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RESPA and TILA Compliance and Regulation

Roundtable: Tuesday May 8, 4:30 pm to 6:00 pm
Concurrent Session: Wednesday May 9, 8:45 am to 10:15 am

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Truth in Lending Act Developments

I. LITIGATION

A. Availability of Rescission in a Class Action

1. ***Andrews v. Chevy Chase Bank, FSB*** (2007 WL 112568, E.D. Wisconsin, January 16, 2007).

   Borrowers alleged that the lender: (1) failed to properly disclose the payment schedule because the schedule did not reflect that the required payments were due monthly; (2) did not clearly disclose the APR and variable rate feature, based in part on disclosures reflecting a note rate of 1.950% and a five year fixed period that applied to the payment and not the rate; (3) added information to the TILA disclosure that was not directly related to the information required to be disclosed (i.e., the initial discounted interest rate of 1.950% set forth as the note rate); and (4) failed to properly disclose the possibility of negative amortization. The federal district court agreed with the first three allegations and determined that the loan was rescindable because of the violations. The court further determined that this matter was appropriate for class certification, finding nothing in the language of the TILA that precludes the use of the class action mechanism to obtain a judicial declaration of whether a TILA error entitles each member of the class individually to seek rescission. The MBA and other industry trade groups have

filed an amici curiae brief requesting that the United States Court of Appeals for the Seventh Circuit overturn the class certification.

2. ***LaLiberte v. Pacific Mercantile Bank*** (147 Cal. App. 4th 1, 4th Dist. Cal., January 25, 2007)

The borrowers filed suit alleging that the exclusion of $450 in closing fees from the Truth in Lending disclosures with each of their loans violated the TILA, and later amended the complaint to include class allegations, including the right to rescind on a class basis. The California appellate court held that rescission is a personal remedy under the TILA and should not be given class treatment. The court found it difficult to believe that Congress would carefully balance the deterrent effects of class actions under the TILA against the potential harm to businesses in the context of statutory damages, and yet allow class action rescission to proceed without any safeguard. The court also noted that with 100 class members, the lender could face the loss of over $37 million in security if rescission were allowed on a class basis.

3. ***McKenna v. First Horizon Home Loan Corp.*** (475 F.3d 418, 1st Cir., January 29, 2007).

The borrowers filed suit alleging that the lender inaccurately disclosed information pertaining to their rescission rights and had failed to appropriately respond to their requests for rescission in violation of the TILA and its Massachusetts counterpart, the Massachusetts Consumer Credit Cost Disclosure Act (MCCCDA). The borrowers asserted that the violations entitled them to statutory damages and rescission, and sought a declaration that any class member who so elected could rescind. The United States Court of Appeals for the First Circuit reversed the district court's 2006 decision certifying class treatment of the rescission claim, finding class certification is not available for rescission claims, whether direct or declaratory, under the TILA or the MCCCDA. The First Circuit stated that the rescission process is intended to be private, with the creditor and debtor working out the logistics of a given rescission. In addressing the express cap on statutory damages for class actions and the absence of any express class action provision in connection with rescission, the First Circuit stated that "Congress either may have intended rescission to be totally unavailable as a class remedy in the TILA milieu or it may have intended rescission class actions to be available unrestrainedly in TILA cases, not subject to any special limiting conditions. We find the first alternative to be much more likely."

4. ***Murry v. America's Mortgage Banc, Inc.*** (2006 WL 1647531, N.D. Ill. June 5, 2006).

The court denied a plaintiff's motion to certify a class with regard to a rescission claim based on grounds specific to the case. The issue of whether or not a rescission claim may proceed on a class action basis was not addressed.

B. Right to Rescind After Loan Pay-Off

1. ***Barrett v. JP Morgan Chase Bank, N.A.*** (445 F.3d 874, 6th Cir., April 18, 2006).

The borrowers refinanced their mortgage with Bank One in May 2000 and again in January 2001. In May 2001, the borrowers refinanced the loan with another lender, and Bank One released its security interest in their home. The borrowers requested that the Bank One loans be rescinded based on alleged TILA violations. Bank One responded that because both loans were refinanced, and the security interest released, there was nothing left to rescind. The district court agreed, but the United States Court of Appeals for the Sixth Circuit reversed. The Sixth Circuit stated that nothing in the TILA or its implementing regulations provides that the act of refinancing extinguishes an unexpired right to rescind, and that the right to rescind gives consumers the right to recover fees in addition to the right to the release of the security interest.

2. ***Handy v. Anchor Mortgage Corp.*** (464 F.3d 760, 7th Cir., September 29, 2006).

The borrower obtained a refinance mortgage loan from Anchor Mortgage and was provided with five copies of a notice of right to cancel. Four of the notices followed the Federal Reserve Board's H-9 model form (refinancing with original creditor) and one followed model form H-8 (general). The H-8 form was the correct form for the transaction. The borrower sought to rescind the transaction two years later on the basis that the rescission notices were not clear and conspicuous. While the case was pending, the borrower died and the administrator of her estate was allowed to substitute as plaintiff. The district court denied the rescission claim on the grounds that if the borrower wanted to rescind following the closing, she could have used either of the forms to do so. The United States Court of Appeals for the Seventh Circuit disagreed, finding that the provision of two versions of the rescission notice violated the clear and conspicuous notice requirement, especially with regard to the effects of rescission. The lender argued that rescission was inappropriate, and maybe even impossible, because the estate of the borrower had recently repaid the loan. The Seventh Circuit agreed with the "well-reasoned opinion" of the Sixth Circuit in *Barrett* and held that even though the loan had been paid in full, a transaction containing a TILA violation is rescindable even after the loan is paid off.

3. ***Pacific Shore Funding v. Lozo*** (138 Cal. App. 4th 1342, 2d Dist. Cal., July 19, 2006).

The borrowers obtained a refinance loan subject to the Home Ownership and Equity Protection Act (HOEPA). Almost two years later the borrowers refinanced the loan. The borrowers then attempted to rescind the first loan on the grounds that the rescission notice did not include the date of the transaction or the deadline for rescission, and that lender failed to comply with the HOEPA pre-closing disclosure requirements. The borrowers filed suit after the lender rejected the rescission demand, and the trial court, following the decision of the United States Court of Appeals for the Ninth Circuit in the 1986 case *King v. State of Cal.*, denied the claim on the grounds that once a loan is refinanced there is nothing left to rescind. The appellate court declined to follow *King*, and instead followed *Barrett* and other cases in holding that the right to rescind survived the refinance of the loan. The court noted that the borrowers still had something to rescind, namely the interest, fees, penalties and charges paid under the first loan.

C. Other Rescission Issues

1. ***Bills v. BNC Mortgage, Inc.***(2006 WL 3227887, N.D. Illinois, November 3, 2006).

The borrower, who was married, obtained a refinance loan. The borrower's wife did not attend the closing, or receive or sign any documents, as the borrower was the sole owner of the property and sole borrower. The couple later sought to rescind the loan on the grounds that the wife had not received a notice of the right to cancel. The couple argued that the wife was a consumer entitled to receive the notice of the right to cancel because she held homestead rights in the property. Based on other cases, the district court determined that under Illinois law homestead rights are merely rights of possession and do not rise to the level of an ownership interest and, therefore, the wife was not a consumer entitled to receive a notice of the right to rescind. The court granted the defendant's motion to dismiss.

2. ***Bank of New York v. Conway*** (916 A.2d 130, Superior Court of Connecticut, December 13, 2006).

A married couple obtained a refinance loan that was closed on March 22, 2000. The named defendant-borrower signed the note, but did not sign the mortgage as he did not have any ownership interest in the property at the time of closing. On March 27, 2000, the borrowers signed and returned a document certifying that they had not exercised the right to rescind. On March 28, 2000, the borrower who owned the property executed a quitclaim deed that conveyed the property to herself and her husband. The husband then added his signature to the mortgage. After the borrowers defaulted, they were sent a demand letter. In response, the

husband returned a notice of the right to cancel seeking to rescind the loan. A foreclosure action was commenced and the note holder moved for summary judgment. The borrowers asserted that the signing of the mortgage by the husband after closing constituted a separate transaction that entitled him to receive a separate notice of the right to cancel. As special defenses the borrowers asserted that the loan was rescinded, that the lender had failed to follow the rescission procedures, and that the lender had failed to disclose an $80 recording fee and had padded a $475 appraisal fee. The note holder claimed that the assertions regarding the fees were false. The court determined that the husband's signing of the mortgage did not constitute a separate transaction that triggered the right to receive a notice of the right to cancel. With regard to the borrower's special defenses based on the recording and appraisal fees, although the facts were in dispute, the court, following prior state court decisions, determined that even if the allegations were true the right to foreclose would not be defeated. The court stated that violations of the TILA's disclosure provisions are not valid special defenses in a mortgage foreclosure action because such violations do not relate to the validity of the note or mortgage, but rather relate to the conduct of the lienholder.

3. ***Palmer v. Champion Mortgage*** (465 F.3d 24, 1st Cir., September 29, 2006)

The borrower obtained a debt consolidation loan that was closed on March 28, 2003. On that date the borrower signed the loan documents, TILA disclosure statement and settlement statement, but did not receive copies of the documents. In early April the borrower received by mail copies of the closing documents, and the notice of the right to cancel. The notice provided that the borrower had the right to cancel within three business days of the last to occur of (1) the date of the transaction, which was stated to be March 28, 2003, (2) the date of receipt of the TILA disclosures or (3) date of receipt of the cancellation notice. The notice also provided that to cancel, the cancellation notice must be sent no later than April 1, 2003 or midnight of the third business day following the latest of the three listed events. In August of 2004 the borrower attempted to rescind the transaction, and the lender did not respond. The borrower then filed suit claiming that the inclusion in the cancellation notice of the April 1 deadline was confusing and entitled her to a continuing right to rescind. The district court granted the lender's motion to dismiss. Citing other cases, the United States Court of Appeals for the First Circuit stated that the court must refrain from crediting the plaintiff's bald assertions, unsupportable conclusions and opprobrious epithets, and that courts must evaluate the adequacy of TILA disclosures from the vantage point of a hypothetical average consumer, which the court described as a consumer who is neither particularly sophisticated nor particularly dense. The First Circuit stated that it failed to see how any reasonable consumer would be drawn to the April 1 deadline without grasping the twice-repeated alternate deadlines, and affirmed the dismissal of the case.

4. ***Moore v. Cycon Enterprises, Inc.*** (2007 WL 475202, W.D. Michigan, February 9, 2007).

The borrowers rescinded a mortgage transaction under the TILA. At issue was whether borrowers were required to tender the full original principal loan amount or the principal loan amount less the loan origination fee, underwriting fee and settlement fee that the borrowers financed. The court noted that the TILA and Regulation Z provide that upon rescission, a consumer is not liable for any amount, including any finance charge. The court held that the borrowers were not required to pay any charges related to the transaction, even if such fees were financed by the lender. Thus, the borrowers were required to return the principal, less the amount of the fees that were financed.

5. ***Tucker v. Beneficial Mortgage Company*** (437 F.Supp.2d 584, E.D. Virginia, July 7, 2006).

In October 2003, the borrowers joined a class action settlement with the lender that was negotiated by the Virginia Attorney General. The settlement released the lender from liability for "all civil claims and causes of action…whether known or unknown." In September 2004, the borrowers attempted to rescind their loan with lender based on alleged TILA and HOEPA violations. The court found that because borrowers joined in the class action settlement, they were barred from rescinding the loan.

D. Payoff Fees

1. McAnaney v. Astoria Financial Corp. (2006 WL 2689621, E.D.N.Y., September 19, 2006).

Three married couples obtained loans made or acquired by the defendant. In connection with the payoff of their loans, the couples assert that they received a letter from the defendant demanding fees such as an attorney document preparation fee, a facsimile fee and a recording fee. The couples brought a class action against the defendant challenging the fees. The district court noted that the defendant used Fannie Mae/Freddie Mac uniform instruments that provided there would be no prepayment penalties or fees, and that the TILA disclosures did not disclose the disputed fees as prepayment penalties or finance charges. The court granted the motion of the couples to certify a class.

E. Business Purpose

1. ***Cashmere Valley Bank v. Brender*** (146 P.3d 928, Supreme Court of Washington, November 16, 2006).

In 1993 the borrower consolidated approximately $203,000 of business loans with the lender, and obtained an additional $150,000 to settle a divorce and obtain his wife's interest in an orchard and shake mill. The borrower signed an agreement representing and warranting that the new loan primarily was for business purposes. The loan was renewed in 1996, and the lender obtained additional security in the borrower's mobile home. In 1999 the borrower obtained additional funds, and in 2001 the 1996 and 1999 loans were consolidated into one loan. The borrower defaulted on the 2001 loan and the lender commenced foreclosure. The borrower asserted defenses and counterclaims including a violation of the TILA. The central issue was whether the 2001 loan was exempt from the TILA on the grounds that it was primarily for a business purposes. The Supreme Court of Washington noted the analysis of the Court of Appeals, in which the lower court identified the following three approaches by which courts assess the purpose of a loan: (1) the original purpose approach, pursuant to which a court will assess the original character and predominating purpose of the loan, (2) the all circumstances approach, pursuant to which the court undertakes a factual analysis, and (3) the quantitative approach, pursuant to which the court looks to whether the borrower used the majority of the loan proceeds for a commercial or consumer purpose. The Court of Appeals selected the quantitative method for the case, and the Supreme Court agreed that such method was appropriate (noting that it was not opining on whether the quantitative method is appropriate for use outside the circumstances of the particular case). The $150,000 obtained by the borrower to settle his divorce and obtain his wife's interest in an orchard and shake mill was considered at trial to be for a consumer purpose. The Supreme Court noted that bank did not object to this characterization, even though it appeared as if the proceeds were used to obtain business assets. The court concluded that, even if the $150,000 was considered to be used for consumer purposes, the majority of the funds still were used for an exempt purpose and, therefore, the loan was not subject to the TILA.

F. Assignee Liability

1. ***Parker v. Potter*** (2007 WL 465560, 11th Cir., February 14, 2007).

The United States Court of Appeals for the Eleventh Circuit held that the right to rescission applies against assignees, as well as creditors, even if a violation of the TILA is not apparent on the face of the documents.

2. ***Miranda v. Universal Financial Group, Inc.*** (459 F.Supp.2d 760, N.D. Illinois, November 7, 2006).

The borrower brought an action for rescission against the lender, two former assignees and the current note holder. The former assignees argued that they no longer had the power to rescind the loan, and that they should be dismissed from the litigation. The court held that a borrower may exercise the right to rescind against any assignees, including former assignees, and declined to dismiss the former assignees.

G. Security Interest Disclosure

1. ***Carye v. Long Beach Mortgage Company***, 470 F.Supp.2d 3, D. Massachusetts, January 22, 2007).

The lender required the borrower to sign a 1-4 Family Rider, adding to the property description, among other items, "goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property…." The borrower argued that the Rider created a security interest that should have been disclosed as part of the TILA disclosures. The lender countered that the Rider created only incidental interests that are excluded from the definition of a security interest. The court denied the lender's motion to dismiss, stating that it "cannot conclude that the only reasonable interpretation of the Rider is that is creates only incidental interests that cannot be disclosed."

II. REGULATORY

A. CHARM Booklet

1. A revised Booklet was issued by the Federal Reserve Board (Board) in December 2006. The prior version was issued in May 2005.

2. The revised Booklet may be used now, and must be used no later than October 1, 2007.

3. Revisions to the Booklet include:

   a. An upfront summary of key points, referred to by the Board as "core message," with references to where the points are addressed in the Booklet.

   b. A mortgage shopping worksheet that is an expanded version of the mortgage checklist and appears in the front of the Booklet.

   c A greater focus on the potential for payment shock.

d. A highlighted statement that loans are available through lenders and brokers, and that brokers are not required to find the best deal for the consumer unless they are acting as the consumer's agent.

e. A highlighted statement that with no-doc or low-doc loans, the lender does not require proof of income, but the consumer usually will have to pay a higher interest rate or extra fees.

f. A highlighted statement that the payment amounts used in the examples do not include taxes, insurance, condominium or HOA fees, or similar items that can be a significant part of the monthly payment.

g. Specific discussions regarding:

   i. Hybrid ARMs.

   ii. Interest-only ARMs.

   iii. Payment-option ARMs.

h. A Consumer Cautions section that addresses:

   i. Loans with initial discounted interest rates.

   ii. Payment shock that can result when initial discounted rates are adjusted.

   iii. Negative amortization in greater detail, including the potential for significantly higher payments.

   iv. The potential for home prices not to increase sufficiently, or to decrease, and that this may make it difficult for the consumer to refinance.

   v. Prepayment penalties and conversion fees.

   vi. Graduated-payment or stepped-rate loans.

B. Interest-Only Mortgage Payments and Payment-Option ARMS—Are They for You?

1. A new Booklet issued by Federal Financial Institution Exam Council members in November 2006 for consumers. Not a required disclosure.

2. Addresses interest-only ARMs and payment-option ARMs, and refers consumers to the CHARM Booklet for additional information.

C. HOEPA Point and Fee Trigger.

1. Under the Home Ownership and Equity Protection Act, in addition to the applicable annual percentage rate trigger, the requirements of the Act are triggered if the points and fees exceed the greater of a specific dollar amount that is adjusted annually or 8% of the “total loan amount”.

2. The Board adjusted the dollar amount for points and fees test from $528 for 2006 to $547 for 2007. (August 14, 2006 *Federal Register* notice.)

D. Regulation Z—Bankruptcy Act Changes/Other Open-End Changes

1. Background

   a. In December 2004 the Board published an advanced notice of proposed rulemaking to commence a comprehensive review of the open-end credit rules under Regulation Z. (December 8, 2004 *Federal Register*.)

   b. On April 20, 2005 the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was signed into law.

      i. The Act includes amendments to the TILA, both open-end and closed-end provisions.

      ii. The Board is required to adopt regulations to implement the amendments.

   c. In October 2005 the Board published a second advanced notice of proposed rulemaking regarding the open-end credit rules, and advised that it will include the changes regarding open-end credit that are required by the Act in the Board’s overall review of the Regulation Z open-end credit provisions. (October 17, 2005 *Federal Register*.)

2. Bankruptcy Act Changes.

   a. Minimum payment warning (open-end).

   b. Introductory rate offers (open-end, credit card).

   c. Credit card Internet solicitations (open-end, credit card).

d. Late fee disclosure (open-end).

e. Tax deductibility warning with high loan-to-value mortgage credit (open- and closed-end).

f. Account termination restriction (open-end).

3. Minimum Payment Warning.

a. Pursuant to the minimum payment warning requirement, periodic billing statements for open-end accounts will need to include in a prominent location on the front of the statements:

i. A warning that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the balance.

ii. A hypothetical example of how long it would take to pay off a specified balance if only minimum payments are made.

iii. A toll-free telephone number that the consumer may call to obtain an estimate of the time it would take to repay their actual account balance.

b. To standardize the information provided to consumers through the toll-free telephone number, the Board is required by the Act to prepare tables that illustrate the approximate number of months it would take to repay an outstanding balance if the consumer pays only the minimum monthly payment and if no other advances are made.

i. The Board plans to develop formulas that can be used to generate the required tables.

c. With regard to the toll-free telephone number:

i. The Board must establish and maintain for up to a 24-month period a toll-free number for use by customers of depository institutions having assets of $250 million or less.

ii. Other depository institutions must establish their own toll-free number or use a third party.

iii. The FTC must establish a toll-free number for use by customers of non-depository institutions.

d. Exception: If through a toll-free number a creditor provides the actual number of months that it will take the consumer to repay the outstanding balance (rather than an estimate):

i. The hypothetical example is not required to be included in the periodic statement.

ii. The warning and toll-free number must be disclosed in the periodic statement, but do not have to be on the front of the statement.

e. The Board can exempt one or more types of open-end accounts from some or all of the minimum payment warning requirements.

i. The Board requested comment on whether it should exempt open-end accounts and credit extensions with a fixed repayment period, such as certain home equity lines of credit, from all of the requirements, or only the requirement to disclose the hypothetical example and toll-free number.

ii. The Board noted that the requirements may not be suitable for reverse mortgage transactions.

4. Late Fee Disclosure.

a. The Act requires that with open-end plans creditors must provide additional disclosures on periodic statements if a late payment fee will be imposed for failure to make a payment on or before the due date.

b. The periodic statement must disclose clearly and conspicuously:

i. The date on which the payment is due or, if different, the earliest date on which a late payment fee may be charged.

ii. The amount of the late payment fee that may be imposed if payment is made after the applicable date.

5. Tax Deductibility Warning With High Loan-to-Value Mortgage Credit.

a. For credit, both open-end and closed-end, secured by a consumer's principal dwelling, creditors must provide additional disclosures if the credit amount will or may exceed the fair market value of the dwelling.

b. With advertisements that are disseminated in paper form to the public or through the Internet (but not radio or television), the advertisements must include a clear and conspicuous statement that:

i. The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.

ii. The consumer should consult a tax advisor for further information regarding the deductibility of the interest and charges.

c. Credit applications for open-end credit must include a statement that interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes (and continue to include a statement that the consumer consult a tax advisor, which was required before the Act).

d. Credit applications for closed-end credit must include a clear and conspicuous statement that:

i. The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.

ii. The consumer should consult a tax advisor for further information regarding the deductibility of the interest and charges.

6. Account Termination Restriction.

a. A creditor may not terminate an open-end credit plan before its expiration date solely because the consumer has not incurred finance charges on the account.

b. A creditor would not be prohibited from terminating an account that was inactive for three or more consecutive months.

E. Federal Reserve Board Hearings

1. The Home Ownership Equity Protection Act (HOEPA) requires the Board to periodically hold public hearings on the home equity lending market and the adequacy of existing regulatory and legislative provisions for protecting the interests of consumers, particularly low income consumers.

2. The Board held hearings in 2000, which focused on predatory lending and the ability of the Board to use its regulatory authority to address abusive lending practices.

a. The hearings led to amendments of the Regulation Z provisions governing HOEPA loans that were adopted in December 2001, with compliance becoming mandatory in October 2002 (the "2002 revisions").

b. Among other changes, the 2002 revisions:

i. Lowered the APR trigger for first lien loans from 10 to 8 percentage points above the yield on Treasury securities with comparable maturities.

ii. Required (1) the inclusion in the points and fees test of premiums or other charges for credit life, accident, health or loss-of-income insurance, or debt-cancellation coverage and (2) the deduction from the loan principal of such premiums and charges for purposes of computing the total loan amount in cases in which the premiums and charges are financed.

iii. Added the prohibition against creditors, assignees or servicers of a HOEPA loan refinancing the loan within the first year following origination, unless the refinancing is in the borrower's interest.

iv. Added a presumption that a creditor engages in a pattern or practice of making HOEPA loans based on the consumer's collateral without regard to the consumer's repayment ability (which constitutes a violation of HOEPA) if the creditor engages in a pattern or practice of making HOEPA loans without verifying and documenting the consumer's ability to repay.

3. Pursuant to the public hearing requirement, in the Summer of 2006 the Board held hearings in Chicago, Philadelphia, San Francisco and Atlanta.

a. The Board also invited the submission of written comments.

b. Parties submitting comments included the MBA, industry members and consumer groups.

4. The four main objectives of the Board were to:

a. Gather views on the effectiveness of the 2002 revisions in protecting consumers and the impact of the revisions on the availability of credit in the higher-cost portion of the subprime market.

b. Gather information that will assist the Board's review of Regulation Z, particularly the rules governing home mortgage loans.

c. Identify matters for which the Board or other entities can develop educational materials to help consumers make informed choices about mortgage loans.

d. Help identify matters for which additional research about the mortgage lending market would be beneficial.

5. The Board identified the following as topics to be addressed:

a. The impact of HOEPA rules and state and local predatory lending laws on predatory lending. The Board invited comment on:

i. Whether the 2002 revisions were effective in curtailing predatory lending practices, the impact of the revisions on the availability of subprime credit, whether other abusive practices emerged since the revisions, and whether certain provisions were particularly effective, or particularly likely to negatively affect credit availability.

ii. The impact of state and local predatory lending laws on curbing abusive practices, whether the laws have adversely affected the access of consumers to legitimate subprime lending, whether certain provisions were particularly effective, or particularly likely to negatively affect credit availability.

iii. What efforts since the 2002 revisions to educate consumers about predatory lending have been successful, and what is needed to help such efforts succeed.

iv. Whether the existing HOEPA disclosures required by Regulation Z should be changed to improve the understanding by consumers of high-cost loan products and, if so, in what way.

b. Nontraditional mortgage products—interest only and payment options ARMs. The Board invited comment on:

i. Whether consumers have sufficient information from disclosures and advertisements about nontraditional mortgage products to understand the risks, such as payment increases and negative amortization, associated with the products.

ii. Whether any disclosures required by Regulation Z should be eliminated or modified because they are confusing to consumers, unduly burdensome to creditors, or are simply not relevant to nontraditional mortgage products, and whether the current required

disclosures present information about nontraditional mortgage products in an understandable manner.

iii. Whether some Regulation Z disclosures should be provided earlier in the mortgage shopping and application process to aid consumers' understanding of key credit terms and costs.

c. Nontraditional mortgage products—reverse mortgages. The Board invited comment on:

i. Whether current Regulation Z disclosures are adequate to inform consumers about the costs of reverse mortgages and to ensure that they understand the terms of the product.

ii. Whether counseling under the HUD reverse mortgage program has been effective in educating consumers about reverse mortgages and in preventing abuses from occurring.

iii. With regard to reverse mortgages that are not made under the HUD program, whether counseling is offered to applicants, whether the borrowers have difficulty understanding the loan terms or encounter other difficulties, and whether the lenders employ alternate disclosure approaches that are proven to be effective.

d. Informed consumer choice in the subprime market. The Board invited comment on:

i. How do consumers who get higher-priced loans shop for the loans, and how do the consumers select a particular lender?

ii. What do consumers understand about the role of mortgage brokers in offering mortgage products, and has their understanding been furthered by state-required mortgage broker disclosures?

iii. What strategies have been helpful in educating consumers about their options in the mortgage market, and what efforts are needed to help educate consumers about the mortgage credit process and how to shop and compare loan terms and fees?

iv. What are some of the "best practices" that lenders, mortgage brokers, consumer advocates and community development groups have employed to help consumers understand the mortgage market and their loan choices?

v. What explains the differences in borrowing patterns among racial and ethnic groups, how much are patterns attributable to differences in credit history and other underwriting factors such as loan-to-value ratio, and what other factors may explain these patterns?

6. Under HOEPA, the Board has the authority to:

a. Except specific mortgage products or categories of mortgage loans from certain HOEPA requirements.

b. Prohibit acts or practices in connection with any mortgage loans that the Board finds to be unfair, deceptive, or designed to evade HOEPA.

c. Prohibit acts or practices in connection with refinance mortgage loans that the Board finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.

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