed changes include: eliminating the disclosure of the effective annual percentage rate; and grouping interest charges and fees assessed

¹⁴ 74 Fed. Reg. at 43,562.

¹⁵ 74 Fed. Reg. at 43,601 (to be codified as 12 C.F.R. § 226.7).

¹⁶ 74 Fed. Reg. at 5,244 (Jan. 2009) (amendments to Regulation Z affecting credit cards).

on the account during the billing cycle together under one heading even if fees may be attributable to different users of the account or to different sub-accounts and requiring disclosure of separate totals of interest and fees for both the period and the year-to-date. Specifically, the Board no longer allows fees and transactions to be interspersed in chronological order.

Comments

1. MBA supports the elimination of the historical APR since it is not useful information to the consumer.
2. We understand that the number of fees and transactions shown on a periodic statement depends on a number of variables, and, as such, disclosures of these terms vary widely.
 - a. The number of transactions on an account may vary based on a number of factors including the time of year (*e.g.*, holidays, home improvements spring and summer, back-to-school are a few examples of higher volume periods). This is true irrespective of whether the home secured line of credit is accessible with a card access device. Rather, use of the line depends on each individual consumer's own strategy concerning when and how to use the line of credit. In contrast to these higher volume periods, many accounts without card access devices may have only two transactions each month - a credit reflecting a payment and the finance charge determined solely by the application of one or more periodic rates. Because of these variables, it may be difficult to accurately predict "the typical number of transactions" on periodic statements.
 - b. The number of fees shown each month on an account statement may vary based on such things as the programs and features in which the borrower is participating, the consumer's payment and line utilization patterns, and the combination of these and other factors. Consider the following examples:
 - A consumer who pays late - meaning outside the contractual grace period - may be assessed a late fee;
 - A consumer whose payment checks are returned may be assessed a return item fee;
 - A consumer who promised to maintain a minimum balance, and who fails to do so may be charged a low-balance fee;
 - A consumer who promises and fails to meet certain conditions may be charged an annual fee; and,
 - A consumer who requests additional services such as overdraft protection may be assessed certain fees.

The typical number of fees shown on a periodic statement is driven, for the most part, by the consumer's performance and preferences.

3. MBA is concerned about the burden on creditors and the lack of clear benefit to consumers that would result from a requirement that fees be grouped together on periodic statements for HELOC accounts. The change would impose expensive and time intensive programming burdens. Also, the small number of transactions and fees on the typical HELOC periodic statement (as contrasted with unsecured card accounts) make the change unnecessary. Consumers are accustomed to transactions in chronological order. Moreover, consumer testing on credit card disclosures does not appear relevant to whether or not grouping fees together on periodic statements for HELOC accounts will assist consumers in finding fees more easily. Consumers may have more difficulty identifying fees on unsecured credit cards when the fees are interspersed with transactions because of the large number of transactions shown on the periodic statement, but this same difficulty does not appear applicable to HELOC accounts.

VI. Change-in-Terms Notices

Proposal - The Proposal would change the format and content of the change-in-terms notice, largely conforming to the change-in-terms provisions finalized in the December 2008 Open-End Final Rule.¹⁷ In addition, the Proposal would increase advance notice of a change in a HELOC term from 15 to 45 days in advance of the effective date of the change.¹⁸

Comments

1. Where the HELOC has a feature that contains a contractual provision for a change in terms upon the happening of specified event, as long as that feature was disclosed at account opening in accordance with the terms of the regulation the creditor should not be required to give 45 days notice. For example, if the consumer rescinded an authorization to make payments by preauthorized debits from his or her deposit account, the creditor should be able to increase the rate without 45 days notice as long as that feature was properly disclosed at account opening.

VII. Account Terminations, Suspensions and Credit Limit Reductions

Proposal - The Proposal would prohibit creditors from terminating an account for payment-related reasons until the consumer has failed to make a required minimum periodic payment for more than 30 days after the due date for that payment.¹⁹ It also

¹⁷ 74 Fed. Reg. 43, 605 (to be codified as 12 C.F.R. § 226.9).

¹⁸ 74 Fed. Reg. 43, 605 (to be codified as 12 C.F.R. § 226.9).

¹⁹ 74 Fed. Reg. 43,608 (to be codified as 12 C.F.R. § 226.9(j)).

contains a number of additional requirements related to temporary suspensions of advances and credit limit reductions. The proposed changes include: (1) Establishing a new safe harbor for suspending or reducing a line of credit based on a "significant" decline in property value. For HELOCs with a combined loan-to-value ratio at origination of 90 percent or higher, a five percent decline in the property value would be "significant" and (2) Providing additional guidance regarding the information on which a creditor may rely to take action based on a material change in the consumer's financial circumstances, such as the type of credit report information that would be appropriate to consider. The Board proposes allowing certain permissible suspensions and reductions under a safe harbor based on a "significant" decline in property value. Also, the Proposal provides guidance on the information that creditors may rely on to take action based on a material change in the consumer's financial circumstances, such as the type of credit report information that would be appropriate to consider.

Comments

- 1. Use of Credit Scores to Reduce/Suspend Lines** - Regulation Z and the Commentary should remain flexible in this regard and not require a specific/minimum decrease in credit score or even require that a drop in credit score is necessary before a creditor can take action to suspend/reduce a line pursuant to a "material change in financial circumstances." Additionally, creditors should be able to use any type of credit score or history that is proven to be accurate and predictive.
- 2. Suspending or Terminating HELOCs Due to SARS Filings / Suspected Money Laundering** – Actions taken by a creditor in connection with suspicious activity (like the filing of a SAR or multiple SARS) or because of suspected money-laundering activity related to the use of the HELOC should provide a basis for suspending or terminating a HELOC and Regulation Z and/or the Commentary should make that explicit.
- 3. Notice of Action /AVMs** – We support the Board's continued finding that use of an AVM rather than a full appraisal is appropriate, and believe that the Rule or Commentary should clarify how a creditor may comply with the requirement to provide a copy of a valuation for action taken on a credit line when an AVM is used. Often AVMs are provided electronically and are not in a format that can be readily provided to consumers. The creditor should be able to comply by providing any documentation that can be created or printed from the AVM report provided by the vendor.

VIII. Reinstatement of Accounts.

Proposal – The Proposal would add requirements regarding reinstating accounts that have been temporarily suspended or reduced.²⁰ The proposed changes include: requiring additional information in notices of suspension or reduction about consumers'

²⁰ 74 Fed. Reg. at 43,611.

ongoing right to request reinstatement and creditors' obligation to investigate such request; and requiring creditors to complete an investigation of a request within 30 days of receiving a request for reinstatement and to give a notice of the investigation results to consumers whose lines will not be reinstated.

Comments

- 1. Consumer Requests Received Shortly After Action** - The Proposal requires the creditor to bear the costs of the first reinstatement request and to respond within 30 days. Where the action was taken due to deterioration in the value of the collateral, a minimum of 12 months should pass before the consumer could request reinstatement at the creditor's cost. This is because property values take time to increase. Any earlier requests for reinstatement should be processed at the consumer's expense.
- 2. Timing of Creditor's Response** - Because HELOC account management decisions are typically done in batches and consumers will get a "free" first reinstatement request, this will likely significantly increase the number of reinstatement requests the creditor will receive at one time. This will make it difficult to comply with the 30-day response time. The time period for responding should be increased to 45 days.
- 3. Actions Taken Prior to the Effective Date of the New Regulation** - The Rule should clarify that the free first reinstatement request does not apply to any line actions taken prior to the effective date of the new regulation.
- 4. Method of Consumer Request** - The Rule should not require the creditor to accept phone reinstatement requests and should allow the creditor to require that reinstatement requests be made in writing. It is important to maintain the writing requirement so creditors can effectively receive, track and timely respond to requests. Requiring consideration of phone requests would make recordkeeping much more difficult.
- 5. Monitoring** - It is important that the Rule and Commentary preserve the ability for the creditor to shift the burden to the consumer for requesting reinstatement and not require the creditor to self-monitor. The costs and other burdens associated with a requirement on the creditor's part to monitor accounts for reinstatement would be significant and could serve to reduce the number of actions that a creditor could otherwise take.

MBA Comments on Proposed Open-End Credit Provisions in Regulation Z

John A. Courson

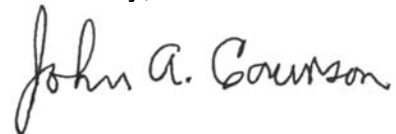
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Conclusion

Again, MBA appreciates the opportunity to comment on the HELOC Proposed Rule. MBA looks forward to working together with the Board on a final rule. Should you have any questions, please do not hesitate to contact Ken Markison, Associate Vice President and Regulatory Counsel at (202) 557-2930 or kmarkison@mortgagebankers.org.

Sincerely,

A handwritten signature in black ink that reads "John A. Courson". The signature is written in a cursive, slightly slanted style.

John A. Courson

President and Chief Executive Officer

Mortgage Bankers Association