

July 23, 2009

Fed Proposes Major TILA Changes for Mortgages and Home Equity Lines

Today, the Federal Reserve Board issued two proposals to amend Regulation Z, which implements the Truth in Lending Act (TILA). One addresses closed end mortgages and the other home equity lines of credit (HELOCs). These changes, if adopted, will profoundly transform the timing, format and content of disclosures for all real estate-secured lending to consumers.

At the same time, relying on its authority to prohibit unfair practices, the Fed is proposing new, substantive limitations on the treatment of compensation to mortgage originators—both wholesale and retail. This will limit the manner in which brokers and employees of creditors can be compensated.

The Fed is also proposing to require the inclusion of many fees in the APR calculation that are currently excluded. The concept of an “all-in” APR has been debated for years, and requires the Fed to use its exception authority to override statutory mandates. It will result in some increase in the number of high cost loans under TILA.

Due to the amount of attention in recent months to the suspension and reduction in HELOC lines, the Fed is also proposing to create some additional requirements on creditors in that area. New disclosures and guidelines are proposed and certain reinstatement rules would be specified.

In an important aside, the Fed says it has committed to working with HUD on a coordinated TILA-RESPA disclosure, in order to eliminate the confusion and overlap of the two disclosure requirements. ***This is a goal CBA has advocated in meetings with both agencies and in numerous letters over the past several years.*** At today’s Federal Reserve Board meeting, the Fed staff reported that the two agencies have already met, and HUD has agreed to working together on developing a coordinated disclosure.

Due to the length and complexity of the proposals, the Fed will accept comments for 120 days from publication in the Federal Register.

Summary of Proposals

Closed-End Mortgages

A. Application disclosures. The proposal contains new requirements and changes to the format and content of applications disclosures, including:

- A new on-page Board publication, entitled “Key Questions to Ask about Your Mortgage.
- A new one-page Board publication, entitled “Fixed vs. Adjustable Rate Mortgages,” which would replace the currently required Consumer Handbook.
- Revised format and content of the ARM disclosure, including a tabular Q&A format, more streamlined rate and payment information, and a disclosure of potentially risky features, such as prepayment penalties.

B. Disclosures within 3 days of application. Changes to the disclosures required within 3 days of application, include:

- New “all-in” calculation of the APR, which includes many fees and costs paid by consumers but currently excluded from APR calculation.
- A graph that shows consumers how their APR compares with the APRs for borrowers with excellent and impaired credit.
- Disclosure of the potential changes to the rate and payment.
- Disclosure of total settlement charges, as is currently required by RESPA.
- Summary of key loan features, including the loan term, amount and type
- New format requirement.

C. Disclosures 3 days before consummation. A new “final” disclosure will have to be given 3 days prior to consummation. The Fed is seeking comment on two proposed alternatives:

Alternative 1: If any terms change after the final TILA disclosures are provided, then another final TILA disclosure would need to be provided at least 3 days before consummation;

Alternative 2: If the APR exceeds a certain tolerance, or an adjustable rate feature is added after the final TILA disclosures are provided, then another final TILA disclosure would be provided at least 3 days before consummation. All other changes would only have to be disclosed at consummation.

D. Disclosures after consummation. The proposal would change the timing, content and types of subsequent disclosures, including:

- For ARMs, increasing advance notice of payment changes from 25 to 60 days, and changing the format and content of ARM rate adjustment notice.
- For loans with negative amortization, a monthly statement to provide information about payment options that include the costs and effects on payments
- For forced-place insurance, a notice of the cost and coverage at least 45 days before a charge is imposed.

E. Compensation. Employing its Unfair or Deceptive Acts or Practices authority for mortgage lending, the proposal contains new limits on originator compensation applying to both mortgage brokers and loan officers who are employees of creditors (collectively, “loan originators”). These include:

- Prohibiting payments to a loan originator based on the loan’s terms and conditions. (The proposal requests comment on an alternative that would permit originators to receive payments based on the loan’s principal amounts.)
- Prohibiting a loan originator from “steering” consumers to transactions that are not in their interest in order to increase the originator’s compensation.

Home Equity Lines of Credit (HELOCs)

A. Application disclosures. The proposal makes several changes to the application disclosures for HELOCs, including:

- Eliminating the current multi-page disclosures and the Fed brochure explaining HELOCs.
- A new one-page Fed publication summarizing basic information and risks regarding HELOCs, entitled “Key Questions to Ask about Home Equity Lines of Credit.”

B. Disclosures 3-days after application. New transaction-specific disclosures must be given within 3 days after application, which include:

- Information about rates, fees, payments and risks, in tabular format.
- Highlighted information on the existence of a balloon payment.
- Payment examples based on the current available rate and the maximum possible rate.

C. Account opening disclosure. A reformatted disclosure at account opening, that would be similar to the disclosure 3 days after application, in order to facilitate comparison.

D. Periodic statement. Changes to the format and content of the periodic statement, similar to the new credit card rules, from December 2008, including:

- Eliminating the effective (historical) APR disclosure.
- Grouping interest charges and fees separately and requiring disclosure of separate total of interest and fees for both the period and the year to date.

E. Change in terms notice and timing. New format and content of change-in-terms notices, similar to the new credit card rules, from December 2008, are proposed. The proposal also increases the advance notice of a change in terms from 15 to 45 days in advance of the effective date of the change.

F. Account Termination. A substantive change prohibits creditors from terminating an account for payment-related reasons until the consumer has failed to make a required minimum payment for more than 30 days after the payment due date.

G. Suspensions and credit limit reductions. The proposal contains a number of changes to the requirements related to temporary suspensions of advances and credit limit reductions. These include:

- A new safe harbor for suspending or reducing a line based on a “significant” decline in property value. For HELOCs with a combined LTV ratio at origination of 90% or higher, a five percent decline in property value would be “significant.”
- Additional guidance on what information the creditor 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.

H. Reinstatement of accounts. The proposal contains additional requirements regarding the reinstatement of suspended or reduced accounts, including:

- Additional information in notices of suspension or reduction about the ongoing right to request reinstatement and creditors’ obligation to investigate a request.
- Requiring creditors to complete an investigation of a request within 30 days or receiving a request for reinstatement, and to give a notice of investigation results to the consumer whose lines will not be reinstated.

The proposals will be published in the Federal Register shortly, and will have a 120-day comment period. Prior to publication, the proposals may still be obtained by going to the Fed’s web site at www.federalreserve.gov. CBA intends to comment. If you have any questions or comments, contact Steve Zeisel, CBA Senior Counsel, at szeisel@cbanet.org.

Upcoming CBA Events

TELECONFERENCE: Recent Developments Regarding Consumer Arbitration

July 29, 2009 | 2:00 -3:00 p.m.

[Learn More](#) | [Register Now](#)

2009 Home Equity Lending Conference

Sept 13-15, 2009 | Hollywood, FL | Westin Diplomat

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2009 Fair Lending Conference

Oct 18-20, 2009 | Washington, DC | Omni Shoreham

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