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December 18, 2009

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

VIA FACSIMILE AND REGULAR MAIL: 202.452.3819

Re: Request for Comments on Proposed Amendments to Regulation Z
Docket No. R-1366

Dear Ms. Johnson:

SunTrust Banks, Inc., including its operating affiliates and subsidiaries (together, "SunTrust") is pleased to submit this response to the Federal Reserve Board (the "Board") in response to the Board's Request for Comments on proposed amendments to Regulation Z, which was published in the Federal Register on August 26, 2009 (the "Amendments"). SunTrust endorses the Board's efforts to address the concerns it has recognized as warranting regulatory change. More specifically, we support the Board's efforts to simplify and improve mortgage disclosures; optimize the timing of disclosures; utilize standardized disclosures; and address those loan originator compensation practices that have proven harmful to consumers.

As one of the largest lending institutions in the United States, SunTrust is keenly aware of the current challenges facing the residential mortgage industry.[1] SunTrust Mortgage is one of the ten largest mortgage originators and mortgage servicers in the United States.[2] Through our extensive experience with all aspects of the mortgage lending process, we recognize that the current federal regulatory regime for closed-end mortgage lending could benefit from prudent amendments.[3] However, we believe

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[1] *SunTrust Banks, Inc., with total assets of $179.1 billion on March 31, 2009, is one of the nation's largest and strongest financial holding companies. Through its banking subsidiaries, the company provides deposit, credit, trust, and investment services to a broad range of retail, business, and institutional clients. Other subsidiaries provide investment management, equipment leasing, and capital market services. The company operates 1,694 retail branches and 2,673 ATMs in the Southeast. In addition, SunTrust provides customers with a full range of technology-based banking channels, including Internet, PC, and Automated Telephone Banking. Additional information about SunTrust is available at our website: www.suntrust.com.*

[2] *SunTrust Mortgage, Inc. is a wholly-owned subsidiary of SunTrust Bank. SunTrust Mortgage, Inc. originates loans through 202 locations in SunTrust markets and adjacent states, maintains correspondent and broker relationships in 49 states and services loans in 50 states and the District of Columbia. SunTrust Mortgage services more than one million loans representing in excess of $175 billion in outstanding closed-end, mortgage-secured, consumer debt. Additional information about SunTrust Mortgage is available at: www.suntrustmortgage.com.*

[3] *SunTrust is providing a separate comment letter in response to Docket No. R-1367 relating to open-end, mortgage-secured credit.*

that the below comments will serve to achieve a more appropriate balance between addressing certain outstanding regulatory shortfalls and enabling home lending to continue to function at levels appropriate to responsibly meet public demand. We respectfully provide these comments in hopes of contributing meaningful input to the Board as it promulgates final regulations. Thank you in advance for considering our commentary on this very important topic.

OVERVIEW

Consistent with the Board's approach to categorizing the Amendments, SunTrust addresses each of the following areas in turn:

- **Disclosures at Application**
- **Disclosures within Three Days of Application**
- **Disclosures within Three Days of Consummation**
- **Disclosures after Consummation**
- **Loan Originator Compensation and "Steering"**
- **Miscellaneous Subjects**

DISCLOSURES AT APPLICATION

Key Questions to Ask About Your Mortgage

The Board proposes to require that creditors, at application, provide a one-page, Board-drafted publication entitled "Key Questions to Ask about Your Mortgage" for all closed-end mortgages. The document must be provided before the consumer applies for a loan or pays a nonrefundable fee, whichever is earlier.

Generally, we do not object to providing this document, as it may serve to both motivate the applicant to become informed about the mortgage origination process and trigger a meaningful dialogue between the applicant and the loan originator.[4] However, the Board might consider the following points about this document:

- The use of the word "Key" in the document title is idiomatic and potentially confusing. We would suggest the Board replace this word with the term "Important" or something similar. Also, the title assumes the applicant already has a mortgage, which may confuse the applicant into thinking that the document contents are not relevant until some subsequent point in the application process.

- The Board might move the reference to the Board's website to the end of the document, which is where such notices generally appear. This will cause the

[4] *While not specifically recognized in the Amendments, we believe that mortgage brokers should be required to provide these forms before accepting an application or collecting any fee. We believe that mandating such will ensure that this information is received at the appropriate time in the loan origination process for all borrowers. An alternative to requiring brokers to provide program disclosures would be for HUD to revise the "Summary of your loan" section of the new GFE so that it would provide the same information as the program disclosures.*

document to flow better, as the borrower is invited to seek "more information" after reviewing the information in the body of the document.

- The first question begins, "If you have an adjustable rate mortgage," which suggests the borrower already has such. This might be restated as "If you choose an adjustable rate mortgage." In the same location the following appears, "...your interest rate can go up or down after a short period." Some ARM products have an introductory rate period of 5, 7 or even 10 years, so we do not believe that the word "short" accurately describes all ARM features. The Board might replace this sentence with, "...your interest rate can go up or down before you have fully repaid your debt."

- The answer to the second question indicates that a borrower's monthly payment may increase because "your property taxes or insurance premiums increase." The consumer's property taxes or insurance premiums may increase regardless of what mortgage loan the consumer chooses or whether the consumer has a mortgage at all. It is not relevant to the consumer's decision about a particular mortgage product. For this reason we do not believe that it is necessary to include this language. If the Board believes that such an ancillary notification is preferred, we suggest deleting the current reference to taxes and insurance and adding the following sentence at the end, "In addition, changes to your property tax rates or insurance premiums may increase your payment over the life of the loan."

- The third question is inconsistent across the model forms. In addition, whether the loan requires payment of principal has an effect on the consumer's equity; however, decreases in the market value of the home may have an even greater effect. Both the third and fourth question should be clarified to address this latter point. For these reasons, we suggest replacing the current third and fourth questions with the following alternative language:

3

Will any of my monthly payments be interest-only?
Some loans let you pay only the interest on your loan each month. These payments do not pay down the amount you borrowed. As a result, if you have this type of loan, you may not build any equity in your home even if your home does not decrease in value.

4

Even if I make my monthly payments, can my loan balance increase?
Some loans let you choose to pay even less than the interest owed each month. The unpaid interest is added to your loan balance and increases the total amount that you owe. This could cause you to lose equity in your home even if your home does not decrease in value.

- The seventh question asks, "Will I have to document my employment, income and assets to get this loan?" In subsequent disclosures this question becomes "Will my loan have a higher rate or fees because I did not document my employment, income or other assets?" We recommend that this question be amended so that it is consistent in all disclosures.

- Something omitted from this document that the Board might wish to include relates to a borrower's duty to assess their own financial situation and to ensure they are capable of repaying the debt. It seems important that this document at least acknowledge – perhaps in the introductory paragraph – that purchasing a home is a serious undertaking that requires thoughtful consideration and a pragmatic, sober assessment of the borrower's own credit situation and financial wherewithal. Understanding and accepting both the benefits and burdens of a substantial loan is a responsibility that an applicant must not take lightly.

- Finally, we do not believe it is clear whether the lender must retain evidence of having provided the notices in their records if the borrower does not obtain the loan through the lender. It is also not clear if there is any benefit to having the document signed. It is difficult to imagine that lenders would be required to retain such a document when the applicant opts for a different lender to obtain the loan. It would be helpful for the Board to opine on this question to ensure that lenders' responsibilities are clear on this point.

Fixed vs. Adjustable Rate Mortgages

The Board proposes to replace the current "CHARM" (Consumer Handbook on Adjustable Rate Mortgages) booklet with a new, single-paged publication entitled "Fixed vs. Adjustable Rate Mortgages." This document is intended to provide a plain-language explanation of the basic differences between fixed-rate and adjustable rate mortgages.

Once again, we do not object to providing this document, as it can provide meaningful information to the applicant and may stimulate dialogue between the applicant and the loan originator. However, the Board might consider the following points about this document:

- The title includes the abbreviation "vs.," which may be unclear to some borrowers. The Board might consider renaming the document "Comparing Fixed and Adjustable Rate Mortgages" or something similar to address the use of the abbreviation.

- The disclosure appears to tell the consumer that if the rate is fixed then payments will stay the same for the life of the loan. This is not necessarily so in the case of a fixed-rate, balloon loan or a loan with a temporary buydown feature. For this reason, we suggest adding the below underlined language to the first sentence of the first paragraph of the disclosure:

  > A traditional fixed rate mortgage <u>with equal monthly payments throughout the life of the loan</u> is a safe choice for many borrowers.

  We further suggest that the description in the Fixed Rate Mortgages column be revised to address this issue and the risks of a fixed rate mortgage:

> With a fixed rate mortgage, the interest rate and monthly loan payment usually stay the same for the entire loan term. However, the interest rate and monthly payment are often higher than the initial rate and payment on an ARM.

- The column of the form describing ARMs contains the following sentence: "However, both the rate and payment can increase very quickly." This statement is not accurate for hybrid ARMs that have many years until the first adjustment. We recommend revising this sentence by adding the underlined language as follows:

  > However, on some ARMs both the rate and payment may increase very quickly.

- Both this document and the Key Questions to Ask About Your Mortgage are to be presented to applicants on separate sheets of paper. We request that the Board consider combining the two documents into a single page as this will (i) decrease the number of pages for applicants to read; (ii) reduce the costs of providing the disclosure; and (iii) conserve the resources associated with producing the disclosure. We do not believe that the separation of these two documents provides a benefit that offsets these issues.

ARM Loan Program Disclosures

The Board proposes to require creditors to provide a new disclosure when a consumer expresses an interest in an ARM loan product. The disclosure contains two sections, each of which is addressed in turn below.

The first section, entitled "Interest Rate and Payment," consists of the following:

(a) Introductory Period

Introductory Period	***(Length of Time)*** The interest rate [is discounted and] will stay the same for [a] (*length of time*) [introductory period]. After this initial period, [the interest rate could increase][even if market rates do not change, this rate will [increase][decrease] by ___%].

(b) Frequency of the Rate and Payment Change

Frequency of Rate [and Payment] Change	***(Frequency)*** The interest rate [and payment] will adjust (*frequency*) [after the introductory period]. [The payment will adjust (*frequency*) [after the introductory period].]

(c) Index or Formula used to make adjustments, a source of information about the index or formula, and an explanation of how the interest rate will be determined

[Index] [Formula]	[(*Index*)][(*Formula*)] After the initial (*length of time*) period, your interest rate will be based on [the (*index*) plus a margin. The (*index*) is published in the (*source of index*)] [(*formula*). Information about this formula can be found at (*source of formula*)].

(d) Limit on Rate Changes

Limits on [Rate] [and Payment] Changes	**[___% (*Frequency*) Cap][;][___% Lifetime Cap]** Your [interest rate][payment] can increase [**no more than** ___% in any (*time period*)][, and] [**no more than** ___% over the life of the loan].]

(e) Interest Rate Carryover

[If a rate cap prevents us from adding part of an interest rate, we can add that increase at a later adjustment date.]

(f) Conversion Feature

[You have the option to convert your loan to a fixed rate loan for (length of time). If you convert your loan to a fixed rate loan, the [rate] [payment] may not increase more than (frequency) [or ___% overall]. [You may have a higher interest rate when you convert to a fixed rate loan.]

[You may have to pay fees when you convert to a fixed rate loan.]]

(g) The Preferred Rate

The interest rate is a preferred rate that could [increase] [decrease] by ____% if (description of event).] [You could pay fees if [one or more] (description of event(s)) occur(s).]

- The terms "introductory period" and "initial period" appear at different times in this first section. We would recommend that the latter term be replaced with the former term in all circumstances to ensure clarity and consistency.

- Provision (d) is entitled "Limits on [Rate][and Payment] Changes," though it only contemplates that rates will progress upward. The Board should note that there are often both ceiling and floor limits for rate changes. Therefore, the board might amend this provision by entitling it, "Limits on <u>Increased</u> [Rate][and Payment] Changes."

- Also, above provisions (e), (f) and (g) are not contained in any model form. The Board notes that, "The model clauses are not included in the model forms although they are mandatory for certain transactions. Creditors using the model clauses when applicable to a transaction are deemed to be in compliance with the regulation with regard to that disclosure." Given the Board's approach to including "as necessary" disclosures using brackets in the model form, doing

the same with these three model clauses might be helpful, as it is unclear whether the Board has a preferred order and/or whether there are any bold or capitalization requirements.

- For some ARM loans the initial interest rate is not determined using the index or formula that applies to later rate adjustments. Therefore, the creditor will often not know, when giving the program disclosure, whether the initial rate will be discounted from the fully indexed rate, the same as the fully indexed rate or be a premium over the fully indexed rate. This is due to the fact that the rate is not set using the formula that will apply to later rate adjustments.

  Additionally, borrowers often have the choice of paying discount points and obtaining a lower initial interest rate, or taking a higher initial interest rate and receiving a credit towards closing costs. Whether a borrower chooses to pay discount points to get a lower initial rate or chooses to pay a higher initial rate to receive a credit, the fully indexed rate would not be affected. Because the disclosure precedes the loan application, the creditor does not know, when giving the program disclosure, what choice the borrower will make and whether the initial rate will be a discounted or premium rate.

  We recommend that the Board clarify that it is permissible to represent that the initial rate may be discounted, even if there is a possibility that the consumer may ultimately choose an initial rate that is not discounted.

The second section of the ARM Loan Program Disclosure is entitled "Key Questions About Risk." This disclosure must appear in a tabular, Q&A format, with highlighted answers in a particular order. Affirmative answers must appear in bold and capitalized text, while negative answers must be disclosed in non-bold text. The "Key Questions About Risk" section includes three *mandatory* disclosures:

(a) Interest rate increases

Can my interest rate increase?	**YES.** Your interest rate could increase at the end of the (*length of time*) [introductory period], and (*frequency*) after that.

(b) Payment increases

Can my monthly payment increase?	[No.] [**YES.** [If your interest rate increases, your monthly payment will increase.][Your minimum payment can increase after (*period*).]]

(c) Prepayment penalties

Could I owe a prepayment penalty?	[No.][**YES.** If you pay off your loan, refinance, or sell your home within (*period*) you could pay a large penalty.]

- As noted in a prior comment, we do not believe that the use of the idiomatic "Key" in a title is especially clear. We would suggest that the Board consider an alternative term, such as "Important." Also, we do not believe that the use of bold and capitalized text is necessary, though we do not object to the requirement if the Board is convinced it is truly beneficial to consumers.

- It seems unusual that the prepayment penalty provision is mandatory, but that it must be disclosed *after* other disclosures when the other disclosures are applicable. If the prepayment penalty warrants mandatory disclosure, it seems reasonable to keep these three questions first and have the "as applicable" questions follow as appropriate.

The "Key Questions About Risk" section also includes six other disclosures *as applicable*. In the section entitled "Miscellaneous Subjects," we more fully respond to the Board's proposed requirement that lenders only include those disclosures relevant to the requested loan product. However, it is worth noting here that we do not believe the omission of some items and the inclusion of others will enable consumers to effectively engage in comparison shopping. For this reason, we believe the Board should reconsider this requirement. The six "as applicable" disclosures appear below:

(a) Interest-only payments

[Will any of my monthly payments be interest-only?]	[YES. [Your (*frequency*) payments for the first (*period*) of the loan][This loan would give you the choice to make (*frequency*) payments that] cover the interest you owe each month, but **none** of the principal. Making these (*frequency*) payments means your loan amount will stay the same and you will be no closer to having it paid off.]

(b) Negative amortization

[Even if I make my monthly payments, could my loan balance increase?]	[YES. Your minimum payment covers only part of the interest you owe each (*period*) and **none** of the principal. The unpaid interest will be added to your loan amount, which over time will increase the total amount you are borrowing and cause you to lose equity in your home.]

(d) Balloon payment

[Will I owe a balloon payment?]	[YES. You would owe a balloon payment due (*period*).]

(e) Demand feature

[Can my lender demand full repayment at any time?]	[YES. We can demand that you pay off the **full** amount of your loan at any time. We would give you at least (*period*) notice.]

(f) No -documentation or low-documentation

[Could my loan have a higher rate or fees if I do not document my employment, income or other assets?]	[YES. If you provide more documentation, you could decrease your interest rate or fees.]

(g) Shared-equity or shared-appreciation

[Do I have to share any equity I gain?]	[YES. We are entitled to ___% of any gain you make when you sell or refinance this property.]

- We believe that some of these questions can be improved. For example, for provision (a), the question should read, "<u>Can</u> any of my monthly payments be interest-only?" Similarly, for provision (b) the question should read, "Even if I make my <u>minimum</u> monthly payments...?"

- The inclusion of the rare loan term involving shared-equity or shared-appreciation (provision (g)) seems unnecessary. While we recognize that this is an important term of any loan, we do not believe that lenders require such a provision with any frequency and that the burden of programming for this disclosure will far outweigh the very rare benefit derived by consumers.

- We believe it would be beneficial to require pre-application loan program disclosures for all loan programs that have the features identified in the Key Questions that present additional risks. This would include loans with increasing step rates or step payments, fixed rate interest only loans, fixed rate loans with negative amortization, loans with required prepayment penalty features, loans with balloon payments, and no-documentation or low-documentation loans with higher pricing. In many cases, creditors and mortgage brokers are already required by the Nontraditional Mortgage Guidance adopted by both federal and state regulators to provide information about such risks.

- We also believe it is important that the Board make clear that if a lender errs in making this ARM Loan Program disclosure, but no loan is ever made, the borrower has no recourse against the lender. Otherwise, an individual could shop for disclosures until an error is made and then attempt to seek a remedy against the lender, even if the borrower had no intention of going through with the loan.

<u>DISCLOSURES WITHIN THREE DAYS OF APPLICATION</u>

The Board proposes to replace the current TILA disclosure requirements for loans secured by land or a dwelling with an entirely new disclosure. The format, headings, font size and content are very technical, requiring a creditor to provide documents that print only those disclosures that are relevant to the borrower's loan. (As noted *supra*, this issue is more fully discussed *infra*.)

As a preliminary matter, we request that the Board help creditors deal with the complex formatting requirements by providing additional disclosure examples that cover, at a minimum, the structure of all of the standard mortgage programs of Fannie,

Freddie, FHA and VA. Each section of the proposed new disclosure is discussed more fully below:

<u>Identification of Originator and Creditor</u>

(*Name of Creditor*)
(*Loan Originator Unique Identifier*)

- The Board notes that in transactions with multiple originators, each loan originator's unique identifier must be listed. (For example, both identifiers for a broker and its employee loan originator meeting that definition would be required when a loan is table funded.) However, the Board does not appear to provide a sample of how each unique identifier would be presented when there is more than one loan originator. We ask that the Board provide such to ensure that there is no confusion on this point.

  Further, several registered loan originators may be involved in the origination of a loan – whether it be directly or indirectly. Tracking every originator who touches a loan file would be a significant regulatory burden with little or no apparent consumer benefit. For this reason we recommend that no more than two loan originators be required to be disclosed and that the creditor should be permitted to use any reasonable method to determine the loan originators listed on the file. For example, the loan originator who takes the application and with whom the consumer deals directly should be a satisfactory disclosure.

- Also, the borrower's mailing address may be different than the address of the property securing the loan. We request clarification that both addresses may appear in this section.

<u>Loan Summary</u>

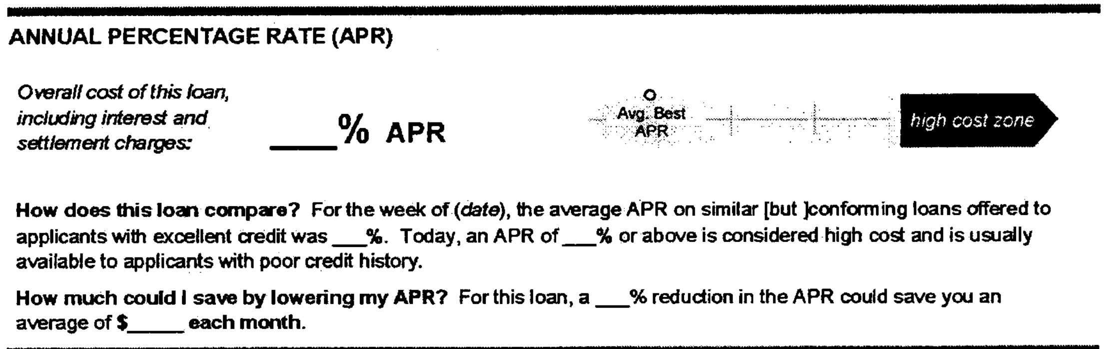
LOAN SUMMARY

Loan Amount:	**$____**
Loan Term:	***(length of term)***
Loan Type and Features:	**Fixed Rate Mortgage** • [Includes [interest-only payments][step-payments]]
Total Settlement Charges:	**$____** • [$____ of these charges are already included in your loan amount above.] • [This total does not include a down payment. See your Good Faith Estimate or HUD-1 for details.]
[Prepayment Penalty:	Up to **$____** if you pay off your loan, refinance, or sell this property within (*period*).]

This disclosure requires that lenders include – as applicable – bulleted information in the "Loan Type and Features" and "Total Settlement Charges" sections. The Board should make clear whether bulleting is mandatory or optional. Also, in the model

disclosure "step payments" is not capitalized; however, in the sample disclosure, it is capitalized. It would be helpful if the Board was consistent with this disclosure.

Annual Percentage Rate



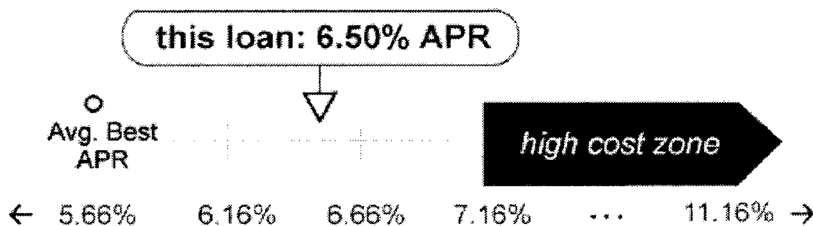
ANNUAL PERCENTAGE RATE (APR)

Overall cost of this loan, including interest and settlement charges: ____% APR

How does this loan compare? For the week of (*date*), the average APR on similar [but]conforming loans offered to applicants with excellent credit was ___%. Today, an APR of ___% or above is considered high cost and is usually available to applicants with poor credit history.

How much could I save by lowering my APR? For this loan, a ___% reduction in the APR could save you an average of $_____ each month.

The Board believes that the above disclosure will benefit borrowers by providing a visual indication of how a particular loan compares to the "Avg. Best APR" and a new "high cost zone." The former value is the Average Prime Offer Rate ("APOR"). The latter value is a range that is set at the margins as the APOR plus 1.5% (on 1st lien mortgages) through the APOR plus 5.5%. The sample forms include a bubble that references the loan in question as "this loan: _____ % APR," and from the bubble descends an arrow that marks the location of the loan on the continuum. One completed example is excerpted and enlarged below:



The Board then requires that lenders include a verbal restatement of the same information contained in the graphic – such as the below:

How does this loan compare? For the week of March 23, 2009, the average APR on similar conforming loans offered to applicants with excellent credit was **5.66%**. Today, an APR of **7.16%** or above is considered high cost and is usually available to applicants with poor credit history.

- The ability of most mortgage lenders to generate a graph like this in an accurate way will be very difficult. We believe that doing so will require the replacement of many of our current printers to ensure that the shading is clear and will require a virtual programming overhaul of our current systems. With this background, we believe that the traditional (word-based) disclosure is sufficient to convey this information to borrowers. In fact, by including the same information utilizing a traditional disclosure, it appears the Board is conceding that the graphic itself lacks inherent clarity when viewed in isolation. While we

understand that the Board believes that such a graphic will be beneficial to borrowers, we respectfully submit that it will more likely trigger additional questions that will only add more uncertainty to the loan origination process. For these reasons, we believe the graphic should be completely stricken from the Amendments.

If the Amendments must include the graph, the Board could post a graph every week that creditors could include in disclosures, rather than requiring creditors to disclose loan-specific graphs. Another alternative is to combine the APOR Comparison with a credit score disclosure. The APR to APOR comparison will only be useful if consumers understand how their creditworthiness compares to the creditworthiness of other consumers. We recommend that the Board finalize the model form H-3 for the credit score disclosures for loan secured by 1-4 family residential real property that it proposed as part of the proposed FACTA risk-based pricing regulations, and that the Comparison of APR to APOR appear on that disclosure.

Because the APR will now be an all-in APR, the calculation of the APOR should be revised to include the average amount of all of the fees included in the calculation. Without this change the comparison of the APR to the APOR will be misleading because the APOR will be understated from the actual average APRs offered to prime customers.

Also, the disclosed APOR must be for the week in which the disclosure required under this section is "provided," while a different section provides that it should be the APOR as of the date the disclosure is "produced." Because there may be a delay between when a disclosure is produced and when it is provided to the consumer, we request a clarification that the creditor may use the APOR in effect either on the date the disclosure is produced or provided.

Similarly, the Amendments refer to the higher-priced mortgage loan threshold as defined in Section 226.35(a)(1). That threshold is determined using the rate set date. To ensure consistency, we recommend that proposed Comment 38(b)(3) be revised to indicate that the APOR may be determined as of either the date the disclosure is produced or provided and to delete the reference to the Comment that states that the APOR is determined by the rate set date.

The APOR is computed for owner-occupied conforming loans with a loan-to-value ratio of 80% or less. As a result, the APOR substantially understates the average prime offer rate for loans that are not secured by owner-occupied properties, for loan amounts above the Fannie Mae / Freddie Mac conforming loan limit, as well as for loans with LTVs above 80%. We believe that the Board should revise the language that explains the comparison by replacing the current verbiage with the following:

> **How does this loan compare?** For the week of (date) the average APR on similar [but smaller] conforming loans offered to applicants with excellent credit and substantial equity in their homes was

______%. Today, an APR of _____% or above is considered high cost and is usually charged to applicants who obtain a very large loan, have a blemished credit history, or are borrowing more than 80% of their home's value.

- The disclosure following the question "How Much Could I Save By Lowering My APR?" should also be amended. As the Board acknowledges, although this disclosure refers to a lowering of the applicant's APR by 1%, the actual calculation as explained in the Amendments would be based upon a reduction in the *interest rate* on the loan by 1%. It is also unclear why the model form has a blank for the amount of the reduction in the APR if 1% should always be used. Further, we believe that some borrowers may conclude from this disclosure that they might qualify for a lower rate, which may not be true. That is, by pointing out how much a particular borrower might save in this situation, the borrower might be confused into believing that he is eligible for such.

  The Amendments require disclosure of "a 1 percentage point reduction in the APR." The form needs to be revised to match the regulation, by adding the word "point." That is, a one percentage point reduction in the APR, such as from 8% to 7%, is a 12.5% net reduction in the APR, not 1%. This change is needed in the Adjustable Rate Loan Program Model Form, Adjustment Notices, and in the APR disclosures on the model forms.

  For this reason, we recommend that the disclosure be revised as follows:

  > **How much could I save by lowering my interest rate?** For this loan, a 1% point reduction in the interest rate could save you an average of **$ ______each month**."

  We also note that the examples only address fully amortizing loans with monthly payments. We request that the Board provide an example of how the disclosure was calculated for the balloon loan shown in form H-19(D). We also ask that the Board provide model language for loans that do not require monthly payments.

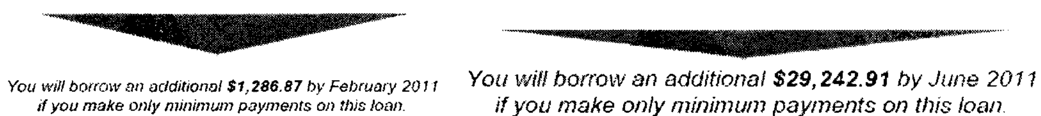
Interest Rate and Payment Summary

INTEREST RATE AND PAYMENT SUMMARY

	Rate & Monthly Payment
Interest Rate	___%
Principal + Interest Payment	$____
Est. Taxes + Insurance (Escrow) • [Includes [Private] Mortgage Insurance]	$____
Total Est. Monthly Payment	**$____**

The Amendments will require that creditors disclose in a tabular format the contract interest rate together with the corresponding monthly payment, including escrows for taxes and property and/or mortgage insurance (based on estimates). The amount of any balloon payment, if applicable, must also be disclosed. For adjustable-rate or step-rate amortizing loans, up to three interest rates and corresponding monthly payments would be required, including the maximum possible interest rate and payment. If the interest rate at consummation is less than the fully-indexed rate, the interest rate must be labeled as "introductory." The table can have no more than five columns and creditors cannot include information in the table that is not required according to the loan type. Even more disclosures are required for loans with negatively-amortizing payment options, introductory interest rates, interest-only payments and balloon payments.

- As part of our review of the sample disclosures we noted the below, which seems to require the inclusion of some kind of large arrow that points downward.



*You will borrow an additional **$1,286.87** by February 2011 if you make only minimum payments on this loan.*

*You will borrow an additional **$29,242.91** by June 2011 if you make only minimum payments on this loan.*

  If this is required by the Board, we request that the Board explain how this must appear. To be clear, we believe that requiring this graphic is unnecessary and unduly burdensome for lenders. In addition, the Board once again includes shading and highlighting requirements that are outside of our current print capabilities. We ask that the Board reconsider the necessity for what appears to be a somewhat cosmetic requirement.

- According to the Amendments, if the creditor requires the establishment of an escrow account, then the escrow payments must be included in the Interest Rate and Payment Summary. The rationale for this requirement is that many consumers compare loans based on the monthly payment amount. However, while it makes sense for consumers to understand the amount that they will need to set aside for taxes and insurance each month, they will need to set aside the same amount whether an escrow account is established or they pay that amount directly. As the Board's HPML rules recognize, it is often in the consumer's benefit to have an escrow account. Requiring that the average monthly amount of taxes and insurance be disclosed only on loans where an escrow account will be required may be misleading, particularly because it would facilitate an unscrupulous loan originator comparing its payments without escrow to the consumer's existing loan, or a competitor's new loan, that includes escrow.

  We recommend that for all first lien loans, the Interest Rate and Payment Summary should include the Estimated Tax and Insurance amounts whether or not an escrow account is required.

<u>Key Questions About Risk</u>

KEY QUESTIONS ABOUT RISK	
Can my interest rate increase?	No.
Can my monthly payment increase?	[No.][**YES.** Your payment can increase beginning in (*date*).]
Could I owe a prepayment penalty?	[No.][**YES.** If you pay off your loan, refinance, or sell your home within (***period***) you could pay a penalty of up to **$_____**.]

- As explained more fully later in these comments, we believe that lenders should not be required to incorporate an active print functionality into their current processes. Instead, lenders should be able to simply print an answer to a question that borrowers can then use to compare to other lenders' offers. (The above "Key Questions" excerpt omits the "as applicable" questions that might be triggered by the terms of a loan.) Not requiring a consistent set of questions and answers from each lender will result in an "apples to oranges" shopping comparison, unless the borrower somehow knows what the omission of a question means. Further, we do not believe that the bold and capitalized "YES" in this section affords a borrower any benefit, when the contrary answer is neither bolded nor capitalized. For this reason, we believe that this requirement should be stricken or at least made consistent for each term. We also believe that the order of these disclosures should be consistent and should not be interposed before or after the prepayment penalty question. Also, as noted previously, the use of the term "Key" may be confusing to some borrowers.

- Finally, the appropriate response to the question that states "Can my monthly payment increase?" is not clear when there is the potential for a payment increase from changes in required escrow amounts. We ask that the Board clarify that when a loan has an escrow account, the possibility of an increase in the escrow payment does not trigger an affirmative response to this question.

<u>More Information About Your Payments</u>

MORE INFORMATION ABOUT YOUR PAYMENTS	
[Payment Change Limits]	[Your minimum payments due cannot increase more than ___% each (*period*) until (*description of recast event*). [When this happens][Beginning in (*period*)], you must make full monthly payments that cover all principal and interest owed on the loan.]
Escrow	[An escrow account is required for property taxes and insurance (such as homeowner's insurance). Your escrow payment is an estimate and can change at any time. See your Good Faith Estimate or HUD-1 form for more details.][An escrow account is not required on this loan. You must pay your property taxes, homeowners, and other insurance on your own.]
[[Private] Mortgage Insurance]	[[Private] Mortgage Insurance [(PMI)] is required for this loan. It is included in your escrow.]
Total Payments	If you made all payments as scheduled, you would make (*number*) payments totaling $_____[, including estimated escrow]. Of this amount, $_____ would go to interest and settlement charges. This amount, and your amount financed of $_____, are used to calculate your APR.

In the above, the Board proposes to require creditors to disclose additional information about certain topics relating to a borrower's payments, including: (1) Information about limitations on rate and payment changes; (2) Whether or not an escrow account for taxes and insurance is required; (3) A disclosure about private mortgage insurance (if applicable); (4) The Amount Financed; (5) The Interest and Settlement Charges; and (6) The Total and Number of Payments.

- This section seems to require that the terms on the left of the transparent dividing line be bolded and that items to the right of the same line not be bolded. This seems hypertechnical and of no real benefit to borrowers. In fact, such abundant usage of "bold on" and "bold off" disclosures might actually confuse borrowers so that they only pay attention to those items that are bolded and simply disregard non-bolded terms that may be of equal importance.

- When an escrow account is required, some items may be paid out of the escrow account while other items are paid directly by the consumer. However, the Escrow language for loans that require escrow accounts disclosure does not appear to take this possibility into consideration despite the fact that the GFE and HUD-1 do. We suggest replacing the current verbiage with the below:

  [An escrow account is required. Your escrow payment is an estimate and can change at any time. See your Good Faith Estimate or HUD-1 form for details on what property taxes, insurance (such as homeowner's insurance) and other items will be paid from the escrow account and which items you must pay on your own.]

<u>Additional Disclosures</u>

→ **You have no obligation to accept this loan.** [Your signature below only confirms that you have received this form.]

→ **If you are unable to make the payments on this loan, you could lose your home.** There is no guarantee that you will be able to refinance to lower your rate and payments.

→ [If you borrow more than your home is worth, the interest on the extra amount may not be deductible for federal income tax purposes. Consult a tax advisor to find out whether the interest you pay is deductible.]

→ **If you do not understand any part of this form, ask questions.** For more information, go to (*Web site of the Federal Reserve Board*).

- We have two comments in regards to the above. First, the Board seems to deviate from its usage of bulletpoints to include arrows that point from left to right. We ask that the board either remove these or make them consistent with the other bulletpoints. Second, we ask that the Board note that the Board's requirement that lenders only print applicable, loan-specific disclosures seems to be of no discernible benefit in this part of the Proposal. The Board could, for example, replace the non-bolded and bracketed verbiage in the first bulletpoint with the following static statement, "If you sign this document, your signature will only confirm that you have received this form." When read in conjunction with the first, bolded statement, this disclosure could be consistently presented

without confusing borrowers. It seems the third bullet point might be similarly amended in order to decrease the printing burden.

MODEL CONTRACT CLAUSES

The Amendments note that the rebate, late payment, property insurance, contract reference, and assumption disclosures were not of primary importance to consumers and were not always well understood. Even if these disclosures are provided in a separate form, they will still contribute to information overload. We therefore recommend that the model contract disclosures be eliminated entirely, as each term is contained the transaction documentation. The utility of a model clause seems in question when, as the Board notes, "[V]ery few participants understood the language indicating that the loan was assumable, and even fewer felt it was important information."

DISCLOSURES WITHIN THREE DAYS OF CONSUMMATION

The Amendments will require creditors to provide a final TILA disclosure to a consumer at least 3 business days before consummation, even if subsequent events do not make the early TILA disclosures inaccurate. The purpose is to address the Board's concern that final settlement costs and loan terms at consummation sometimes differ from the terms in the early TILA disclosure. The scope of this requirement would be extended to include loans that do not include a dwelling and to construction loans.

Alternative proposals are put forth for comment that would address how to handle changes in loan terms and settlement charges that occur during the three-business-day waiting period. Alternative #1 provides that if any term changes during the three-business-day waiting period, the creditor must provide another final TILA disclosure and wait an additional three-business-days before consummation could go forward. Alternative #2 provides that if any term changes during the three-business-day waiting period, the creditor must provide another final TILA disclosure, but would have to wait an additional three-business days before consummation only if the APR increase exceeds tolerances or the creditor adds an adjustable rate feature.

After reviewing this section of the Amendments, we believe that Alternative #2 is the better among the two alternatives. While the Board clearly intends to help borrowers avoid being surprised at a loan closing with unanticipated expenses, the Board should bear in mind the time and effort required to set up a loan closing. This includes efforts expended by borrowers who are anxious to close in order to move into their new home. While we certainly agree that it is unfortunate when a borrower is notified of a term change at closing; we also believe that the Board must not forget that for some borrowers who wish to close, time is strictly of the essence. If Alternative #1 is adopted, borrowers will be required to forego closing for "any term" change, regardless of the severity or materiality of the change. We believe this could prove very detrimental to borrowers.

The requirement to provide a final TILA disclosure three days before consummation calls into question the necessity for a statutory rescission right. Recall that the underlying intent in providing a Right to Cancel was to enact a 3-day "cooling off" period so that borrowers could give ample consideration to the serious responsibility of accepting a mortgage loan. With the greatly expanded disclosure requirements of the proposed changes to Regulation Z, and an identical timeframe within which a borrower can consider the transaction before formal execution of the settlement documents, we ask the Board to reconsider the utility of rescission if this part of the Amendments is adopted.

We also request that the Board clarify whether (yet another) TILA disclosure will be required at closing, if a lender is bound by the terms of this "final" TILA disclosure.

DISCLOSURES AFTER CONSUMMATION

Generally, we do not object to Board's efforts to enhance the disclosures after consummation as provided for in the Model and Sample forms. However, we do not believe that the benefits gained by using varied shading in the disclosures outweigh the compliance costs to creditors. We also believe that requiring white lettering against a dark background in document titles is unwarranted. We are unaware of any evidence that suggests the use of capitalized letters and bold font is somehow inadequate for this purpose. We ask that the Board revisit these disclosures and consider omitting these cosmetic requirements.

ARM Adjustment Notice / Annual Notice Model Form

Under the Amendments, creditors must provide ARM interest rate adjustment notices in a revised format at least 60 days before payment at a new level is due (currently 25 days). The earliest that a creditor can provide the notice remains 120 days. The new notice contains a table with a comparison of the current interest rate, the new interest rate, payment information and the due date for the new payment. A new annual notice is also required in the event no payment change accompanies an interest rate change. Additional information must be provided in these notices, and the notices must comply with special format requirements. Model forms are provided, and the Board states that the headings, content and format must be "substantially similar" to those in the Model forms.

The Board requests comment on whether requiring creditors to provide 45 days rather than 60 days advance notice of a payment change better balances concerns about providing sufficient notice to consumers and sufficient time for creditors to verify reported indices and prepare disclosures. We believe that changing the period from 25 days to 45 days will accomplish the Board's goals with far less impact on creditors. We believe that this is more in keeping with the release of new indices upon which the rate changes are based.

The Board also solicits comment on whether a 60-day notice period is appropriate for short-term loans (e.g., construction loans) and if not, what period would be appropriate

and still provide consumers sufficient notice of a payment change. Once again, we believe that 45 days is sufficient and appropriate notice.

The Board notes that some ARM loan agreements (such as those on FHA and VA loans) may provide for a look-back period that is too short for the creditor to be able to provide an adjustment notice at least 60 days before payment at a new level is due. The Board seeks comment on the number or proportion of existing ARM loan agreements under which creditors or servicers could not comply with a minimum 60-day advance notice requirement. We believe this number to be substantial, so we request that the Board limit application of this new requirement to loans entered into after the effective date of the Amendments.

The Amendments would require that these disclosures be placed in a prominent location. An associated comment states that disclosures meet the prominent location standard if they are located on the first page and on the front side of the disclosure statement. We ask that the Board make clear that there is no presumption of a lack of prominence if this disclosure does not appear on either the first page or on the front side of the disclosure statement.

Payment Option Statement

For negatively-amortizing loans, the Amendments require creditors to provide a periodic statement not later than 15 days before a periodic payment is due for a negatively-amortizing, payment-option loan. The intention is to address "payment shock." This periodic statement must include a table with a comparison of the amount and impact on the loan balance and property equity of a fully-amortizing payment, an interest-only payment, and a minimum negatively-amortizing payment. The form a creditor uses must be "substantially similar" to the headings, content and format of this form. One section of this statement appears below:

Payment Option	**This Payment Covers**	**If you make this payment *this* month**	**If you make this payment *every* month**
❑ $___ Full Payment *(recommended to reduce loan balance)*	All the interest that you owe this month, plus some principal.	Your balance will decrease. You will be closer to having it paid off.	Your balance will steadily decrease and you will pay off your loan on schedule.
❑ $___ Interest-Only Payment	All the interest that you owe this month, but none of the principal.	Your balance will stay the same. You will be no closer to having it paid off.	As early as (*date*), you will have to make monthly payments much larger than today's "Full Payment" amount.
❑ $___ Minimum Payment	Just part of the interest that you owe this month.	**$___ in unpaid interest will be added to your loan balance this month.** You are borrowing more money, and you will be losing equity in your home.	As early as (*date*), you will have to make payments significantly larger than today's "Full Payment" amount to pay off your loan.

We do not understand the necessity for a creditor to include the bold demarcation around the perimeter of the "Full Payment" section. While the Board clearly intends to steer borrowers to make the amortizing payment, and we do not object to this, we believe that the use of the larger "Full Payment" with the recommended verbiage is

adequate to make this point. We believe that the bold line is unclear, as it could be construed to be part of the column header and not a payment option. Further, we are unclear why the Board includes an empty box adjacent to each payment option amount. We would recommend the Board omit these boxes.

The Board notes that the Interagency Guidance on Nontraditional Mortgage Product Risks issued in 2006 (the "Interagency Guidance") contained a model disclosure intended to address this issue. While we do not object to the Board making necessary revisions, we do ask that the Board clarify that the Interagency Guidance is no longer relevant and that the Amendments supersede any applicability of the Interagency Guidance. We are somewhat concerned that if the Board fails to do so some borrowers may be confused as to the necessity for compliance with both. Further, we believe that those states that look to the Interagency Guidance for compliance standards would benefit from this clarification.

In addition, we ask that the Board amend its current proposal and require creditors to provide a periodic statement not later than 10 days before a periodic payment is due for a negatively-amortizing, payment-option loan. Most creditors strive to provide a monthly billing statement as far in advance as possible to allow borrowers ample time to remit payment. However, given the potential uncertainty of mail delivery, as well as the occasional service shortfall, a creditor may not always be able to deliver the periodic statement 15 days before a periodic payment is due. We believe that 10 days is a more appropriate time period to label a servicer's actions as potentially culpable. If the Board determines that it is unable to concede this point, we ask that the Board consider a creditor safe harbor, where there is no culpability for failing to meet the 15 days timeline if the creditor has a process in place for providing such notices and the creditor did not act maliciously or recklessly.

Creditor-Placed Property Insurance Notice

After taking reasonable steps to determine that required property insurance has lapsed, creditors must provide notice of the cost and coverage of creditor-placed (forced-placed) property insurance at least 45 days before a charge is imposed for the insurance. The notice must also contain several provisions, which are contained in the Model Clause provided in the Amendments.

H-18—Creditor-Placed Property Insurance Model Clause

(Creditor name and contact information)

Re: (loan number) and (property address/ description)

Under our agreement, you must maintain adequate insurance coverage on the property. Our records show that your insurance policy has expired or been cancelled, and we do not have evidence that you have obtained new insurance coverage. Under our agreement, we can buy property insurance on your behalf and charge you for the cost as early as (*date*). Therefore, we request that you provide us with proof of insurance by (*description of procedure for providing proof of insurance*).

Please consider the following facts about the insurance policy that we buy:

- The cost of this insurance policy is $______ per year and is probably significantly higher than the cost of insurance you can buy through your own insurance agent.
- This insurance policy may not provide as much coverage as an insurance policy you buy through your own insurance agent].

If you have any questions, please contact us at (*contact information*).

In addition, a creditor must provide consumers with evidence of insurance within 15 days of imposing a charge for the insurance.

The Board intimates that creditor-placed insurance is somehow unfair to borrowers despite the fact that the mortgage specifically allows for such. While the Board does provide some anecdotal evidence in support of this change, we are aware of no need for the proposed changes.

Nevertheless, if the Board proceeds with this new requirement we first ask that the 45-day period be shortened to 30-days. It is axiomatic that uninsured collateralized property represents a substantial risk to borrowers, to creditors and to any holder of an interest in the debt. We believe that 30 days affords a borrower more than sufficient time to address a lapse in coverage.

Next, the Board notes that a handful of states have their own requirements relative to notification to a borrower prior to or following a creditor obtaining creditor-placed insurance. In the interest of uniformity, clarity and consumer utility, we ask the Board to preempt any state notices intended to address the same issue.

The Board also intends for creditors to provide consumers with evidence of insurance within 15 days of imposing a charge for the insurance. We believe that this time period is too short and that 30 days is more appropriate. Further, we request that the Board make clear that "evidence of insurance" does not require a creditor to provide a complete insurance binder. Instead, for purposes of the Amendments, providing "evidence of insurance" should only require written notification from the creditor that informs the borrower that insurance has been obtained, from whom the policy was obtained, and the term of the policy.

We would also recommend that the Board amend the model verbiage by replacing the ambiguous "property address / description" with "property address or description." We

believe that this will clarify that a creditor is not required to provide both in order to satisfy the Amendments. We also ask that the Board remove the bulleted points from the disclosure, as an omission of such should not be grounds for a challenge to compliance with this requirement.

Finally, the Board solicits comment on whether the notice should also contain statements, if applicable, that the creditor will receive compensation for obtaining creditor-placed property insurance and that the creditor will establish an escrow account to pay for the creditor-placed insurance premium. We do not recognize any need for such statements.

LOAN ORIGINATOR COMPENSATION AND "STEERING"

Perhaps nothing contained in the Amendments has garnered more attention than has the proposed loan originator compensation limitations. (A survey of the published comments to date makes clear how very unpopular this section of the Amendments is with some in the mortgage industry.) In short, the Board proposes to prohibit any person from compensating a loan originator, directly or indirectly, based on the terms or conditions of a loan transaction secured by real property or a dwelling. (The one exception to this prohibition is the situation where the borrower pays the loan originator directly and no other person compensates the same loan originator in the transaction.) This payment prohibition would apply to any person, rather than only a creditor, in order to prevent evasion by structuring loan originator payments through non-creditors. And, the prohibition would extend beyond wholesale (broker) originators to include employees of banks, mortgage companies owned by banks and others who meet the expansive definition of a "loan originator."

Under the proposal, compensation that is based on the interest rate, APR or the existence of a prepayment penalty would be considered a payment that is based on a term or condition of the loan. In addition, the Board is considering including the amount of the loan as compensation that is based on a term or condition of the loan, though the Board has not reached a final decision on this point. Compensation would not be limited to commissions, but would include salaries or any financial incentive that is tied to the transaction's terms or conditions, including annual or periodic bonuses or awards of merchandise or other prizes. Compensation may be based on the originator's loan volume, the performance of loans by the originator or hourly wages.

Creditors that use geography as a criterion for setting compensation must be able to demonstrate that the practice reflects legitimate differences in the costs of origination and in the levels of competition for originators' services. In addition, a creditor must retain for a 25-month period, for each covered transaction, (1) a record of the agreement between it and the loan originator that governs the originator's compensation and (2) a record of the amount of compensation actually paid to the originator in connection with the transaction (the HUD-1 meets this requirement for brokered loans).

Violations of the originator compensation limitations constitute an unfair or deceptive trade practice.

In addition, the Board proposes to prohibit loan originators from "steering" consumers to transactions that are not in consumers' best interest in order to increase compensation. Restated, a loan originator would have a duty to not steer a consumer to a higher cost loan that would pay more to the originator when the loan is not in the consumer's best interest. The Board has attempted to include a safe harbor for loan originators that essentially requires "shopping" the loan to various creditors when the loan originator regularly does business with them.

While we do not believe that the practice of charging yield spread premiums and overages constitutes an unfair or deceptive trade practice, we do not object to curbing some loan originator compensation practices.[5] Further, we do not believe that the Amendments are *per se* unworkable, with the following notable caveats:

- The definition of "loan originator" should exclude individuals who are managers or supervisors, whose compensation is not based upon loans that they directly originate, but on the production of the individuals they manage and supervise. Managers and supervisors have little actual impact on an individual loan.

- The Board requests comments on an alternative that would allow loan originators to receive payments that are based on the principal loan amount. We believe that permitting payments based on the principal loan amount must be permitted under the Amendments.

  As the Board is aware, creditors are now required to obtain evidence of repayment ability for certain loans pursuant to recent changes in applicable federal laws and regulations. Therefore, any incentive to place a borrower into a higher-priced home in order to increase compensation will be checked. Next, failing to exclude the loan amount from the "terms and conditions" prohibition would result in the artificial deflation of lower-priced and luxury homes, and the artificial inflation of moderately-priced homes. This is so because loan originators – acting as rational market participants – would focus on originating moderately-priced loans that that do not require the onerous additional effort necessary to close a loan for lower-priced or luxury homes. The Board should not take a step that would bring about such a result. Finally, mandating flat dollar payments only may have a disparate impact on less affluent borrowers who purchase lower-priced homes. And it is possible that these borrowers could be members of a protected class.

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[5] *It is worth noting that Yield Spread Premiums and Overages have been a preferred compensation convention for decades and have been widely recognized as being a legitimate and value-adding practice. For example, in October 2001, Housing Secretary Mel Martinez stated, "It has always been HUD's position that yield spread premiums serve an important purpose in the housing market. Many potential home buyers do not have the cash to pay the upfront costs of buying a home, including the settlement costs such as appraisal fees, title insurance, the fee charged by a mortgage broker for doing the paperwork, and similar costs. … Yield spread premiums help these potential homebuyers become homeowners by letting them pay less at the time of settlement, and pay a higher interest rate and monthly payment over the life of the mortgage. The broker pays the upfront costs instead, and then recoups these costs by selling the mortgage to an investor at a higher price, reflecting the higher interest rate. The price difference is the yield spread premium. Yield spread premiums are a legitimate tool to help families become homeowners."*

- The Board proposes to carve out from this limitation payments made directly from a borrower to a loan originator. That is, the Board states the prohibition to awarding compensation based on "transaction terms and conditions" does not apply, "[i]f a loan originator receives compensation directly from the consumer in a transaction secured by real property or a dwelling: (i) The loan originator shall not receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and (ii) No person who knows or has reason to know of the consumer-paid compensation to the loan originator, other than the consumer, shall pay any compensation to the loan originator, directly or indirectly, in connection with the transaction." This carve out appears to be only applicable to mortgage brokers. We don't see any scenario where a consumer would pay the loan officer directly, something never done by this company. There are accounting and tax issues to be resolved before a retail lender could permit this conduct.

  This exception seems especially notable, as the Board appears to be permitting both YSPs and overages when received directly from a borrower. And yet if the same payment was made by a creditor to a loan originator, it would be an unfair or deceptive trade practice. Presumably the reason the former scenario would be permissible is because the borrower would be more aware of the amount of total compensation received by the loan originator. But does this mean, then, that if a borrower is the only party compensating a loan originator, the Board agrees that the creditor *may* pay to the borrower money that is to be used as part of the closing costs and that the loan originator may still be compensated by way of a YSP or overage directly from the borrower? If so, this could become something of a "shell game," where the borrower pays the loan originator a YSP or overage; the creditor pays the borrower an amount that may be similar to the YSP or overage paid by the borrower; and the borrower's interest rate may be increased because of the increased risk to the creditor. While it is true that the borrower may be more aware of how the loan originator was compensated, it is not clear that the borrower would understand the trade-off that occurred. We ask that the Board consider this situation and make appropriate changes to the Regulations to address it.

- The Board notes that a loan originator may be compensated based on "loan volume," though it is unclear if this means the total dollar value of the loans originated, the number of loans originated, or both. This leads to a related uncertainty about compensation payment changes based on prior loan volume. Specifically, the Board notes as follows:

  > "This section does not limit a creditor from periodically revising the compensation it agrees to pay a loan originator. However, the revised compensation arrangement must result in payments to the loan originator that do not vary based on the terms or conditions of a credit transaction. A creditor might periodically review factors such as loan performance, transaction volume, as well as current market conditions

for originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator. For example, assume that during the first 6 months of the year, a creditor pays $3,000 to a particular loan originator for each loan delivered, regardless of the loan terms. After considering the volume of business produced by that originator, the creditor could decide that as of July 1, it will pay $3,250 for each loan delivered by that particular originator, regardless of the loan terms. No violation occurs even if the loans made by the creditor after July 1 generally carry a higher interest rate than loans made before that date, to reflect the higher compensation."

Does this mean that a lender could revise a loan originator's compensation based on the average loan amount for the loan originator during some preceding period of time? Could the lender base the revised compensation on some other aggregated loan value that is a "term of condition" of the loans originated (e.g., average LTV, average interest rate, average APR, etc.)? What is the minimum period of time that a lender can "look back" to determine future compensation?

- The Board seeks comment on whether the time period for retaining the compensation evidence is adequate and if more documentation should be retained. After careful review, we do not believe that the time period needs to be extended, nor do we believe that more documentation needs to be retained.

- The Board requests comment on whether any or all of the compensation protections should apply to HELOCs. In short, we are unaware of any need to extend the compensation limitation to HELOCs, which is in keeping with the Board's lack of evidence to expand such.

- In the case of Community Reinvestment Loans, we ask that the Board permit additional compensation. This exception should apply to Low to Moderate Income ("LMI") consumers and loans secured by property in LMI census tracts.

- The Amendments include quotation marks around the term "steer," which suggests that the usage is idiomatic. It seems unusual for the Board to utilize quotes in this manner in regulations and commentary. For clarity, the Board might consider either using a different term or removing these quotations marks.

- The Board's proposed safe harbor against charges of steering is especially onerous. Essentially, in order for a loan originator to obtain the safe harbor protection, the loan must be chosen by the consumer from at least three loan options for each type of transaction (i.e., fixed-rate or adjustable-rate loan) in which the consumer expressed an interest, provided the loan originator obtains loan options from a significant number of creditors with which the originator regularly does business. For each type of transaction in which the

consumer expressed an interest, the originator must present and permit the consumer to choose from at least three loans that include: the loan with the lowest interest rate, the loan with the second lowest interest rate, and the loan with the lowest total dollar amount for origination points or fees and discount points. The loan originator must have a good faith belief that these are loans for which the consumer likely qualifies. If the originator presents more than three loans to the consumer, the originator must highlight the three loans that satisfy the lowest rate and points criteria in the rule.

- We would first like to confirm that the safe harbor does not apply to loan originators who are employed through a retail channel because they do not "shop" loans to others (except in the situation noted by the Board where the loan originator acts so as to shop a loan and is compensated for doing so). This is strongly intimated in the Amendments, though no explicit assurance to this effect is present.

- The Board goes to great pains to emphasize how it believes that consumers must shop in order to obtain the best offer when obtaining a mortgage loan. Under the safe harbor, the Board seems to contradict this basic tenet of responsibility by requiring that the loan originator act as a *de facto* shopping agent for consumers. We would encourage the Board to place the burden of "shopping" where it is most appropriate and beneficial – in the hands of consumers.

- We do not believe that the implementation of a "good faith belief" standard for assessing creditworthiness is advisable in the safe harbor. We also do not believe that "highlight[ing]" three loans that meet certain criteria will be meaningful to borrowers who are already inundated with information. Further, must this highlighting appear as some kind of active print functionality or can it be performed manually? Or does "highlight" mean to simply note the terms to the borrower?

- We believe it is important that the Board recognize that the proposed compensation changes may have a major impact on the mortgage industry. Currently, yield spread premiums and overages serve to compensate thousands of loan originators across the country, and the changes the Board proposes could result in a direct reduction in the compensation that these individuals receive. In this time of rampant unemployment, high default rates on all consumer debt, and stagnant economic growth, we question whether such a change is appropriate given all of the other legislative safeguards already being implemented to protect and better inform consumers. Perhaps the issue is not that consumers are simply incapable of understanding mortgage compensation as the Board suggests; perhaps the real issue is that the mandatory disclosures have not been presented in a manner that conveys the information in a readily understood format. Respectfully, we do not share the Board's opinion that consumers are incapable of understanding loan originator compensation as currently structured.

- The Board's primary concern relative to the current compensation practices in the industry, such as YSPs and overages, is that there is anecdotal evidence of abuse that has damaged consumers. The Board's proposed remedy is the rather draconian step of making the current compensation protocol impermissible (with the above-noted exception for direct payments from borrowers). We believe and respectfully submit that if the Board wishes to curb abuses, a more palatable approach – and one that will accomplish the Board's goal more narrowly – is to prescribe a cap on YSPs or overages, above which would be an unfair or deceptive trade practice. We believe that such an approach better balances the Board's desire to protect consumers with the industry's desire to preserve a competitive marketplace. For if this type of compensation is deemed an unfair or deceptive trade practice in the mortgage industry, it seems axiomatic that analogous practices in other industries will be deemed unfair or deceptive also (e.g., motor vehicle sales, insurance, certain investments, etc.). If the Board believes that a cap in isolation is inadequate, perhaps a cap coupled with carefully constructed disclosures would accomplish the Board's goals.

MISCELLANEOUS SUBJECTS

Finance Charge

The Board proposes to significantly change the calculus to compute Finance Charges. While a "Finance Charge" would continue to be defined as a fee or charge that is payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to the extension of credit; the definition would now include charges by third parties if the creditor requires the use of a third party as a condition of or incident to the extension of credit (even if the consumer chooses the third party) or if the creditor retains a portion of the third-party charge (to the extent of the portion retained). In short, the following fees, which are currently *excluded* when calculating a Finance Charge, will now be *included* in such computation:

- Application Fees, Notary Fees, and Credit-Report Fees;
- Fees for Title Examination, Title Abstract and Title Insurance;
- Fees for Property Surveys (and similar purposes);
- Fees for Document Preparation of Loan-Related Documents;
- Property Appraisal Fees and Inspection Fees (prior to closing) including pest infestation and flood hazard determinations;
- Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge;
- Government recording and related charges and insurance premiums incurred in lieu of such charges;
- Fees charged by closing agents, both a creditor's own and those of other third parties hired by the creditor to perform particular services;
- Taxes or fees required by law and paid to public officials relating to security interests;
- Taxes imposed as a condition of recording instruments securing the evidence of indebtedness; and

- Various other real-estate related fees.

We submit the following comments and responses to the Board's inquiries:

- The Board explains in detail how it is able to implement a regulation that contradicts the statutory provisions of TILA. That is, TILA specifically recognizes and mandates a "some fees in, some fees out" approach, which the Amendments would facially contravene. The Board relies on its "general exception and exemption authority" under § 1604(a) and (f) to create a whole new categorization for and definition of "Finance Charge."

  It should be self-evident that the Board has taken a very aggressive interpretation with this effort. That is, the Board believes that notwithstanding a specific and long-recognized statutory definition of the term "Finance Charge," the Board is authorized to disregard Congress's intention as expressed in the statute and to create a whole new definition of the term out of whole cloth.[6] We believe that Congress intentionally provided for a "some fees in, some fees out" approach to calculating a Finance Charge, and we question whether the Board has the express or inherent authority to abrogate such a basic tenet.

  Section 1604(f) is limited to the prescription of exemptions.[7] We do not dispute that the Board has the requisite authority to exempt certain types of transactions from TILA's coverage. However, what the Board proposes to require of lenders in order to calculate finance charges is a whole new

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[6] *The definition of Finance Charges specifically excludes certain items when the extension of credit is secured by an interest in real property, which the Board proposes to render almost meaningless through the Amendments. See 15 U.S.C.A. § 1605(e), which provides:*

"Items exempted from computation of finance charge in extensions of credit secured by an interest in real property - The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

> *(1) Fees or premiums for title examination, title insurance, or similar purposes.*
> *(2) Fees for preparation of loan-related documents.*
> *(3) Escrows for future payments of taxes and insurance.*
> *(4) Fees for notarizing deeds and other documents.*
> *(5) Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted prior to closing.*
> *(6) Credit reports."*

[7] *§ 1604. Disclosure guidelines*

...

(f) Exemption authority

(1) In general - The Board may exempt, by regulation, from all or part of this subchapter any class of transactions, other than transactions involving any mortgage described in section 1602(aa) of this title, for which, in the determination of the Board, coverage under all or part of this subchapter does not provide a meaningful benefit to consumers in the form of useful information or protection.

(2) Factors for consideration - In determining which classes of transactions to exempt in whole or in part under paragraph (1), the Board shall consider the following factors and publish its rationale at the time a proposed exemption is published for comment:

> *(A) The amount of the loan and whether the disclosures, right of rescission, and other provisions provide a benefit to the consumers who are parties to such transactions, as determined by the Board.*
> *(B) The extent to which the requirements of this subchapter complicate, hinder, or make more expensive the credit process for the class of transactions.*
> *(C) The status of the borrower, including--*
> > *(i) any related financial arrangements of the borrower, as determined by the Board;*
> > *(ii) the financial sophistication of the borrower relative to the type of transaction; and*
> > *(iii) the importance to the borrower of the credit, related supporting property, and coverage under this subchapter, as determined by the Board;*
>
> *(D) whether the loan is secured by the principal residence of the consumer; and*
> *(E) whether the goal of consumer protection would be undermined by such an exemption.*

methodology – it is not an act of exemption; it is an act of ordination. Such a decree is simply not allowed by Section 1604(f).

Section 1604(a) provides a broader license for the Board to act than does Section 1604(f).[8] However, even § 1604(a) does not appear adequately broad to permit the Board to mandate a requirement so contradictory to the plain wording of TILA. Specifically, in promulgating regulations under TILA, the Board may only act to create "classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions." We interpret the Board's proposed actions as constituting something much greater than what is contemplated in these few words. That is, we believe that the Board can take actions that except transactions, clarify ambiguities, and provide more specific guidance on areas not explicitly addressed in TILA. We even believe that the Board may augment TILA so long as the addition remains consistent with TILA. However, we do not believe that the Board has the recognized authority in Section 1604(a) to except transactions and then create a whole new framework for them that contradicts the statute. The Board's aggressive interpretation cannot go unchallenged, as it essentially frees the Board to create its own requirements without concern for Congress's intent. In fact the very first sentence of Section 1604(a) supports a more limited interpretation by stating, "The Board shall prescribe regulations *to carry out* the purposes of this subchapter."

In short, we question whether the Board has the requisite authority to promulgate a regulation that explicitly contradicts TILA. We believe that the Board should pursue such a change through the legislative process if it believes that TILA is so flawed that the Board must disregard it to carry out the Board's charge.

- The Finance Charge is used to calculate the APR, which is meant to represent the cost of credit expressed as a yearly percentage. The Board concedes that the Amendments will cause more loans to qualify as "HOEPA loans" as described in TILA section 103(aa). Similarly more loans will be subject to the special protections for higher-priced mortgage loans under section 226.35 of Reg. Z and will be reportable as rate spread loans under HMDA and certain state anti-predatory lending laws. However, the Board suggests that this increase will be de minimis.[9] We respectfully disagree with this assessment, as our calculations suggest that a more accurate estimate is much higher. Also, some lenders do not originate HOEPA or similar state program loans; therefore, the redefined calculation would inevitably result in more loans reaching HOEPA

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[8] *§ 1604. Disclosure guidelines*

(a) Promulgation, contents, etc., of regulations - The Board shall prescribe regulations to carry out the purposes of this subchapter. Except in the case of a mortgage referred to in section 1602(aa) of this title, these 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 this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

[9] *The Board claims the number of HOEPA-covered loans will only rise by 0.6% (1st lien refinances and home improvement loans) and that 1st lien home loan purchases or refinances would increase by 3%. The Board believes that the number of state-triggered, anti-predatory loans would increase as follows: DC – 2.5%; Illinois – 4%; and Maryland – 0.0%.*

thresholds. This could reduce the availability of credit to borrowers who, in many cases, may need it most. Indeed since the Board's statistics are based on $200,000 loans we would expect that LMI loans with an average balance of $100,000 to be much more severely affected. This is so because many of the newly included fees don't vary with loan amount. For these reasons, we believe the Board must reconsider the overall risks before adopting this proposal.

- The Board requests comments as to whether the proposed calculus for computing a Finance Charge should be limited to "closed-end credit transactions secured by real property or a dwelling" or if it should be expanded to include all closed-end credit. We believe that carving out a special methodology for computing a term that is referenced utilizing identical nomenclature will be confusing to both industry participants and consumers. We believe this is self-evident, and we hope that the Board will recognize this and act to address this concern. In addition, the Board asks whether the current $100 error tolerance should be increased to $200 and whether it should be pegged to the CPI (or similar index) going forward. We believe that the error tolerance should be increased and that it should be adjusted annually based on an appropriate index.

- The Board should make absolutely clear that the calculation of a Finance Charge is only relevant at the time the loan closes. Any subsequent charge that is assessed cannot be included in the calculation of the Finance Charge as the cost of credit is not impacted by such charges following consummation.

Active Print Functionality

In the Amendments and as noted *supra*, the Board proposes to require creditors to create documents that are tailored to the individual terms of a mortgage transaction. That is, the Board states that it, "...believes technology and form design software will allow creditors to prepare transaction-specific, customized disclosure forms at minimal cost." The Board goes on to say that "the Board proposes to require creditors to provide disclosures for transactions secured by real property or a dwelling only as applicable. As a result, the Board would not allow creditors to use multi-purpose forms...[and that] the use of multipurpose standard forms is not permitted for transactions secured by real property or a dwelling."

It is impossible to precisely quantify how such a requirement will impact mortgage lending in terms of required invested capital and systems upgrades. However, what is clear from even the most rudimentary analysis is that the costs – in both monetary and human capital – to implement such an innovation will be prodigious to the point of being material. Having never contemplated that such would be necessary, whole new systems will have to be built from the ground up to support this measure.

While we appreciate that some borrowers may be confused by information that is not relevant to their particular transaction, we believe that populating a blank with terms that convey inapplicability (e.g., "Not applicable" or "N/A") is equally effective at

clarifying any lingering uncertainty. In fact, by omitting some information we believe that the borrower is actually harmed – such as when a borrower will not know definitively if a prepayment penalty is or is not part of the agreement because the document is silent on the point. Further, by omitting these disclosures the Board will make it harder for consumers to comparison shop the loan terms, as the disclosures given by lenders will not be identical. Restated, omitting information will actually compromise clarity and transparency; therefore, we encourage the Board to carefully reconsider this aspect of the Amendments. To be very clear, not only do we believe that the perceived benefits gained will not outweigh the substantial costs to lenders, but also we believe that the perceived benefits will not come about at all.

Further, we recommend that the Board not require text to be printed on a shaded background. For many consumers, text on a shaded background is more difficult to read. This would be especially true where consumers and creditors must make photocopies of the disclosures or fax them, which could render the text printed on a shaded background illegible.

Translations

In the Amendments the Board requests comments on whether it should use its rulemaking authority to require creditors to provide translations of credit disclosures. The Board poses several questions related to this topic, signaling the Board's willingness to thoughtfully consider the complexity of this issue prior to issuing binding regulations. Because of the severe impact this proposal would have on the mortgage lending industry, SunTrust believes such purposeful deliberation is absolutely critical to ensuring that any such proposal is truly beneficial to all stakeholders.

It is well-established that the United States' commitment to welcoming persons of various cultures, heritages and ethnicities has added to the richness and vitality of the American experience; enriching our collective soul by affording us the benefits of a dynamic and varied populous. However, such an open-armed policy is not without inherent challenges. An individual can find it difficult to become acclimatized to a new country, especially when the individual does not understand the language spoken by most members of the population.[10] In the context of closed-end, mortgage-secured lending, this challenge is compounded by legal and industry-specific terminology, mathematical computations and contract terms that can be both complicated and confusing. It is certainly reasonable that the Board consider the issue and ask whether change is necessary.

Turning to the specific questions posed by the Board, we do not believe that the Board should use its rulemaking authority to require creditors to provide translations of credit disclosures. Failing to provide such is not – and has never been deemed – an unfair or deceptive trade practice and should not be so deemed now. There are several reasons for this position. First, incorporating translated documents into an already challenging transaction will add to the complexity of the exchange and will spark even

[10] More than 82% of Americans speak English as a first language. See: https://www.cia.gov/library/publications/the-world-factbook/geos/us.html.

more uncertainty regarding the meaning of disclosures. Second, loan originators will not speak all languages and may not be able to provide meaningful discourse in response to questions about the disclosures. These same loan originators will struggle to ensure that the disclosures are correct when they are unable to read them.

In addition, scores of languages are spoken in the United States, and it is not clear the degree to which the Board contemplates including or excluding different ones. For example, Chinese is the third most commonly spoken language in the United States; therefore, it would seem that the Board anticipates that loan originators will be able to provide meaningful disclosures in this language, which would prove incredibly challenging given the characters utilized in this language. Finally, the Amendments will represent an enormous compliance challenge for the industry already, and a translation requirement will further complicate adherence to the Amendments in a material way. Because the Board is proposing an active print functionality that will omit terms that are not strictly relevant to a transaction, even parts of the programming for documents will have to be in various languages – something that is not required in any other industry or trade.

Among the questions posed by the Board is one that relates to state laws that mandate the translation of documents in certain limited commercial arrangements. While the number of states with such requirements is quite small, one state in particular has adopted a protocol that might be of interest to the Board. Specifically, the state of Illinois does not require that transaction documents be translated into the language spoken when a retail transaction is conducted. Instead, Illinois takes the position that if a consumer consents in writing to allow someone to act as an interpreter and signs a document to that affect, there is a presumption that the consumer made an informed decision if the consumer proceeds with the transaction.[11]

If the Board were to draft a document that contained a disclosure similar to the one utilized in Illinois and that contained all of the languages of concern to the Board, it is possible that the concerns outlined by the Board would be largely abated. In fact, such a document might encourage lenders to offer more loans to such borrowers, as the uncertainty associated with this type of transaction would decrease. Of course, the Board's document must fully preempt any state version of the same document, thus ensuring consistency across the country. And, because of the time required to complete a mortgage transaction and the various disclosures that must be provided over the course of several days, the borrower would have to agree to utilize her/his own interpreter for subsequent disclosures also.

The Board also asks whether a translation requirement should be expanded beyond mortgage loans to include other types of credit products, such as auto loans or credit cards. Given the sizable concerns associated with incorporating translations into mortgage loans, SunTrust believes that introducing any new translation requirement is certainly inadvisable at this time. The Board also asks whether the documents to be translated should be expanded to include any disclosure or documents provided before, at or subsequent to consummation. SunTrust believes that this requirement

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[11] *See: 815 Ill. Comp. Stat. Ann. 505/2N (2000).*

would result in a veritable cessation of credit given the difficulty of translating documents and delivering them to consumers in a foreign language. To be very clear, the industry challenges associated with such a requirement cannot be overstated.

SCOPE OF AMENDMENTS

The Board expands many of the new disclosure requirements to loans that are secured by vacant land or by land with a dwelling that is not a principal residence. Generally, we do not believe that such an extension of the scope of the disclosures is necessary to carry out the Board's intention of heightening consumer protection from certain practices. We believe that individuals who obtain these types of loans are typically more familiar with closed-end mortgage lending than are some consumers who purchase only a principal residence. Further, we do not believe that loans that are secured by vacant land or land with a dwelling that is not a principal residence were subject to the same abuses identified by the Board as triggering the necessity for changes to Regulation Z.

Nevertheless, should the Board determine that this scope expansion is truly necessary; we ask that the Board note that the Amendments are not consistently tailored to apply to such loans. For example, proposed § 226.38(b)(5) exempts construction loans and temporary bridge loans from the requirements of § 226.38(b)(2) and (b)(3) to compare the loan's APR to the APOR. It seems appropriate to extend this exemption to loans secured by vacant land, because the rates for loans on vacant land are substantially different from the rates for conforming, owner-occupied loans. That is, comparing the APR and APOR would result in a patently misleading disclosure. Similarly, on a loan secured by vacant land, creditors should be permitted to revise the security interest disclosure required by § 226.38(f)(2) so that it does not refer to the possible loss of "the home" because there is no home on vacant land. We trust that the Board will revisit these – and the other disclosures – to ensure the propriety of such disclosures as applied to loans that are secured by vacant land or by land with a dwelling that is not a principal residence.

UNPRECEDENTED LEGISLATIVE ACTIVITY

The Board is no doubt aware of all of the federal, state and local efforts to ameliorate perceived deficiencies in and address certain abuses relating to mortgage lending. Truly, this is a time of unprecedented change for all stakeholders in the mortgage industry. We trust that this truism – coupled with the obvious complexity of the Amendments – leads the Board to afford those impacted by the Amendments a substantial period of time to comply with the final regulations the Board ultimately promulgates. Our conservative assessment is that we could require up to two years to comply with the Amendments, though this will be a function of the complicatedness of the final Amendments.

In addition, we trust that the Board recognizes that contradictory and disparate requirements from different regulators cause impacted firms to expend additional capital and effort unnecessarily. In short, like others in the mortgage industry, we strive to comply with all legal requirements, though doing so is especially challenging

when uncertainty pervades the regulatory landscape. We have every confidence that the Board will endeavor to ensure that the final Amendments are consistent with other, newly-promulgated regulatory requirements.[12]

CONCLUSION

Once again, thank you for this opportunity to comment on the proposed Amendments. We hope that the Board finds the above discussion useful. Should you have any questions regarding our comments, feel free to contact me at your convenience.

Sincerely,

Keith W. Reynolds
Senior Vice President and Deputy General Counsel

[12] For example, the new RESPA rules permit a lender to cure certain problems with a loan within 30 days of settlement. Conversely, TILA affords a lender the ability to cure violations within 60 days of discovery of the violation. Further, Section 32 loans cannot be cured with refunds. Such a patchwork of curative measures seems counter to both creditors and borrowers, both of whom desire to readily understand what is expected. We believe that a uniform, simplified methodology is a superior approach. In this example, a lender should be able to provide curative refunds within 60 days without having to account for loan type or regulatory regime.