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FEDERAL RESERVE FINALIZES REGULATION Z MORTGAGE LOAN RULES

The Board of Governors of the Federal Reserve System has issued final rules on Regulation Z mortgage loan provisions. The final rule largely adopts the proposed rule issued in December 2008. See Alert dated December 5, 2008.

The December 2008 proposal followed a July 2008 final rule under Regulation Z generally requiring creditors to give consumers transaction-specific cost disclosures shortly after application for closed-end loans secured by a consumer's principal dwelling and before consumers pay any fee, other than a fee for obtaining a credit history. This latest final rule is intended to implement amendments to the Truth in Lending Act known as the Mortgage Disclosure Improvement Act (MDIA). The MDIA was enacted on July 30, 2008 as part of the Housing and Economic Recovery Act of 2008 and amended on October 3, 2008 as part of the Emergency Economic Stabilization Act of 2008.

The MDIA broadens and adds to the requirements of the Board's July 2008 final rule. Among other things, the MDIA requires early, transaction-specific disclosures for mortgage loans secured by dwellings other than the consumer's principal dwelling and requires waiting periods between the time when disclosures are given and consummation of the mortgage transaction. The MDIA specifies different requirements for mortgage loans secured by the consumer's interest in a timeshare plan.

Consistent with the MDIA, the final rule amending Regulation Z requires creditors to make good faith estimates of the required mortgage disclosures and deliver or place them in the mail no later than three business days after receiving a consumer's application for a dwelling-secured closed-end loan. Consummation may occur on or after the seventh business day after disclosures are delivered or mailed. If the annual percentage rate provided in the good faith estimates changes beyond a specified tolerance for accuracy, creditors must provide corrected disclosures, which the consumer must receive on or before the third business day before consummation of the transaction. The consumer will be presumed to have received corrected disclosures three business days after the creditor places them in the mail. No special provision is made for

expedited disclosures, such as those sent electronically, overnight or by courier, but a creditor may rely on evidence of actual delivery instead of the presumption of receipt.

Consistent with RESPA, the final rule requires creditors to use the general definition of "business day" (*i.e.*, any day the creditor's offices are open to the public for most business functions) to calculate the three-business-day period for providing early disclosures. Consistent with HUD's Regulation X, creditors must use the more precise definition of "business day" (*i.e.*, all days except Sundays and specified federal legal public holidays) to calculate (i) the seven- and three-business-day waiting periods before consummation and (ii) the presumption of the consumer's receipt of early disclosure before collection of a fee (other than a fee for obtaining a credit history).

A consumer may expedite consummation to meet a *bona fide* personal financial emergency. To waive or shorten the pre-consummation waiting period, the consumer must give the creditor a written statement (not a preprinted form) that describes the emergency, specifically modifies or waives the waiting period and is signed by each consumer who is primarily liable on the legal obligation.

The final rule is effective and applies to mortgage transactions for which creditors receive consumers' applications on or after July 30, 2009.

The rule also provides that the following regulatory changes adopted in July 2008 will become effective on July 30, 2009 (and not on October 1, 2009 as originally provided in the July 2008 final rule): (i) that early disclosures be given for all dwelling-secured mortgage loans rather than only for "residential mortgage transactions" to finance the purchase or initial construction of the dwelling and (ii) that early disclosures be given before consumers pay any fee except a fee for obtaining the consumer's credit history.

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