April 20, 2004

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Chap. I
Docket No. 04-05

Board of Governors of the Federal Reserve System
12 CFR Chap. II
Docket No. R-1180

Federal Deposit Insurance Corporation
12 CFR Chap. III

Department of the Treasury
Office of Thrift Supervision
12 CFR Chap. V
No. 2003-67

Re: Request for burden reduction recommendations; Consumer Protection: Lending-Related Rules; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

To Whom it May Concern:

The Consumer Bankers Association (CBA)[1] appreciates the opportunity to comment on the request by the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the "Agencies") for burden-

---

[1] The Consumer Bankers Association is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, deposits and delivery. CBA was founded in 1919 and provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include most of the nation's largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry's total assets.

reduction recommendations regarding lending-related rules under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).

Financial institutions are among the most heavily regulated businesses in the country. This is inevitable, given the government's responsibility to maintain a safe and sound banking system, coupled with the need to protect consumers who enter into transactions with creditors. Therefore, it is valuable for the Agencies to consider periodically all the compliance regulations, in order to keep the burdens of these regulations at a minimum. We are grateful to be given an opportunity to share our views and the views of our members.

In this letter, we address ourselves to two issues that arise under the regulations being reviewed: The FRB's proposal to amend five consumer regulations to alter the disclosure standards; and the FRB's revisions to Regulation C. We are also offering some comments on the burdens that often arise when changes are made to regulatory requirements without providing enough time to implement the changes.

Clear and Conspicuous

Seemingly minor changes in regulatory requirements can often be burdensome, even if they result in minor improvements. The changes can be motivated by the best intentions, even the intention of reducing burdens. But the legal, processing, and compliance management issues that can be triggered by "minor" changes may far exceed any benefits that would accrue to the industry.

A recent example of this problem involves the FRB's proposals to amend Regulations B, E, M, Z, and DD to clarify the definition of the requirement that all disclosures be "clear and conspicuous."[2] These changes were proposed in part to provide the industry with a more consistent and therefore less burdensome set of regulations,[3] and were expected to have a minimal impact overall.[4] But the FRB did not support the proposals with any evidence that the changes would benefit financial institutions or consumers, and failed to consider any realistic assessment of their cost to the industry.

---

[2] 68 FR 68793 (Dec. 10, 2003). The FRB has not acted to finalize the proposals, but neither has it retracted them. In the final Regulation Z amendments issued in March 2004, after noting the overwhelming industry opposition, the agency stated: "[FRB] staff is continuing to review the issues raised by the comment letters concerning the clear and conspicuous standard and is considering options to address the commenters' concerns." 69 FR 16769, 16770 (Mar. 31, 2004).

[3] The Supplementary Information to the Regulation Z proposal stated: "[C]onsistency among the regulations should facilitate compliance by institutions." 68 FR at 68794.

[4] According to the Initial Regulatory Flexibility Analysis that accompanied each of the proposals, "The proposed amendments are not expected to have any significant impact on small entities." Id. at 68796. Similarly under the Paperwork Reduction Act review for state member banks that accompanied the proposals, the FRB states, "While the proposal would amend Regulation Z and the staff commentary, it is expected that these revisions would not increase the paperwork burden of creditors." Id. at 68797. The FRB offered no supporting information to justify either of these conclusions.

The five affected regulations already mandate that disclosures must be clear and conspicuous (or readily understandable).[5] Where Congress has determined that consumers need to focus on a few, most important pieces of information, it has enhanced the disclosure requirements for these items. Examples include the requirements in Regulation Z that the Finance Charge and APR be "more conspicuous,"[6] the requirement that the more important closed-end disclosures be segregated from other required disclosures[7] and the so-called Schumer Box, where certain disclosures must be in a prominent location and in tabular format.[8] Regulation M also has a segregated disclosure requirement for what are considered to be several of the more important disclosure requirements.[9] In short, existing standards appear more than adequate to protect consumers by mandating a general principle of clarity that is applicable to the thousands of disclosures in numerous documents and notices, and setting forth special requirements to highlight certain more important items of information.

Yet the cost of these new requirements would undoubtedly be large. The five regulations collectively affect scores of documents at small institutions on paper, web pages, financial kiosks, terminal screens, and other electronic media, and hundreds of documents at larger institutions. The number of documents affected depends on the products and services offered by the institution and on the coverage of the new requirements. Each document has one or more, in some cases dozens of disclosures mandated by these regulations. Many of them are disclosures integrated with or sharing space with contract terms. Many of them share space with disclosures required by other federal regulations or by state laws.

Every financial institution would need to have a legal and compliance review of *every one* of its documents, including those in electronic media such as web pages, financial kiosks, and terminal screens, to determine where those changes are necessary and how to make them. The number of actual changes would depend on many factors, including the institution's tolerance for risk, interpretations provided by the FRB, and opinions of courts in subsequent litigation. The resulting annual costs would also be large, because of the expanded size of disclosures, greater production and mailing expenses, and many other related factors.

We would expect the risk of litigation to increase dramatically because the FRB's wholesale reformatting of the disclosure standards of these five regulations would result in the loss of two or three decades of legal precedent. Added to the cost of the litigation itself would be the potential for excessive legal penalties under some of these regulations, if the debtor prevails in court. These litigation costs would drive up the cost of products for consumers.

---

[5] Regulation B: "clear and conspicuous manner; Regulation E: "clear and readily understandable" 12 CFR 205.4; Regulation M: "clearly and conspicuously" 12 CFR 213.3(a); Regulation Z: "clearly and conspicuously" 12 CFR 226.5(a) and 17(a)"; 12 CFR 202.4(d); Regulation DD: "clearly and conspicuously" 12 CFR 230.3(a).

[6] 12 CFR 226.5(a)(2) and 17(a)(2)

[7] Id at 17(a)(1)

[8] Id at 5a(a)(2)

[9] 12 CFR 213.3(a)(2).

Regulation C—New Data Reporting Requirements

The recent amendments to Regulation C[10] involve a significant cost to the industry, and the cost will continue to accrue for some time.

As amended, Regulation C now requires lenders to report data related to loan pricing; for loan originations in which the annual percentage rate (APR) exceeds the yield for comparable Treasury securities by a specified amount or threshold, the lender must now report the difference between the APR and the yield of Treasury of comparable maturity. Lenders also must report whether a loan is covered by the Home Ownership and Equity Protection Act (HOEPA) or involves a manufactured home. The FRB also revised certain definitions in the regulation. The definition of an application was revised to include a request for preapproval, for purposes of reporting denials of such requests. The definition of a refinancing and the definition of a home improvement loan were revised.

The new requirements have significantly increased the amount of information that must be reported, creating the need for every lender to program multiple systems, create new forms, implement new compliance and credit risk management procedures, and develop new auditing, internal data analysis, and self-testing programs. Many institutions had to hire additional staff, including reviewers and geocoders, and train hundreds, if not thousands of loan officers and other personnel.

Ironically, the additional requirements grew out of the FRB's periodic regulatory review process that is designed in major part *to reduce regulatory burdens*. The FRB's stated policy in these reviews is to "identify ways to clarify and simplify the regulatory language; respond to technological and other developments; reduce undue regulatory burden on the industry; delete obsolete provisions; and improve the quality and usefulness of the data."[11] Even so, the final amendments to Regulation C comprised only a small fraction of the total revisions originally included in the Advance Notice of Proposed Rulemaking, many of them involving additional data reporting requirements. Somehow the goal of reducing burden was lost in the desire to expand information reporting.

The burden of data reporting under revisions to Regulation C is still being felt. Many financial institutions are wrestling with the nuances of the new requirements, attempting to overcome technical problems, and preparing for the issues that may arise when the final data are sent to the agencies, returned for data integrity "scrubs" and then released to the public.

---

[10] 67 FR 7221 (Feb. 15, 2002)
[11] 65 FR 78655, 78656 (Dec. 15, 2000).

Insufficient Time to Comply

It has been our experience that the time needed to comply with changes in existing regulations (or the adoption of new regulations) has become longer in recent years, perhaps due to the increasingly technical nature of compliance. But Congress and the regulatory agencies often have not expanded the time provided for implementation to keep pace with this changing need. The burden of implementing changes to compliance requirements is significantly enhanced by the need to make changes without sufficient time. Errors are more likely to occur which can lead to liability and cost, processes that should be automated are handled manually until the revisions can be properly instituted, additional staff must be hired to make the changes in the time allotted, and other work is put aside to meet the deadline.

In one recent example, we joined with others in the industry to seek additional time to comply with the new HMDA reporting requirements in March of 2002. The FRB's issuance on January 23, 2002 gave the banking and lending industry only until January 1, 2003 to begin data collection and reporting under the new regimen. Such a short time frame would have resulted in enormous burdens for the industry.

As is often the case with regulatory revisions, the biggest single timing problem that the industry faced with the Regulation C revisions was the changes needed to software systems. Larger lenders have particularly complex and time-consuming requirements. Most have multiple systems—including multiple application, origination, and servicing systems—that were affected by the revisions. Loan application systems had to be changed to recognize HMDA-reportable applications and force additional data collection—a complex operation, given the number of permutations involved. Interfaces need to be built between those and the HMDA data holding software, which must be reprogrammed for the new requirements as well. This entire process was necessary several times over for each system affected, such as mortgage lending and retail lending. If a company had been involved in a recent merger or acquisition, it may have had multiple systems that had not yet been converted, further multiplying the programming required.

In the final analysis, the need to push the changes through at a fast pace would have added unnecessarily to the cost and burden of implementation for the entire industry. In the case of Regulation C, we are grateful to the FRB for taking our concerns seriously and giving the industry an additional year to implement the changes. But the issues that arose in the case of HMDA have begun to arise to a greater or lesser extent in most regulatory implementation. At larger institutions, the impact on complex systems can create a significant timing problem when changes are necessary. The queue for systems changes can be long, and some of the other changes being made can be as or more important. And smaller institutions are simply incapable of pushing changes through in

the amount of time that used to be adequate. It has been our experience that the regulatory agencies often do not give these concerns adequate attention.

We recommend that, as you undertake the review of these regulations, you consider how changes to regulations can themselves pose a burden by an insufficient time to implement the changes

Thank you for the opportunity to provide our comments. If you require further information, please do not hesitate to contact us.

Very truly yours,

Steven I. Zeisel
Senior Counsel