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February 9, 2009

Ms. Jennifer Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Attn: Docket No. R-1340
By e-mail: regs.comments@federalreserve.gov

Re: Proposed Amendments to Regulation Z to Implement the Mortgage Disclosure Improvement Act of 2008
Docket No. R-1340

Dear Ms. Johnson:

JPMorgan Chase Bank, N.A. ("Chase") appreciates the opportunity to comment upon the proposal (the "Proposal") of the Board of Governors of the Federal Reserve System (the "Board") with respect to proposed revisions to Regulation Z, which implement certain provisions of the Mortgage Disclosure Improvement Act of 2008, as amended ("MDIA").

Chase strongly supports the Board's objective to improve consumer disclosures to assist consumers in making informed decisions in connection with consumer mortgage transactions. The Board solicits comments on several issues to which Chase wishes to respond.

Timing of Delivery of Early Disclosure – Definition of "Business Day" — §§ 226.19(a)(1)(i) and 226.2(a)(6)

The MDIA amends the Truth in Lending Act ("TILA") to require creditors to deliver or mail the early disclosures no later than three business days after receiving the consumer's application and at least seven business days before consummation. Under the Proposal, the general definition of "business day" [namely, a day on which the creditor's offices are opened to the public for substantially all of its business functions] would be used for purposes of satisfying these timing requirements. The Board indicates that this

definition of "business day" for purposes of § 226.19(a)(1)(i) would ensure consistency with the requirement of the Real Estate Settlement Procedures Act of 1974 ("RESPA"), that creditors provide good faith estimates of settlement costs not later than three business days after the creditor received the consumer's application for a federally related mortgage loan.

The Board requests comments on whether the more precise definition of "business day" [namely, all calendar days except Sundays and the legal holidays referred to in § 226.2(a)(6)] should be used to facilitate compliance with the seven business day waiting period requirement.

Chase believes that the more precise definition of "business day" [namely, all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6)] should be employed for both the seven business day and the three business day waiting periods. It makes more sense to use this precise definition when calculating the waiting period to determine when an event such as the consummation of the loan may take place. Using the general definition, as proposed, which turns on when a creditor is open for business can lead to ambiguity as to which day is a business day and, as a result, when consummation of the loan may take place. Using the precise definition will ensure consistency among creditors and will in no way jeopardize the purpose of the waiting periods, which is to allow consumers time to read the disclosures. In addition, mortgage loan origination systems are generally programmed to support the more precise definition of business days, thus enabling creditors to build on existing code for tracking compliance with this requirement.

On the other hand, the definition of "business day" for purposes of the requirement that the creditor must deliver or mail the early disclosures no later than three business days after receiving the consumer's written application, should remain to mean a day on which the creditor's offices are open to the public for substantially all of its business functions, and in this way ensure consistency with RESPA's requirement.

Applications Withdrawn Within Three Days — Comment § 19(a)(1)(i)-4

This comment provides an exception to the requirement that the disclosures be made within three business days of a loan application when the creditor determines within that time period that the application will not or cannot be approved on the terms requested.

Chase requests clarification that no disclosures would be required if the consumer withdraws the application within that time period.

Waiting Period if APR is Overstated — § 226.19(a)(2)

The Proposal requires redisclosure if the APR subsequently changes beyond the specified tolerance, as defined in § 226.22. The Proposal would impose a three business day waiting period after the creditor amends the earlier disclosure.

Chase believes that since declining rates (and a reduction of the APR) are favorable to consumers, the rule should be clarified so as not to require a three business day waiting period when the only disclosure that requires redisclosure is an overstated APR. Chase believes that it would not be beneficial to the consumer to delay consummation of the loan because the APR decreased from the initially disclosed APR.

We also note that, under current Regulation Z, in a transaction secured by real property or a dwelling, an APR that results from an overstatement of prepaid finance charges is considered accurate. Under current § 226.22(a)(4), an APR will be considered accurate even though it may be above the applicable tolerance if a disclosed finance charge would be accurate under § 226.18(d)(1), namely, that the amount disclosed as the finance charge is greater than the amount required to be disclosed. As a result, an overstatement of the APR under § 226.22(a)(4) would not trigger an additional waiting period under the Proposal.

Since any overstatement of the APR would be due to a lower rate, such as in a period when interest rates are falling, or to lower fees and, therefore, beneficial to the consumer, the rule should not require a three business day waiting period in any circumstance in which the APR has been overstated.

Timing of Delivery of Amended Disclosure — § 226.19(a)(2)

The MDIA provides that if corrected disclosures are mailed, the consumer is considered to receive the disclosures three business days after mailing.

Since a creditor may employ a method of delivery which provides delivery confirmation, such as e-disclosure, overnight service or by private carrier, Chase requests that the rule should be clarified so that a consumer will be considered to receive an amended disclosure at the earlier of three business days after mailing, or the actual date of delivery.

Comparison to the Most Recent Disclosure — § 226.19(a)(2)

In a situation where there has been more than one disclosure of the APR (for example, in the good faith estimates and in a redisclosure) and the APR changes again, to determine whether the new APR is beyond the specified tolerance, as defined in § 226.22, comparison should be made to the most recently disclosed APR, rather than to the APR in the initial disclosure. Once the early disclosure has been corrected, it

becomes irrelevant. Chase suggests that the Proposal should be clarified to provide that each disclosure should be compared to the most recent disclosure or redisclosure. This will provide clear file documentation supporting changes throughout the processing of a loan file.

Consumer's Waiver of Waiting Period Before Consummation — § 226.19(a)(3) and Comment 19(a)(3)-1

Under the MDIA a consumer may modify or waive the timing requirements for the early disclosures when the consumer determines that the credit extension is needed to meet a "*bona fide* personal emergency." The statute does not define this term. Congress has left the definition to the Board.[1] Proposed Comment 19(a)(3)–1 states that the consumer may modify or waive the required waiting period(s) only if the consumer has a bona fide personal financial emergency that must be met before the end of the waiting period(s). The Proposal is substantially similar to existing procedures for modifying or waiving the rescission rights or the waiting period before consummating certain high-cost mortgage loans. See §§ 226.15(e), 226.23(e), and 226.31(c)(1)(iii).

The Board requests comment on the proposed modification or waiver procedures, especially whether such procedures should be more or less flexible than existing procedures for modifying or waiving the rescission right or the waiting period before consummating certain high-cost mortgage loans. In particular, the Board asks whether a personal financial emergency can be other than an impending foreclosure.

Chase believes that the purposes for the waiting periods under the MDIA are substantially different from the purposes for the waiting periods with respect to the right of rescission and to the consummation of certain high-cost mortgage loans. Therefore, differing waivers are appropriate.

The waiting periods under the MDIA, which applies to all dwelling secured loans, is designed to allow consumers a period of time in which to read the loan disclosures. Chase believes that more flexibility should be allowed under the Proposal and that circumstances other than a pending foreclosure should be deemed to be a "*bona fide* personal emergency." The Proposal unnecessarily delays the funding of loans secured by a dwelling. Chase anticipates complaints from customers who have received the required disclosures and cannot fund their loan until the expiration of the waiting period because there is not a personal financial emergency such as or equivalent to the imminent sale of the consumer's home at foreclosure during the waiting period.

Under the Proposal the consumer may shorten or waive the seven business day period required by § 226.19(a)(1)(i) or the three business day waiting period required by § 226.19(a)(2) only if the consumer has received accurate TILA disclosures reflecting the final costs and terms. Therefore, as long as the consumer has received the required

[1] Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, § 2501, 1223 Stat. 2564, 2855.

disclosures, the consumer should be allowed to waive the waiting period for a reason which the consumer believes in the consumer's individual circumstances to be a personal emergency. These can be as many and as idiosyncratic as a consumer's personal determination. Creditors should not be required to determine which personal circumstance is or is not a personal financial emergency for an individual consumer and should be allowed to rely upon the truthfulness of the consumer's statements. Additionally, the Board should clarify that creditors may not be liable for any adverse consequences where the consumer requests a waiver of the waiting period.

Prohibition of Printed Waiver Forms — § 226.19(a)(3)

The Proposal would prohibit the use of printed forms for consumer waivers. This prohibition is not required by the MDIA.

Chase believes that instead of receiving waivers from consumers on varying types of paper formats, a printed form should be allowed as long as the form is so constructed that the consumers must provide their own individual explanation for their request. The form could also advise the consumers to make sure that they read the disclosures.

Proposed Notice Requirement — § 226.19(a)(4)

The MDIA requires that the early disclosures contain a clear and conspicuous notice containing the following statement: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application."

Chase suggests that this language be added to the Model Forms in Appendix H to Part 226.

Effective Date of the Proposal

Chase requests clarification that the July 30, 2009 effective date of the new regulations, as required by the MDIA, applies to loans for which a creditor receives an application on or after July 30, 2009.

Timing of HELOC Disclosures

In connection with the Board's review of the content and format of HELOC disclosures, the Board seeks comment on whether it is necessary or appropriate to change the timing of HELOC disclosures. In particular, the Board seeks comment on whether transaction-specific disclosures should be required after application but significantly earlier than account opening where consumers plan to draw on the account as soon as they open it.

Chase does not believe that transaction-specific disclosures (such as the APR, an itemization of fees, and potential payment amounts) should be required after application but significantly earlier than account opening in the situation where the consumers plan to draw on the account as soon as it is opened. Disclosure requirements should not be tied to what might be the consumers' intent about when they might draw on the account.

Aligning Regulation Z and RESPA

The Department of Housing and Urban Development ("HUD") recently finalized amendments to the regulations implementing RESPA. Consumer disclosures required under both sets of rules must complement each other. Therefore, Chase strongly urges the Board to work with HUD to align Regulation Z and RESPA disclosure requirements. Chase offers the following comments regarding the alignment of Regulation Z and RESPA.

1. **Treatment of Application Fees, Appraisal Costs, and Credit History Charges**

"Our origination charge" in the GFE and HUD-1 and HUD-1A settlement statements under the revised RESPA rules includes certain costs that are not included in the "finance charge" under Regulation Z, such as application fees, appraisal costs, and credit history charges. Chase requests the Board to confirm that these costs are not part of the "finance charge" under Regulation Z, even if creditors require them, despite the inclusion of these costs under "our origination charge" in the RESPA GFE and HUD-1 and HUD-1A settlement statements.

2. **Treatment of Origination Charges in "No Cost" Loans**

The new RESPA rules change the disclosures required for "no cost" loans on the HUD-1 settlement statement, meaning loans on which the creditor absorbs settlement costs (or pays a third party for the costs), and does not add the settlement costs to the loan principal. Chase requests the Board to confirm that notwithstanding RESPA's required disclosures for "no-cost" loans on the HUD-1 settlement statement, there are no prepaid finance charges on a true "no-cost" loan where the borrower is not paying any origination charges directly (either by cash or check or from having them withheld from the loan proceeds).

3. **Seller's Points**

RESPA's new GFE will disclose the points a lender charges on a loan. If the property seller pays the points at settlement, the HUD-1 settlement statement must disclose this. To avoid any confusion, Chase requests the Board to clarify that when a seller pays points on a buyer's mortgage loan, these points are not prepaid finance charges under Regulation Z.

4. RESPA's Average Charge Disclosures

One of the recent changes to the RESPA rules permits the disclosure of certain settlement costs to be calculated as the average cost of a settlement service across a number of settlements. Chase requests the Board to determine that any real estate related fees charged to consumers, that are calculated by the average charge method under the revised RESPA rules, are *bona fide* and reasonable real estate related fees exempt from the Regulation Z definition of finance charge, even if the fee charged in a particular loan is above or below the exact cost in the transaction.

5. Adjustable Interest Rate Disclosures

Congress has required the Board to conduct consumer testing to determine the appropriate format for disclosures about adjustable rate mortgage loans. Because the RESPA disclosures and the Regulation Z disclosures about adjustable rate mortgage loan overlap, Chase strongly urges the Board to work with HUD to align the Regulation Z and RESPA disclosure requirements.

Chase is pleased to have had the opportunity to comment on the Proposal. If you have any questions, please contact the undersigned at 813-881-2908.

Sincerely yours,

Denise L. DesRosiers
Sr. Vice President
Deputy General Counsel