



September 2, 2009

Fed Requests Comments on Closed-End Mortgage Rules under Regulation Z, the Truth in Lending Act

EXECUTIVE SUMMARY

- The Federal Reserve Board (Fed) has issued proposed amendments to the closed-end mortgage rules under Regulation Z, the Truth in Lending Act (TILA). At the same time, the Fed also issued proposed changes to the Regulation Z rules that apply to home equity lines of credit, which are the subject of a separate CUNA Regulatory Comment Call.
- The proposal will require lenders to provide, at the time of application, two Fed-published documents. One is titled “Key Questions to Ask about Your Mortgage” that explains potentially risky loan features and the other is titled “Fixed vs. Adjustable Rate Mortgages.”
- Transaction-specific documents must then be provided within three days after application, which summarize key loan terms. Additional “final” disclosures will then be provided at least three days before consummation of the mortgage transaction and new post-consummation disclosures will also be required.
- Among other provisions, the proposal will:
 - Amend the disclosure of the annual percentage rate (APR) so it includes most fees and settlement costs paid by borrowers.
 - Require lenders to show how the borrower’s APR compares to the averages rate offered to borrowers with excellent credit and to borrowers with impaired credit.
 - Require lenders to provide final TILA disclosures to borrowers at least three business days before closing.
 - For adjustable rate mortgages, require lenders to show borrowers how much their monthly payments may increase.
 - Prohibit payments to a mortgage broker or a loan officer that are based on the interest rate or other terms.
 - Impose additional eligibility and disclosure requirements for credit

- insurance, debt cancellation, and debt suspension coverage, which will apply to both closed-end and open-end credit.
- Prohibit a mortgage broker or loan officer from “steering” borrowers to transactions that are not in their interest in order to increase the broker’s or officer’s compensation.

Comments on the proposal are due by December 24, 2009. Please submit your comments to CUNA by December 10, 2009. Please feel free to fax your responses to CUNA at 202-638-7052; e-mail them to Senior Vice President and Deputy General Counsel Mary Dunn at mdunn@cuna.com or to Senior Assistant General Counsel Jeff Bloch at jbloch@cuna.com; or mail them to Mary or Jeff in c/o CUNA’s Regulatory Advocacy Department, 601 Pennsylvania Avenue, NW, South Building, 6th Floor, Washington, DC 20004. **If commenting directly to the Fed, you must refer to Docket No. R-1366.** You may also contact us if you would like a copy of the proposal or you may access it on the Internet at the following address:

<http://edocket.access.gpo.gov/2009/pdf/E9-18119.pdf>

BACKGROUND

TILA is intended to promote the informed use of consumer credit by providing for disclosures about its terms and cost. TILA requires lenders to disclose the cost of credit as a dollar amount and as an APR in a uniform manner. This uniformity is intended to assist consumers in comparison-shopping for credit. Regulation Z implements TILA, which contains official staff commentary that interprets the regulation and provides guidance in applying the regulation to specific transactions.

The proposal focuses on changes to the closed-end mortgage loan rules under Regulation Z. It will apply to all mortgage loan transactions secured by real property or a dwelling, not just those secured by the consumer’s principal home. However, personal property, as opposed to real property, that is used as a dwelling is currently exempted under TILA if the loan exceeds \$25,000 and if the property serves as the borrower’s principal dwelling. That exemption will continue and this would include, for example, loans for manufactured homes and boats.

This proposal is the second part of the Fed’s long-term plan of reviewing all of the Regulation Z requirements, which began in late 2004. The Fed earlier this year finalized the first part when it issued final rules that made significant changes to the disclosure requirements for open-end products, such as credit cards. Also, the recent enactment of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 will require additional changes to the Regulation Z open-end credit rules and will impose a number of new restrictions.

DESCRIPTION OF THE PROPOSED RULE AND CHANGES TO THE OFFICIAL STAFF COMMENTARY

As described below, the proposal will change the format, timing, and content for disclosures that will be provided at the time of the loan application, within three days after the application, within three days before consummation of the transaction, and those provided after the transaction is consummated. The proposal will also include substantive restrictions with regard to loan originator compensation, often referred to as “yield spread premiums,” and with regard to credit insurance, debt cancellation insurance, and debt suspension coverage. Unless otherwise noted, the proposal will also expand the coverage of Regulation Z to include all transactions secured by real property or a dwelling, not just those secured by the consumer’s principal home, which means it will apply to second homes, investment properties, vacant land, and other real estate transactions.

Model Forms and Samples

The Fed has provided model forms and sample language that credit unions and others may use to satisfy the disclosure requirements that are outlined in the proposal. Click [here](#) for a compilation of these forms and samples or refer to the document that accompanied this Comment Call, which will be referenced in the specific provisions described below. To the extent applicable, these disclosures may also include the borrower’s name, address, and account number. However, lenders will no longer be able to use “multi-purpose” forms, which are forms that may be used for more than one type of mortgage transaction.

Disclosures at Application

The following will be the disclosures that must be provided to borrowers at the time he or she is given an application or pays a nonrefundable fee, whichever is earlier. These will be required for all closed-end loans secured by real property, but do not have to be provided when open-end credit is converted to a closed-end transaction.

“Key Questions to Ask About Your Mortgage” Document

At the time of the loan application, lenders will be required to provide a new Fed-published one-page document titled “Key Questions to Ask About Your Mortgage,” which will explain the potentially risky features of a loan in a question and answer format, such as interest-only payments, negative amortization, and prepayment penalties. A sample of this appears on the first page of the model forms and samples document that accompanies this Comment Call that you may access through the link above. This document must be provided even if the borrower does not express an interest in these loan features.

“Fixed vs. Adjustable Rate Mortgages” Document

At the time of the application, lenders will also be required to provide a new Fed-published document, titled “Fixed vs. Adjustable Rate Mortgages,” which will explain the basic differences between these types of loans, and will replace the current Consumer Handbook on Adjustable-Rate Mortgages, referred to as the CHARM Booklet. A sample of this appears on the second page of the model forms and samples document that accompanies this Comment Call that you may access through the link above. This document must be provided even if the borrower does not express an interest in an adjustable rate mortgage (ARM).

Adjustable Rate Mortgages Disclosures

The proposal will substantially revise the format and content of the current ARM loan disclosures. This proposal will require that the heading of the disclosure be either “Adjustable-Rate Mortgage” or “ARM” as opposed to a “variable-rate mortgage,” or some other term, although the name of the lender and the specific name of the adjustable loan program may be incorporated within the heading. This heading must precede and be more conspicuous than the other information in the disclosure and must appear before the two required tables, as described below.

The first table in the disclosure will include the interest rate and payment information and will be under the heading “Interest Rate and Payment.” This will include a description of the introductory period and that payments may then vary, the frequency of the rate and payment change, the index and how it determines the interest rate, and the limit on rate changes. The proposal will eliminate certain current disclosure requirements. This includes the disclosure of a historical example showing the effects of interest rate changes, the disclosure of a maximum interest rate and payment based on a \$10,000 loan, and an explanation of how payments will be determined.

The second table will provide certain disclosures in a question and answer format under a heading titled “Key Questions about Risk” and will include the following:

- Rate increases, including when the first increase may occur and the frequency of increases.
- Payment increases and when the first increase may occur (although the exact calendar date does not have to be disclosed).
- Prepayment penalties.
- If applicable, information about interest-only payments, including the number of permissible interest-only payments and that payments will not reduce the principal; negative amortization and that the principal may increase, which means equity would be lost; a balloon payment and when it is due (although the exact calendar date does not have to be disclosed); any demand for repayment feature and the advance notice the lender will provide before it exercises this right to repayment; no or low-documentation loans and that

these may have higher rates and fees and that more documentation could decrease these rates and fees; or shared equity or shared appreciation arrangements, along with the percentage the lender may be entitled and the events that would trigger this obligation.

The disclosure must also include the Fed's website and indicate this is where more information about adjustable mortgages may be found, as well as a list of licensed housing counselors in the borrower's area. This information would be at the end of the disclosure, outside of the tables that provide the other information.

See model forms H-4(B) through H-4(F) in the model forms and samples document that accompanies this Comment Call that you may access through the link above. The forms cover a number of different loan types and the specific form to use will depend on the loan in which the borrower expresses interest. Information not described above may not be included in this disclosure and lenders must use a disclosure that is substantially similar to the applicable model form. This includes providing the information in the same order as outlined in the model form and using bold text and other formatting, as indicated.

Disclosures Provided Within Three Days after Application

Calculation of the Finance Charge and the APR

The proposal will revise the calculation and the disclosure of the finance charge and APR so that it will now encompass most fees and costs paid by borrowers in connection with the loan transaction. This will include charges payable directly or indirectly by the borrower that are imposed as a condition to the extension of credit. This will also include charges by third parties if the lender requires the use of a third-party as part of the loan process, even if the borrower chooses the third-party service provider or if the lender retains a portion of the third-party charge. Lenders may rely on reasonable assumptions with regard to voluntary or optional charges and label these as estimates. The Fed believes this more inclusive approach will simplify compliance, regulatory burdens, and litigation risks.

The following are examples of fees that are currently excluded from the finance charge but will be included under the proposal for closed-end transactions secured by real property or a dwelling:

- Title examinations
- Abstract of title
- Title insurance
- Property survey
- Fees for preparing loan documents, such as deeds, mortgages, and reconveyance or settlement documents
- Notary and credit reports

- Property appraisals and inspections if performed prior to closing, including pest infestation and flood hazard determinations
- Amounts required to be paid into escrow or trustee accounts if those would otherwise not be included in the finance charge
- Government recording and related charges for perfecting security interests, as well as insurance premiums in lieu of such charges
- Taxes for recording security instruments
- Closing agent charges
- Application fees charged to all applicants, whether or not credit is extended
- Other real estate fees

However, charges that would otherwise be incurred in a comparable cash real estate transaction, such as transfer and property taxes, will continue to be excluded from the finance charge calculation. This exclusion will not apply in transactions in which there is no seller, such as a refinance. Exclusions would also include late fees and similar default or delinquency charges, fees for exceeding a credit limit, sellers' points, and property and liability insurance premiums. The proposal will also require using the term "interest and settlement charges" instead of "finance charges."

Credit insurance, debt cancellation and debt suspension fees will be included as a finance charge for closed-end loans secured by real property. However, these may be excluded from the finance charge for open-end loans or other closed-end loans not secured by real property under current rules, although under the proposal, the lender must also determine that at the time of enrollment the borrower meets any age or employment eligibility criteria. This will also apply to credit life, accident, or loss-of-income insurance.

The lender may use reasonably reliable evidence of age, such as the date of birth on a credit application, driver's license, other government-issued identification, or on a credit report. The lender may also use reasonably reliable evidence of employment, such as information on a credit application, W-2 Form, tax returns, payroll receipts, or other information from the borrower or the borrower's employee. The lender may still deny coverage if the borrower misrepresents his or her age or employment status at the time of enrollment, and the proposal will not require the lender to determine if the borrower ceases to meet the age or employment criteria after enrollment.

If the lender offers a bundled product and the borrower does not meet the age and/or employment eligibility criteria for all the products, the lender must either consider the entire premium for the bundled product as a finance charge or allow the borrower to select only the products within the bundle in which he or she is eligible and then exclude the fee from the finance charge for only those products.

The result of these changes may be that more loans may exceed the Home Ownership and Equity Protection Act (HOEPA) thresholds, which will subject

these loans to additional disclosure requirements and restrictions, and more loans may also be subject to the new rules for higher-priced loans that will be effective on October 1, 2009. In addition, this change may result in more loans being covered under certain State predatory lending laws, and Federal credit unions must take into account the 18 percent usury ceiling, especially if the general level of interest rates rises in the future. Since many of these charges are fixed dollar amounts, it may be even more likely that smaller dollar loans will be subject to these additional rules, as would loans in certain areas with higher insurance premiums, recording fees, and taxes.

Revisions to the Disclosures

Earlier this year, the Fed issued rules to implement provisions of the Mortgage Disclosure Improvement Act (MDIA) and this proposal will amend certain of those provisions. The proposal will expand the scope of these MDIA requirements so that they will also apply to loans that are not otherwise subject to the Real Estate Settlement Procedures Act (RESPA), such as loans for vacant land or construction loans. However, they will not apply to transactions that are primarily for business, commercial, or agricultural purposes, which are not subject to TILA requirements. For those loans not subject to RESPA, lenders may rely on the RESPA rules in certain situations, such as for purposes of determining when a loan application is received.

As outlined in the MDIA rules, the borrower is presumed to receive the disclosures three business days after they are mailed or delivered by the lender. This proposal clarifies that the fee may be imposed after midnight following the third business day after the mailing of the early disclosures. For example, assuming no holidays, a fee may be imposed at any time on Friday if the lender mailed the disclosures on Monday. This three-day presumption will apply in all situations, such as if the disclosures are delivered by courier or electronically, with the exception that the presumption will not apply if the disclosures are delivered in person. Lenders may also rely on other evidence of actual receipt of these disclosures.

The disclosures will be revised as follows and must be in 10-point font and will apply to all closed-end loans secured by real property or a dwelling, other than construction loans, bridge loans, or reverse mortgages:

- There will be a loan summary at the top that will include the following information:
 - The loan amount.
 - The loan term, which will be the time it will take to repay the loan in full, expressed as a number of years.
 - The loan type, which will be disclosed as either an “adjustable-rate mortgage (ARM),” a “step-rate mortgage”, or a “fixed-rate mortgage,” using these specific, quoted terms. This must also disclose if the loan includes “negative amortization” or a “payment option” (only one of these

- terms may be used), “interest-only payments” (but not if it is a negative amortization or payment option loan), or “step-payments,” again using these quoted terms. Certain renewable balloon-payment, preferred rate, and price-level-adjusted loans would be considered a “fixed” loan for purposes of this disclosure.
- “Total Settlement Charges,” using this term, which also must include the portion that is included in the loan amount and a statement, if applicable, that this does not include a down payment. The amount here should be the same as the “total estimated settlement charges” that are disclosed on the Good Faith Estimate (GFE) required under RESPA. This disclosure would also include a reference to the GFE.
 - The prepayment penalty in a dollar amount, but only if it is a feature of the loan. This disclosure will include the maximum penalty, the time period when it may be assessed, and the circumstances in which it may be imposed. No other information may be included. Prepayment penalties include interest charges for time periods after prepayment is made in full, minimum finance charges, and origination fees or other charges that are waived on the condition that the borrower does not prepay the loan. However, fees that would otherwise be charged at the end of the loan term would not be considered prepayment penalties.
 - A graph will then be provided to show borrowers how their APR compares to the “average prime offer rate (APOR)” of comparable, conforming loans for borrowers with excellent credit and the rate for borrowers with impaired credit. The graph will cover the range from the APOR to four percentage points beyond what is currently considered a “higher-priced mortgage” under Regulation Z, and that four percentage rate area will be shaded a different color and labeled a “high cost zone.” The rates disclosed must be as of the week the disclosure is provided and the lender may use the Fed’s tables to find the applicable APOR. The APR must be in a 16-point font and in a prominent location in close proximity to the graph. The term “annual percentage rate” must be used as the heading for this portion of the disclosure and be described as the “overall cost of this loan, including interest and settlement charges.” This information must also include the savings per periodic period that would result from a 1% reduction in the APR. The proposal provides a formula for making this calculation, even though it does not figure out the savings precisely.
 - Below the APR information, the disclosure will include a table summarizing interest rate and payment information under the heading “Interest Rate and Payment Summary.” This will also include the balloon payment, if applicable, which is defined as a payment more than twice the amount of other payments. For adjustable or step rate loans, up to three interest rates and payments must be disclosed, including the rate and payment at consummation, at the first adjustment, and the maximum rate and payment, along with the calendar month and year that the adjustments become effective. An increased payment and the date it becomes effective must also be disclosed if it is independent of a rate increase and must be labeled with a

term such as “first increase” or “first adjustment.” The introductory rate, the time that the rate would be in effect, and the fully indexed rate would be disclosed beneath the table. An estimate of the taxes and insurance must be included in the table if there is an escrow account. The amount applied to principal and the amount applied to interest will be separately disclosed if the borrower makes at least one interest-only payment. The table will also provide a total estimated payment that includes principal, interest, taxes, and insurance. There will be different rate and payment disclosures for loans with negative amortization that will outline the payments at various rates. This will include a different table describing the minimum payment option and the fully amortizing option, as well as the amount the loan balance will increase if only minimum payments are made and indicating when fully amortizing payments must be made. No other unrelated information may be included in these disclosures.

- Information in a table with a question and answer format under the heading “Key Questions about Risk,” which must include details as to whether:
 - The interest rate may increase, including the frequency in which the rate may increase and the month and year when the first increase may occur.
 - The payments may increase and the month and year the first increase may occur, which will also include both the fully amortizing and minimum payments for payment option loans.
 - There are prepayment penalties, including the circumstances that it may occur and the maximum penalty.

Information about the following would also be provided to the extent these features apply to the specific loan:

- Interest-only payments and that the loan balance will remain the same in that none of these payments will go towards principal.
 - Negative amortization and that the unpaid interest is added to principal, which means the loan balance increases and the borrower loses equity in the home.
 - Balloon payments, along with information about the advance notice that the lender must provide.
 - The extent the lender may demand full repayment, along with information about the advance notice that the lender is required to provide before this right is exercised.
 - No or low-documentation loans and that the rate and fees will be higher for these types of loans, as well as indicating that the rates and fees will be lower if the borrower chooses to provide additional documentation about employment, income, and assets.
 - Shared-appreciation arrangements and the events triggering the obligation to share future appreciation in the property.
- More information about the payments would then follow the “Key Questions about Risk” under the heading “More Information about Your Payments.” This will include, under the subheading “Total Payments,” information about the amount financed (defined as the loan amount minus prepaid finance charges) and that this, and the interest and settlement charges, are used to

calculate the APR; the interest and settlement charges and that they represent a part of the total of payments; and the total and number of payments (assuming the rate does not change). There must also be disclosures as to whether there will be an escrow account, whether there is private insurance, and the limitations and calculations with regard to any rate and payment changes. This must include the index and margin used if the rate may change or other explanation as to how this may change if an index and margin is not used. For negatively amortizing loans, there must be information describing the circumstances in which the payments may change so that they fully amortize the loan.

- The following describes the additional information that would appear at the end of this disclosure in bold print, in the following order:
 - The MDIA amended Regulation Z to require the following statement: You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.” This will be changed under the proposal. The lender instead will be required to provide a statement that the borrower has no obligation to accept the loan and, if the lender provides a space for the borrower’s signature or initials, the space must be in close proximity to the disclosure and must include a statement that the signature only confirms receipt of the disclosure statement. For HOEPA loans, the statement would be: “You have no obligation to accept this loan. Your signature below only confirms that you have received this form.”
 - An additional disclosure that states: “If you are unable to make the payments on this loan, you could lose your home. There is no guarantee that you will be able to refinance to lower your rate and payments.”
 - A statement notifying the borrower that if the amount borrowed is more than the home is worth, then the interest on the additional amount may not be deductible for Federal income tax purposes and the borrower should consult a tax advisor for more information as to the extent the interest is deductible. This implements provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and may be provided on all the disclosures, even for loans in which this statement would not apply.
 - A statement that the borrower should ask questions if he or she does not understand any of the information, along with the website of the Fed where the borrower may obtain additional information.
- If there is a required deposit, the disclosure must indicate that the APR does not reflect the deposit.

To view these new disclosures, refer to model forms H-19(A) through H-19(I) in the model forms and samples document that accompanies this Comment Call that you may access through the link above. Sample clauses H-20 through H-23 provides sample language that is to be used on the model forms, if applicable based on the features of the loan.

The forms cover a number of different loan types and the specific form to use will depend on the loan in which the borrower expresses interest. Lenders must use disclosures with headings, content, type size, bold print, capitalized lettering, and format that are substantially similar to these model forms and clauses, and the information must appear in the order indicated on the forms and clauses. Each loan originator must disclose his or her unique identifier at the top of the disclosure. The originator is required to obtain this identifier under the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act. Other currently required disclosures must be disclosed separately.

For HOEPA refinance loans, lenders must currently disclose charges for optional credit insurance or debt-cancellation insurance, grouped together with the amount borrowed. The proposal will require that debt suspension coverage be disclosed in a similar manner. Also, the determination as to whether a loan is covered under HOEPA is determined by use of the APOR. The official staff commentary will indicate that information and the methodology for the APOR may be found at www.ffiec.gov/hmda.

Disclosures Provided Three Days before Consummation

The rules implementing the MDIA also imposed requirements for disclosures that must be provided three business days before loan consummation. As with the disclosures provided three days after application, the lender may presume the disclosures are received three days after they are mailed or delivered, which means the lender must mail or deliver them approximately one week before the loan consummation. Again, lenders may also rely on other evidence of actual receipt of these disclosures.

This proposal expands the scope of these provisions so they will also apply to loans not otherwise subject to RESPA, such as loans for vacant land or construction loans. Again, they will not apply to transactions that are primarily for business, commercial, or agricultural purposes, which are not subject to TILA requirements.

The proposal will now require lenders to provide a “final” TILA disclosure to the borrower at least three business days before consummation even if the terms do not change. This differs from the MDIA, which required these disclosures if the APR exceeded certain tolerances and otherwise required them at the time of loan consummation if the APR did not exceed the tolerances. These disclosures will include the information, and in the same format, as provided in the disclosures that were given to the borrower three days after application. This will also include the total of the final settlement charges, which is also required to be disclosed under RESPA at the time the loan is consummated. Taxes and insurance payments may be disclosed as estimates, and lenders may use the HUD-1 or HUD-1A as a substitute for the disclosure of the settlement charges.

The Fed is also proposing the following two alternatives with regard to redisclosure if terms change after the final disclosure is provided:

- If any terms change after the “final” TILA disclosure is provided, another final TILA disclosure would need to be provided, and the loan may not be consummated until three days after it is received by the borrower, although the borrower may waive this waiting period if there is a bona fide financial emergency. A decrease in the APR may in certain situations still be considered accurate even if it exceeds the tolerances that are currently outlined in Regulation Z. This would include when the APR is reduced as a result of a discount that is provided for automated payments or when there are reductions in the amount charged for the owner’s title insurance. However, the changed terms still have to be disclosed by the time the loan is consummated. The disclosure of the interest and settlement charges will be considered accurate if it is greater than the amount charged or no more than \$100 less than what is charged.
- Another TILA disclosure would need to be provided at least three business days before consummation only if the APR exceeds current Regulation Z tolerances or if an adjustable-rate feature is added after the “final” disclosure is provided. All other changes after the final disclosure is provided would be disclosed at the time the loan is consummated. Again, a decrease in the APR may still be considered accurate if it exceeds the current Regulation Z tolerances, as described above. The borrower may also waive this three-day waiting period if there is a bona fide financial emergency.

Disclosures after Consummation

The proposal will change the timing, content, and types of notices that are provided after loan consummation, as follows:

ARM Loans

For ARMs, the advance notice of payment change must be provided 60 days in advance, but no more than 120 days before the new payment is due, instead of the current 25-day advance notice requirement. This is based on when the payment is due, not when the interest rate changes, although payments that change due to tax or insurance increases would not trigger these requirements. The format and content of this notice will be revised and will provide the following information, much of which is already required under the current rules:

- The current and new interest rates and a description of the change in the index that led to the new rate. This must also describe the circumstances in which foregone interest may be imposed, such as when a rate cap applies
- The amount of the current and new payment that is allocated to interest, principal, taxes, and insurance, as applicable. If the payment is interest-only or negatively amortizes the loan, the payment required to fully amortize the loan over the remainder of the term would also need to be disclosed.
- The current and new payment and the due date for the first new payment.

- The limits on interest rates or payment increases at each adjustment, if any, and the maximum interest rate or payment over the life of the loan.
- Any change in the term or maturity of the loan if it results from the rate adjustment.
- The loan balance.

Lenders will also be required to provide an annual notice when the interest rate changes but the payment does not change, which will include the following information:

- That the interest rate has changed but the payment has not, along with the specific annual time period covered by the disclosure.
- The highest and lowest rate that applied during the year, but the lender may not disclose all the rates that applied.
- The extent to which the lender has foregone an interest rate increase, due to a cap or some other reason.
- The maximum rate that may apply over the life of the loan.
- The loan balance as of the last date of the year covered by the disclosure.

Both the annual notice and the notice of the payment change must also provide information about the time period in which the lender may impose a prepayment penalty and the maximum amount, as well as the phone number to call for more information about the loan and a phone number and website for HUD-licensed housing counselors. This will appear below the interest rate and payment information. To view these new disclosures, refer to model forms H-4(G) through H-4(K) in the model forms and samples document that accompanies this Comment Call that you may access through the link above. Lenders must use forms in which the heading, content, and format are substantially similar to the model forms.

Payment Option Loans with Negative Amortization

For payment option loans with negative amortization, a monthly statement will be required that will provide information about the available payment options. The information will be in a tabular format and will compare the amount and impact on the loan balance and property equity of a fully-amortizing payment, an interest-only payment, and the minimum payment that is less than the interest due, which negatively amortizes the loan. However, only the payment options that apply to the borrower's loan at the time the payment is due would need to be disclosed. For the negatively amortizing payment option, the statement must indicate the amount that will be added to the loan balance as a result of the unpaid interest.

This statement must be provided at least 15 days before the monthly payment is due. To view this new disclosure, refer to model form H-4(L) in the model forms and samples document that accompanies this Comment Call that you may access through the link above. The statements delivered by the lender must be substantially similar to this model form with regard to the format, content, and

headings. Other information may be provided, as long as it appears outside the required table.

Creditor-Placed Property Insurance

For creditor-placed property insurance that the lender may purchase if there is no insurance on the property, the proposal will require that a notice of the cost and coverage of such insurance be provided to the borrower at least 45 days before a charge is imposed. The lender will also be required to provide the borrower with evidence of such insurance within 15 days of imposing the charge.

The proposal will require that the following conditions be met before the lender may charge for creditor-placed insurance:

- The lender makes a reasonable determination that the borrower's current insurance has lapsed.
- The lender mails or delivers the written notice at least 45 days before a charge is imposed.
- The borrower does not provide the lender with adequate evidence of property insurance during the 45-day notice period. The lender may then impose a charge immediately afterwards and may also charge for coverage during the 45-day period if it is not prohibited by State or other law.

The notice must contain the lender's name, contact information, loan number, the address or description of the property securing the loan, as well as statements indicating:

- That the borrower is obligated to maintain insurance on the property.
- The insurance has lapsed.
- The lender in this situation is authorized to obtain insurance on the borrower's behalf.
- The date the creditor may charge for the cost of the insurance.
- How the borrower may provide evidence of insurance.
- The annual cost of creditor-placed insurance and that it is likely higher than insurance obtained by the borrower.
- The creditor-placed insurance may not provide as much coverage as insurance obtained by the borrower.

This notice requirement will apply to all closed-end loans, including mortgages and automobile loans. To view this new notice, refer to model clause H-18 in the model forms and samples document that accompanies this Comment Call that you may access through the link above.

Loan Originator Compensation

Prohibiting Payments Based on Loan Terms and Conditions

The proposal will prohibit certain payments to a loan originator, known as “yield spread premiums” or “overages,” that are based on the loan terms and conditions. This would include payments based on the loan amount, interest rate, or the existence of a prepayment penalty, but not compensation based on loan volume, the performance of loans delivered by the originator, or hourly wages. These provisions will apply to all closed-end mortgage transactions. The Fed has also proposed an alternative in which compensation based on the loan amount would be permitted.

These provisions will prevent payments by any person, not just the creditor, although this will not apply to payments the borrower makes directly to the loan originator. If the borrower directly pays the loan originator, the proposal will prohibit the loan originator from receiving compensation from any other party in connection with the transaction. Compensation will include commissions, as well as salaries or incentives tied to the transaction’s terms or conditions, such as bonuses or prizes in the form of either cash or merchandise.

For purposes of these provisions, the “loan originator” will include mortgage brokers, as well as employees of the lender who perform loan originator functions. The lender must retain a record of the agreement as to the compensation provided to the loan originator and a record of the compensation that is actually paid. The HUD-1 settlement statement would be one example of such a record.

Currently, Regulation Z prohibits lenders and brokers from coercing appraisers to misstate the value of the home and also prohibits certain servicer practices. These apply to closed-end loans secured by the principal dwelling. The proposal will extend these restrictions to all closed-end loans that are secured by real property or a dwelling.

“Steering” Consumers to Certain Transactions

The proposal will prohibit mortgage brokers or loan officers from “steering” borrowers to transactions that are not in their best interests in order to increase the mortgage broker’s or loan officer’s compensation. Although borrowers choose among loan options with different rates, points, and features for a variety of different reasons, one example that would violate this provision would be to direct the borrower to a fixed rate loan when there are other fixed rate loan options that would provide less compensation to the broker or loan officer.

The proposal will not require the broker or loan officer to direct the borrower to the loan that provides the least amount of compensation, although this will

generally satisfy this requirement. Compliance with these provisions will be satisfied if the broker or loan officer offers the borrower at least three choices for each type of loan, such as fixed or variable rate loans. These three choices must include the one with the lowest rate, the second lowest rate, and the one with the lowest dollar amount of points and fees. The broker or loan officer must have a good faith belief that the borrower would qualify for any of these choices. Additional choices may be presented, as long as these three choices are highlighted. These provisions on “steering” will not apply to home equity lines of credit (HELOCs).

Credit Insurance, Debt Cancellation Insurance, and Debt Suspension Coverage

As described above in the discussion as to whether fees for credit insurance, debt cancellation insurance, or debt suspension coverage may be excluded as a finance charge, lenders will be required to determine if the borrower meets the age and/or employment eligibility criteria at the time the borrower chooses the product. The proposal will require the lender to provide a disclosure that this determination has taken place. These provisions will apply to all closed-end transactions, in addition to mortgage loans, and will also apply to open-end transactions.

This new disclosure will include the following information:

- The term “optional costs” must be included in bold text and all capital letters, if the product is optional. The name of the program must also be included, whether or not the product is optional.
- If the product is optional, the term “stop” must be in bold text and all capital letters, with a statement that the borrower does not have to buy the product.
- A statement that the product may not provide additional benefits if the borrower already has insurance.
- A statement that other types of insurance may give the borrower similar benefits that are often less expensive.
- A statement that the borrower is or may be eligible for the benefits, based on the review of the borrower’s age and/or employment status at the time of enrollment. Again, the lender may use reasonably reliable evidence, as described above in the description as to how the fees may be excluded from the finance charge. The lender cannot offer the product if it is clear the borrower does not qualify based on age and/or employment status at the time of application, although the product can be offered if later events make the borrower ineligible, based on these criteria. For bundled products, the lender will not be able to comply with these provisions if the borrower is ineligible for any one of the specific products.
- If there are other eligibility restrictions in addition to age and employment status, such as pre-existing health conditions, then there would another statement indicating that the borrower may not receive any benefits because of these other restrictions.

- A reference to the Fed's website, the cost information and term, the loan amount, a statement in which the borrower acknowledges that the purchase is either optional or required, and a space for the borrower to sign and date in which he or she agrees to purchase the product. The cost, term, and loan amount would be underlined.
- If applicable, a statement that for debt suspension products, the obligation to pay is only suspended and interest will continue to accrue.

To view this new disclosure, refer to model clauses G-16(C) and G-16(D) for open-end transactions and H-17(C) and H-17(D) for closed-end transactions in the model forms and samples document that accompanies this Comment Call that you may access through the link above. The model clauses apply to open-end or closed-end transactions that are not secured by real property if the product is voluntary and applies to all closed-end transactions secured by real property, regardless of whether the product is voluntary. The disclosure lenders use must be substantially similar to these model clauses with regard to headings, content, and format.

Other Disclosure Requirements

For all closed-end mortgage transactions, Regulation Z currently requires certain information to be grouped together and segregated from other information. The proposal will require that the lender's identity be subject to these requirements. These requirements will also apply to ARM program disclosures and the ARM adjustment notices.

Regulation Z currently allows lenders to use multi-purpose forms to satisfy the disclosure requirements, as long as they are clear and conspicuous. The proposal will no longer permit this for transactions secured by real property or a dwelling.

Transactions secured by real property or a dwelling that have balloon payment financing with leasing characteristics will be treated as closed-end loans and subject to the requirements under this proposal. Balloon-payment loans in general, as well as preferred-rate and price-level adjusted mortgages secured by real property or a dwelling, will be considered fixed-rate transactions for purposes of these new disclosure requirements, assuming the rates are not otherwise adjustable. A mortgage secured by real property or a dwelling will not be considered an adjustable-rate loan solely because there may be a shared-equity or shared-appreciation feature.

For reverse mortgages, the disclosure requirements will only apply if the borrower's death is one of the conditions of repayment. If the reverse mortgage has an adjustable interest rate and is secured by real property or a dwelling, the lender must then disclose the shared-equity or shared-appreciation feature.

Currently, lenders may delay disclosures for transactions involving mail or telephone orders until the first payment is due if certain information, such as the APR or finance charge, is provided in advance. This will no longer apply to transactions secured by real property or a dwelling.

QUESTIONS TO CONSIDER REGARDING THE REGULATION Z PROPOSAL

(The Fed has specifically requested comment on the issues raised in these questions.)

- The Fed recognizes that lenders will need sufficient time to implement the numerous revisions that will likely be adopted. How long should the implementation period be for the changes outlined in this proposal?
-
-

- As for loan originator compensation, the proposal will prohibit compensation based on the loan's terms and conditions. However, the Fed is considering allowing loan originators to receive payments that are based on the principal loan amount. Do you agree with this approach and that it will still achieve the purposes of these provisions? Should lenders be permitted to pay different percentages based on the amount of the loan, such as a higher percentage for lower loan amounts that may be geared toward lower income areas? Should these provisions on loan originator compensation only apply to "higher-priced" mortgage loans, such as the HOEPA threshold or the threshold under the recent Regulation Z final rule on mortgage practices? Should they apply to HELOCs, even though the Fed has indicated that the problems being addressed by these provisions have not generally been an issue with HELOCs?
-
-

- Under the proposal, the lender must retain a record of the compensation agreement with the loan originator that was in effect on the date the transaction's rate was set since this is most likely when a loan originator's compensation was determined. Would another time period be more appropriate? Lenders must also maintain a record of the actual amount of compensation that is paid to the originator for each transaction. The HUD-1 statement would be appropriate for the mortgage broker. Are there comparable records for loan officers (who are also considered loan originators under these provisions) that should be referenced? Are there other records that should be subject to these record retention requirements? These records must be maintained for at least two years. Is this adequate or is some other time period more appropriate?
-
-
-

- The proposal will prohibit loan originators from "steering" borrowers to a specific loan product based on the fact the originator will receive additional compensation, even though the loan may not be in the borrower's best interest. The proposal provides guidance for complying with this general requirement. Do you support this prohibition and think these provisions will be effective, practical, feasible, and enforceable? Would there be any adverse, unintended consequences? Should they apply to HELOCs, even though the Fed has indicated that the problems being addressed by these provisions have not generally been an issue with HELOCs?
-
-

- Is further guidance needed with regard to the provisions for determining what constitutes a finance charge? Should these provisions apply to all closed-end credit beyond transactions secured by real property or a dwelling? Should they apply to HELOCs? Will these provisions simplify compliance, reduce regulatory burden, enhance consumer protections, and reduce litigation risk, as claimed by the Fed? What are the cost and benefits of this approach? Are there alternatives you would prefer with regard to what constitutes a finance charge that would be simpler? Are there third-party charges that should be specifically listed as those that would not be considered a finance charge?
-
-

- Are you concerned about the impact of this on smaller loans or loans in specific areas with high settlement charges, which may result in certain loans exceeding the HOEPA threshold, the 18% federal credit union usury limit, or the “higher-priced” threshold under the recent Regulation Z mortgage loan rules?
-
-

- Currently, a finance charge is considered accurate if it does not vary from the actual finance charge by more than \$100. Should this be raised to \$200? Should it be indexed to inflation? The proposal will include voluntary and optional charges as finance charges, although the Fed realizes that lenders may not know the amount of these specific charges for purposes of providing the early disclosures. In these situations, the lender may disclose these amounts as “estimates.” Is further guidance needed in this area? Are there certain charges that cannot be calculated three business days before loan consummation? Should certain charges be specifically excluded from the finance charge definition?
-
-

- The proposal provides examples of reasonably reliable evidence of the borrower's age or employment status for purposes of credit insurance. Are there other examples that should be included? Should the lender be required to determine if the borrower meets the age/employment eligibility criteria after the product is sold?
-
-

- The proposal will retain the current exclusion from the finance charge with regard to the premiums for insurance against property loss or damage or against liability resulting from the ownership or use of the property. Do you agree with this approach and should it continue to be applicable to flood insurance? What would be the adverse consequences if these premiums were included in the finance charge? The proposal will also retain the exclusion for sellers' points. Do you agree?
-
-

- For the open-end Regulation Z rules, the Fed created an exception to the requirement to provide prior written disclosures or obtain written signatures or initials for telephone purchases of credit insurance and debt cancellation or debt suspension coverage. Such an exception will not be provided for closed-end transactions. Do you agree with this approach?
-
-

- What are the operational and other practical effects of requiring lenders to provide final TILA disclosures no later than three business days before loan consummation?
-
-

- In certain circumstances, an additional disclosure may be required after the “final” disclosure is provided. Under one alternative, an additional TILA disclosure would need to be provided at least three business days before loan consummation only if the APR exceeds current Regulation Z tolerances or if an adjustable-rate feature is added after the original “final” disclosures are provided. Should other events also require additional disclosures under this alternative, such as the addition of a prepayment penalty, negative amortization, interest-only, or a balloon payment feature? Should a disclosed APR that is higher than the actual APR be considered accurate in all circumstances? Should additional tolerances be included for other disclosures, other than the APR and finance charges?
-
-

- New disclosures will need to be provided if the borrower expresses an interest in an ARM loan at the time of application, which will replace the CHARM booklet. At the time of application, all borrowers must receive a disclosure titled “Key Questions to Ask about Your Mortgage” and a disclosure titled “Fixed Versus Adjustable Rate Mortgages.” Are there additional disclosures that should be provided at this time for other types of loans? This new disclosure for ARM loans, titled “Key Questions about Risk,” outlines a number of risk factors that should be disclosed. Are there other risk factors that should also be disclosed?
-
-

- The proposal will require lenders to provide advance notice of a rate adjustment at least 60, but no more than 120 days, before payment at a new level is due, not before the interest rate changes. What operational changes will you need to make to comply with this new requirement? Are there indices that are published at times that would make compliance difficult? Would a 45-day notice requirement better balance the benefits to borrowers with the burdens imposed on lenders, such as verifying indices and preparing disclosures? This proposal will apply to all loans, regardless of duration. Should this requirement apply to loans of less than one year? Is there another threshold that should be used as an exception?
-
-

- The proposal includes more restrictions for lenders who impose force-placed property insurance. Should these provisions also apply to HELOCs? These provisions require a 45-day notice before the borrower may be charged for this type of insurance. Is another time period appropriate? Should a local or toll-free telephone number of the lender be included in the notice? Should the notice also contain statements, if applicable, that the lender will receive compensation for obtaining this insurance and that an escrow account will be established to pay the premiums or will this just be information overload?
-
-

- Should lenders be required to translate disclosures for those who do not speak English or speak English as a second language? Has this been a problem for these types of borrowers? What should be the trigger for providing such disclosures? Should it be the language used in the negotiation, the lender's presentation, the language of the advertisement, or should it be by the borrower's request? Should there be an exception if there is a translator present? Should such a requirement be limited to mortgage loans or should it apply to other types of loans and which should those be? Should it apply to all disclosures or just to certain ones and which would those be? Should such a requirement apply to websites and should this requirement only apply to certain foreign languages?
-
-

- The proposal will prohibit multi-purpose disclosure forms that could be used for more than one type of mortgage transaction. Do you rely on multi-purpose forms? Will this prohibition create significant operational changes, difficulties, or costs?
-
-

- Should the proposed disclosure of the APR be more or less prominent than is currently proposed? Should a different type of graph or visual be used instead that will better benefit the borrower? What are the advantages and disadvantages of the proposed graph-based disclosures and what are the operational changes, difficulties, or costs that will be incurred in making this type of disclosure? The disclosure requirements for the APR and APOR will not be required for construction loans, bridge loans, and reverse mortgages. Do you agree with this approach?
-
-

- Lenders will also be required to disclose the savings per month if the rate was reduced by 1 percentage point. The proposal provides a methodology in which the savings will not be as precise as other, more costly and complex calculation methods. Do you agree with this approach?
-
-

- Under the proposal, fees for preparing a payoff or providing other services when a borrower is prepaying the loan will not be considered a prepayment penalty since they are also charged at the end of the loan term. Do you agree with this interpretation?
-
-

- Should premiums or other amounts for credit life, debt suspension and debt cancellation agreements and similar products be excluded from the disclosure of escrows for taxes and insurance, especially since borrowers may otherwise believe these products are required and, therefore, will not analyze as to whether these products are appropriate?
-
-

- The disclosures will reference the Fed’s website. What types of information should the Fed include on its website that will be helpful for borrowers who are shopping for mortgages? Should the lender be required to disclose its contact information on the disclosures, such as a telephone number and address?
-
-

- The proposal will require disclosure of the loan originator's unique identifier, which the originator is required to obtain under the SAFE Act. Are there mortgage loans in which there may not be a loan originator, such as a loan offered through an automated process without contact with an originator?
-
-

- Do you have any additional comments with regard to the proposed model forms and sample clauses? Is additional information needed to explain these forms and clauses?
-
-

- Other comments?
-
-