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BUREAU OF
CONSUMER PROTECTION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

COMMISSION AUTHORIZED

February 28, 1992

William W. Wiles, Secretary
Board of Governors of the Federal Reserve System
Washington, D.C. 20551

Dear Mr. Wiles:

The staff of the Division of Credit Practices, Bureau of Consumer Protection of the Federal Trade Commission (FTC) appreciates this opportunity to comment on the Federal Reserve Board's (Board) proposed revisions to Regulation Z, the implementing regulation for the Truth in Lending Act (TILA), regarding home equity lines of credit.[1] The Board requested comment on possible changes to these requirements in view of the United States Court of Appeals' examination of various home equity credit line issues raised in recent litigation, in Consumers Union v. Federal Reserve Board, 938 F.2d 266 (D.C. Cir.). Our comments focus on proposed revisions to the teaser rate and payment example requirements of Regulation Z.

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[1] The Commission enforces the Truth in Lending Act and its implementing Regulation Z for finance companies, mortgage companies, retailers, and the vast majority of other non-federally chartered or federally insured financial entities. See Section 108(c) of the TILA. In conjunction with its enforcement experience, the Commission and its staff have submitted comments to the Federal Reserve Board on many prior occasions and have commented to numerous state agencies on proposed legislation.

These comments represent the views of the Division of Credit Practices of the Federal Trade Commission. They do not necessarily represent the views of the Commission or any individual Commissioner.

I. Teaser Rate Requirement

The Home Equity Loan Consumer Protection Act, amending the TILA, provides that creditors must state any initial "teaser" or discounted rate in preapplication disclosures. More specifically, if an initial annual percentage rate is offered that is not based on an index, creditors must disclose a "statement of such rate and the period of time such initial rate will be in effect." Section 127A(a)(2)(C)(i) of the TILA.

In implementing this requirement, the Board did not require that the rate itself be stated. Rather, the Board required creditors to disclose the fact that the initial rate is discounted, state the period of time the discounted rate will be in effect, and alert consumers to "ask about" the current discount rate value. In promulgating this provision, the Board relied on its broad implementing authority granted by Section 105 of the TILA,[2] duly recognized by the United States Supreme Court.[3]

The Board now asks whether this regulatory language should be retained or revised. If revised, the Board asks whether the regulatory language should more closely track the statutory language, requiring creditors to state the discounted rate itself and deleting the statement telling consumers to "ask about" the current discount.

In our view, amending Regulation Z to mandate disclosure of the specific teaser rate associated with an offer of a home equity line of credit is unnecessary and is likely to impose costs on creditors that are not offset by any consumer gains. As the Board noted in its request for comments, it is in the interest of lenders to convey these promotional rates to potential borrowers. Because the discounted rate may change frequently, requiring disclosure of this particular value could obligate creditors continually to revise preprinted forms or update inserts. Lenders apparently find it less costly to convey such information orally (or in other manners) rather than to revise preprinted forms each time the discounted rate changes.

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[2] Under Section 105 of the TILA, regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of the TILA to prevent circumvention or evasion thereof, or to facilitate compliance.

[3] Anderson Bros. Ford v. Valencia, 452 U.S. 205 (1981); Ford Motor Credit Co. v. Milhollin, 444 U.S. 555 (1980).

Under these circumstances, permitting lenders to disclose this information orally (or in other manners) appears more efficient and unlikely to disadvantage consumers.

As noted, Section 105 of the TILA confers broad authority on the Board to implement the statute to prevent circumvention or evasion as well as to facilitate compliance. Therefore, and for the above reasons, we believe that the Board's approach to this issue is reasonable and that the current language of the Regulation on this issue should stand.

II. Payment Examples Requirement

Under Section 127A of the TILA, three types of payment examples must be provided for home equity plans: 1) an example showing the minimum periodic payment and amount of time needed to repay the line, based on a $10,000 balance and a recent annual percentage rate (the minimum payment example); 2) a statement of the minimum periodic payment based on a $10,000 balance when the maximum annual percentage rate is in effect (the worst case example); and 3) an historical table, based on a $10,000 extension of credit showing how annual percentage rates and payments would have been affected by index value changes over the most recent 15-year period (the historical example). Under the statute, the worst case example and the historical example must be stated "for each repayment option" under the plan.

In implementing these requirements, the Board allowed creditors to provide representative examples of the various payment options offered, rather than requiring separate examples for each payment option. More specifically, the Board created three categories of payment options: 1) plans that permit minimum payment of only accrued finance charges (interest-only plans); 2) plans in which a fixed percent or fraction of the outstanding balance is used to determine the minimum payment; and 3) all other types of minimum payment options. In this manner, no matter how many payment options were offered, creditors would never have to state more than three minimum payment examples, three worst case examples, and three historical examples. (Creditors must also narratively describe all their payment choices). The Board developed this approach to avoid "information overload" to consumers, and it requests comment on whether the payment example rules should be retained or revised.

We do not believe the Board's requirements for home equity payment examples should be expanded. Many creditors offer a wide variety of payment options. It would be unreasonable -- and highly costly -- to require lenders to disclose the details of each of these plans in these disclosures. As the Board has noted, requiring a worst case example and an historical

example for every payment option could provide more material than consumers could reasonably digest regarding the plans available. It could also prove so burdensome that lenders might narrow the payment plans offered to consumers, which may not serve consumers' interests. The variety of payment options on the market at present benefits consumers and enables consumers to select the plan that is best tailored to their individual needs.

The Board's reliance on Section 105 of the TILA to support this approach is appropriate. The Board has sought to ensure disclosure of information that will facilitate the home equity line choice and that at the same time is reasonable and practicable for lenders to provide.

Thank you for consideration of these views.

Sincerely,

Carole L. Reynolds
Division of Credit Practices
Bureau of Consumer Protection