American Bankers Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Leading Builders of America
Mortgage Bankers Association
National Association of Homebuilders

February 28, 2011

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Re: Revised Interim Final Regulation
Interest Rate and Payment Summary
Docket No. R-1366

Dear Ms. Johnson and Ms. Ayouch:

The undersigned appreciate the opportunity to comment on the revised interim final regulation that the Federal Reserve Board (Board) published on December 29, 2010. This revised interim final rule amends an interim final rule published on September 24, 2010.

By way of background, in July of 2008, as part of the Housing and Economic Recovery Act, Congress enacted the Mortgage Disclosure Improvement Act (MDIA) which established new timing requirements for disclosures under the Truth in Lending Act (TILA) and required the Board to implement disclosures for consumer mortgage loans on which the rate or payment amount may vary. While the statute provides that the statutory provisions on adjustable loans should become effective no later than January 30, 2011, it does not require that any rules become mandatory on that date.

The Board did not produce an interim final rule until August 2010 that was not formally published until September, and that covers more than adjustable loans. Because of confusion and problems with that Rule, the Board published this second interim Rule on December 29. Notwithstanding the late publication and expansiveness of the rule, the Board has maintained the January 30, 2011 compliance date for the first Rule, making compliance exceedingly difficult.

The Board states that both of these interim final rules (the Rule or Rules) are intended to implement a provision in the MDIA that is codified at § 128(b)(2)(C) of the Truth in Lending Act (TILA). The Rules require a new disclosure called an Interest Rate and Payment Summary.

The undersigned have been strong advocates of improved consumer mortgage disclosures for many years. We appreciate the Board's efforts to issue an interim Rule and a further interim Rule to attempt to remedy a range of concerns with the first Rule.

Notwithstanding, the final Interest Rate and Payment Summary disclosure, even as revised, has a number of serious problems.

- It has needlessly disrupted the market as to several popular loan products. ***Treatment of these products under the Rules is so uncertain that creditors are pulling the products off the market.*** Among the disrupted products are temporary buydowns for home purchases, the absence of which will hamper the recovery of the nation's housing market. Another is preferred rate loans, a popular product of clear consumer benefit. This is the *worst* time for unnecessary housing market disruptions.

- The Rules continue to permit a very misleading disclosure about the beginning of amortization on a popular loan product. Only a rule change can fix this. Moreover, Board Staff has given differing advice about what the Board believes the Rules permit in this uncertain area, adding to the compliance difficulty.

- The Rules impose significant implementation costs because the Rules are confusing and unclear. The Board's position that the revised Rule has no regulatory burden is unrealistic. The Board's February 1, 2011 announcement that adopting rules in piecemeal fashion is unnecessarily burdensome is realistic. The Rules are piecemeal and burdensome.

- The disclosure is largely redundant and unnecessary because it duplicates disclosures required under the Real Estate Settlement Procedures Act (RESPA). The disclosure will not benefit consumers; it will contribute to the information deluge. The deluge and redundancy in consumer mortgage disclosures today are leading creditors to create "roadmaps" so consumers can find what they need to know in the onslaught of papers. Creditors routinely apologize to consumers for the incomprehensible nature of all these papers. The Rules would make the deluge worse, not better.

- The disclosure will be short-lived because the Dodd-Frank Act gave a triple mandate to the Bureau of Consumer Financial Protection (Bureau) to integrate TILA and RESPA disclosures, which the Bureau has, appropriately, made a top priority. The Rules add to the lack of integration, counter to the Congressional triple mandate.

- The Rules continue to require several technical corrections before they can be fully implemented.

Moreover, considering the confusion that resulted from the first and now second interim rules, creditors, across the industry, are at various stages of compliance. For these reasons, we urge that the Board make the Rules optional. Creditors should be provided the option of simply complying with the RESPA rule to satisfy the TILA § 128(b)(2)(C) requirements. While the Rules need to be revised again, creditors that have been struggling to comply with the two Rules should not be penalized for having tried to comply, and should therefore be permitted, in addition, the option to make disclosures under either interim final Rule. This reasonable approach not only acknowledges the confusing nature of the Rules' requirements and the difficulties detailed herein, but also acknowledges the short-lived nature of the disclosures, and the fact that responsibility for the Rules will shift to the Bureau in five months.

As alternatives, the Board could expressly specify the areas of difficulty set forth in this comment and provide that, under the circumstances, a good faith effort at compliance with the Rules is sufficient until the Bureau's integration of RESPA and TILA disclosures is finalized.

These points are discussed below.

I. The Costs of the Rules Far Outweigh Any Perceived Benefit

The undersigned believe that the costs of the Rules will far outweigh any perceived benefit, particularly considering that the requirements are likely to be short-lived. The costs of the interim final Rules are described in this part of the letter as follows.

A. The Rules Have Disrupted the Marketplace Availability of Buydowns, a Popular Tool That Supports Home Sales at a Time When Rules Should Be Supporting Housing Markets

Home sellers, particularly homebuilders, often provide buyers with temporary "buydowns" of the interest rate or payments on a buyer's loan for the early years of the loan. Buydowns facilitate home sales and homeownership. They benefit consumers.

There are differing types of buydowns, and the buydown amount also may vary over time on the same loan. In any event, when the buydown is reduced or expires, the loan payment, from the borrower's perspective, increases. The terms of the buydown are separately

disclosed to the homebuyer, and the buydown is a separate contract from the loan contract. When a homebuilder offers a buydown, the creditor is not a party to the buydown contract.

Regulation Z requires that disclosures "shall reflect the terms of the legal obligation between the parties."[1]

Neither of the two interim final Rules makes clear how creditors are to treat buydowns. Are they step-rate mortgages or ARMs under the Rules? Or are Interest Rate and Payment Summaries to be prepared to "reflect the terms of the legal obligation" between the consumer and creditor?

As a result of the uncertainty, some creditors have stopped making or acquiring loans with buydowns. These include large creditors, on whom smaller creditors rely to buy loans the small creditors originate. This means the disruption has spread very quickly across the nation. This nationwide disruption was unexpected, is unnecessary, and is further damaging a very weak housing market. This result certainly was not what Congress envisioned when it enacted the MDIA.

Further, buydown disclosures under the Rules could be very confusing. An example will illustrate the problem. Suppose a loan has a fixed rate of 5% for the first ten years and a buydown agreement under which a homebuilder will contribute to monthly payments by a fixed $X in the first year and $Y, a lower amount, in the second year. The first column of the disclosure is required to show the "interest rate at consummation and the period of time until the first interest rate adjustment may occur, labeled as the 'introductory rate and monthly payment[.]'"[2] This would show the rate is 5%, the payment amount, and that the first rate adjustment will occur at year ten. The consumer would be led to believe that the payment will not change for ten years. If the second column shows the payment will increase after the first year, this would seem contradict the first column.

To end the unnecessary disruption of home sales – just as the important spring selling season arrives – the Board needs to permit creditors to handle buydowns without fear of TILA liability. Creditors should be permitted to use RESPA disclosures or disclosures under any reasonable reading of the Rules. We very strongly urge immediate relief in this area considering the nature of the concern and its potential consequences.

B. The Rules Have Disrupted the Marketplace Availability of Preferred Rate Loans, Another Popular Tool That Supports Home Sales, When Rules Should Be Supporting Housing Markets

Additional uncertainty has disrupted the availability of preferred-rate loans. These are loans on which the rate increases upon the occurrence of some event within the consumer's control, such as the consumer-employee leaving the creditor's employ, the consumer closing an existing deposit account with the creditor, or the consumer revoking an election

[1] 12 C.F.R. § 226.17(c)(1).
[2] 12 C.F.R. § 226.18(s)(2)(i)(B)(1).

to make automated payments. As with buydowns, preferred-rate loans are popular, and they plainly benefit consumers.

Under the original and revised interim final Rules, the definition of an ARM loan includes loans "for which the annual percentage rate may increase after consummation."[3] This may be read to include preferred-rate loans, and Board Staff has informally interpreted it in that way. That means many areas are unclear.

The Interest Rate and Payment Summary must disclose the interest rate at consummation, and when the first rate adjustment may occur.[4] It is possible, however, on a preferred-rate loan that the rate could adjust the day after consummation. Is this the disclosure creditors should make? The Rules seem to require this, but it results in a confusing disclosure.

For ARMs, the Interest Rate and Payment Summary must also disclose the maximum rate that may apply during the first five years and the earliest date on which that rate may apply.[5] At what date are creditors to assume the consumer triggers the expiration of the preferred rate?

The first column is to show the introductory rate and monthly payment. If the preferred rate were to terminate the day after consummation, the consumer would never make a payment at the preferred rate. Is the first column to disclose the periodic payment before or after the termination of the preferred rate?

In the H-4(I) disclosure, "You have a discounted introductory rate of ___% that ends after (*period*)[,]" when is the end of the introductory rate? Clause (s)(2)(iii)(A) requires the disclosure to show "[t]he interest rate that applies at consummation and the period of time for which it applies[.]" This appears to require the disclosure to show that the introductory rate "ends" the day after consummation, although it most likely will not

Clause (s)(2)(iii)(B) requires "A statement that, even if market rates do not change, the interest rate *will* increase at the first adjustment and a designation of the place in sequence of the month or year, as applicable, of such rate adjustment[.]"[6] This appears to require a statement that the interest rate *will* increase the day after consummation, although they most likely will not. Accordingly, this quite plainly misstates the loan terms because there is no guaranty that the rate *will* increase. By requiring creditors to misstate the loan terms, the Rules force creditors to violate Regulation Z's overarching directive to disclose the legal obligation between the parties.[7]

Moreover, for negative amortization loans, clause (s)(4)(i)(A) requires disclosure of "[T]he minimum periodic payment required until the first payment increase or interest rate

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[3] 12 C.F.R. § 226.18(s)(7)(i).
[4] 12 C.F.R. § 226.18(s)(2)(i)(B)(1).
[5] 12 C.F.R. § 226.18(s)(2)(i)(B)(2).
[6] Emphasis added.
[7] 12 C.F.R. § 226.17(c)(1). ("The disclosures shall reflect the terms of the legal obligation between the parties.").

increase[.]" If the preferred rate were to terminate the day after consummation, the consumer would never make a payment at the preferred rate. Does this clause require disclosure of the periodic payment before or after the termination of the preferred rate?

Adding to the uncertainty is that this treatment of preferred rate loans runs counter to their treatment under the advertising rules. A creditor need not assume that the preferred-rate provision, by itself, means that more than one simple annual rate of interest will apply to the loan under §226.24(f)(2), and the payments that would apply upon occurrence of the event that triggers the rate increase need not be disclosed separately under §226.24(f)(3)(i)(A).[8] The commentary provides that advertisements for preferred-rate loans need not include the possible but unknowable termination of a preferred rate; this makes sense because the consumer, not the creditor, decides whether to end the preferred rate and, if so, when to end it. Requiring disclosures that differ from advertisements would be inappropriate and confusing.

Again, uncertainties about the two Rules have disrupted the market for preferred-rate loans. This also is not what Congress could have intended when it enacted the MDIA.

To end the unnecessary disruption of home sales and refinances, the Board needs to permit creditors to handle preferred rate loans without fear of TILA liability. Creditors should be permitted to use RESPA disclosures or disclosures under any reasonable reading of the Rules. Here again, we very strongly urge immediate relief.

C. The Rules Permit a Misleading Disclosure of Interest-Only Loans

Despite the best of intentions, both interim final Rules still result in misleading disclosures about interest-only loans. Considering their popularity, this, too, is a very serious concern under the Board's Rules.

This issue arose with the first interim Rule concerning loans that change from requiring interest-only payments to requiring payments of principal and interest without a change in interest rate. Under the first interim final Rule, a new column in the Interest Rate and Payment Summary to show the beginning of amortization is not required.

Where the regulation requires a new column, in § 226.18(s)(2)(i)(C), it does so by cross-referencing a provision, (s)(3)(i)(B), that only applies if all periodic payments will be applied to accrued interest and principal, which does not cover interest-only payments.

In the section-by-section analysis of the second Rule, the Board, however, attempts to explain the first Rule:

> Under § 226.18(s)(2)(i)(C), if an amortizing loan provides for a payment increase without regard to an interest rate adjustment (as described in § 226.18(s)(3)(i)(B)), the creditor must disclose an additional column showing the rate in effect at the time of such a payment increase and the date on which the payment increase will

[8] Supplement I to Part 226—Official Staff Commentary on Regulation Z at comment 24(f)1.ii.

occur.[9]

This does not describe what the Rule says. The Rule says that "If the loan provides for payment increases as described in paragraph (s)(3)(i)(B)" a disclosure is required. Paragraph (s)(3)(i)(B) does not cover interest-only payments.

In the second interim Rule, the Board revised the commentary to the Rule to state that § 226.18(s)(2)(i)(C) applies to all amortizing loans even if the loan is not the type covered by § 226.18(s)(3)(i). The revised commentary states:

> The disclosure requirement of § 226.18(s)(2)(i)(C) applies to all amortizing loans, including interest-only loans, if the consumer's payment can increase in the manner described in § 226.18(s)(3)(i)(B), even if it is not the type of loan covered by § 226.18(s)(3)(i). Thus, § 226.18(s)(2)(i)(C) requires that the creditor disclose the interest rate that corresponds to the first payment that includes principal as well as interest, even though the interest rate will not adjust at that time. In such cases, if the loan is an interest-only loan, the creditor also must disclose the corresponding periodic payment pursuant to § 226.18(s)(3)(ii). The table would show, from left to right: the interest rate and payment at consummation with the payment itemized to show that the payment is being applied to interest only; the interest rate and payment when the interest-only option ends; the maximum interest rate and payment during the first five years; and the maximum possible interest rate and payment.[10]

While this clarification is helpful, the problem arises from the regulation rather than from the commentary. The Rule itself still does not require the disclosure that the Board wishes creditors to make.

1. Commentary Cannot Impose A Regulatory Requirement

As the Board's commentary states:

> This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation Z. Good faith compliance with this commentary affords protection from liability under 130(f) of the Truth in Lending Act.[11]

While good faith compliance with the commentary would provide protection from liability, there can be no liability when there is no requirement in the first place. Creditors can use a disclosure without the column the Board means to require, and will not thereby violate either TILA or Regulation Z. Amending the commentary is insufficient to add to the Regulation Z requirements.

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[9] 75 Fed. Reg. 81836, 81839 (December 29, 2010),

[10] 75 Fed. Reg. 81836, 81842 (December 29, 2010).

[11] Supplement I to Part 226—Official Staff Commentary on Regulation Z.

The Rule continues not to require a column disclosing the beginning of amortization when it occurs without a rate change. We believe this is a disservice to consumers because the Rule permits creditors to use a disclosure that is incomplete.

Further, a Regulation Z-compliant disclosure would contradict the RESPA disclosure, which includes the maximum payment amount. Congress mandated integrated disclosures, not conflicting disclosures.

The beginning of amortization normally triggers a significant increase in the required payment amount. We believe it is important that disclosures not mislead consumers about what the payments will be, especially if the payment amount can increase significantly.

A rulemaking is necessary to require the disclosure the Board believes is needed. An interim final change to the commentary, without advance notice and without an opportunity for the Board to review comments on a proposed rule before finalizing the requirement, is insufficient.

2. *The New Commentary Would "Require" Disclosure of Incorrect Information in Most Cases*

Even if creditors were to make the disclosure consistent with the revised commentary, it would in most cases result in the new column being in the wrong place and showing the wrong information.

The commentary would have the columns show the rate and payment, from left to right, at consummation, at the end of the interest-only period, at the maximum rate during the first five years, and the maximum rate ever possible.

If the interest-only period terminates before the first rate adjustment, this would be sensible. Most often, however, it terminates after one or more rate adjustments. An example will illustrate the issue. Suppose a loan has in interest-only period of ten years, the rate adjusts after three years and annually thereafter, and the loan could reach its lifetime maximum rate on the 60th payment.

The commentary would have creditors disclose, in the first column, the introductory rate and corresponding payment, and that there is no principal included in the payment.

The second column would show the rate and payment for the 121st payment because that is the end of the interest-only period. The regulation, not the commentary, requires this column to be labeled "first adjustment" even though it is not the first adjustment, it is the seventh adjustment.

The third column would show the maximum rate during the first five years, and the corresponding payment amount. The corresponding payment would not include principal during the first five years.

The fourth column would show the maximum rate ever possible. In this example, this is the same rate as the five-year maximum. Again, the payment would not include principal.

The use of columns adds great graphical clarity to ARM disclosures because the columns lay out how the loan changes over time and the order in which the changes occur. A consumer will naturally believe the first adjustment is reflected in the second column, even if it were labeled "seventh adjustment" or even if were to have no label at all. Consumers may look at this disclosure and believe that their first adjustment does not occur for ten years. This is a problem because the consumer may expect not to have the loan for ten years, and therefore ignore the remaining columns. *The fact of rate annual rate adjustments beginning after three years will be hidden.*

Or, a consumer may read all the columns and see the initial payment and the first adjustment at year ten. The consumer would also see that the maximum payment amount during the first five years is higher than the initial payment yet is lower than the payment at the first adjustment. The consumer would also see that the maximum-ever payment amount is higher than the initial payment yet is lower than the payment at the first adjustment. *Quite simply, this will not make sense*.

Creditors should be able to move the column to the correct chronological order. In this example, the five-year column should be second, the maximum-ever column should be third, and the column showing the end of the interest-only period should be on the far right. Although the column should not be labeled "first adjustment" that is what the regulation requires.[12]

Merely changing the label of the "first adjustment" column is insufficient to solve the problem. The placement of the columns in a tabular disclosure is strongly illustrative – indeed, it seems to be the very purpose for having columns. Consumers may well pay far more attention to the placement of columns than to their labels.

Adding to the inability to determine how to comply with the Rules is that Board Staff has provided inconsistent advice to the industry. Staff has indicated that the columns should be in chronological order. Other advice has been that the columns are not required to be in chronological order. Creditors report that they simply do not know what the Rules require or are intended to require.

We realize that the Board is disinclined to revise its Interim Final Regulation yet again, especially this close to the integration of RESPA and TILA disclosures and to the designated transfer date. By the time the Board can complete a rulemaking under the Administrative Procedure Act, integrated disclosures will be in place or close to final and the Board will have transferred its TILA rulemakings to the Bureau of Consumer Financial Protection (Bureau). As indicated, the better solution would be to provide that disclosures in compliance with RESPA and it rules are sufficient to comply with TILA § 128(b)(2)(C), and that disclosures under either interim final Rule are also permissible.

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[12] 12 C.F.R. § 226.18(s)(2)(i)(C).

Also as indicated, the fact that the Bureau has made integration a top priority means this solution would not last long, which is important. From the perspective of providing the best disclosures, using the RESPA rather than a § 226.18(s) disclosure is the best outcome available until the disclosures are integrated. It may not be ideal, but it is better than a misleading or contradictory disclosure.

D. The Rules are Imposing Enormous Hard Costs for Systems Changes

The costs for systems changes the Rules require are substantial and under the circumstances should not be required. For example, the Revised Interim Final Rule changes the treatment of ARM loans on which the interest rate changes after five years. The first interim final Rule, in § 226.18(s)(2)(i)(B)(2), required disclosure of the maximum interest rate that may apply "during the first five years *after consummation* and the earliest date on which that rate may apply[.]" The revised Rule alters this language to instead require disclosure of the maximum rate that may apply during the first five years "*after the date on which the first regular periodic payment will be due* and the earliest date on which that rate may apply[.]"

The purpose of this change is to take into account that the interest rate typically adjusts a month before the payment amount changes. If a loan has a rate change after five years, measured from consummation, the payment will generally not change until more than five years after consummation. Under the first interim final Rule, this meant the five-year disclosure would not show the rate increase. In its revised Rule, the Board explains that it intended creditors to disclose the first rate adjustment.[13]

While we understand, and agree with, the intent behind this revision to the regulation, we do not agree that is a mere clarification. It is a substantive change to what the Rule requires.

Creditors have been implementing the first interim final Rule for some time now by making systems changes necessary to retrieve and prepare the disclosures based on the consummation date. Now creditors must begin anew and cause the systems retrieve and to base disclosures on a different date. Creditors also now must implement systems changes to stop retrieving and using the consummation date. All this will require yet another round of costly, disruptive, and wasteful systems changes that will need to be revised if not undone very soon.

We believe this rule change should have the benefit of a full notice and comment period before it becomes effective because of the substantive nature of the change. We also believe the Board should have an opportunity to review and respond to comments before creditors begin to incur the unnecessary costs of implementing this change. In any case, however, it clearly is an area where substantial amounts will be spent to comply.

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[13] 75 Fed. Reg. 81836, 81839 (December 29, 2010).

1. *The Board's Position that There is No Cost and There May Be a Burden Reduction from the Interim Rule Conflicts With Our Members' Experiences and Budgets*

In its Paperwork Reduction Act review for the revised Rule, the Board states:

> The revisions do not add to the disclosure requirements adopted in the September 2010 Interim Rule but, rather, only resolve uncertainties and clarify under certain circumstances which of those disclosure requirements apply to which types of mortgage loan products and how.[14]

In its Regulatory Flexibility Act analysis for the revised Rule, the Board also states:

> The Board notes, in fact, that the revisions this interim rule makes to the provisions of Regulation Z adopted in the September 2010 Interim Rule are for the purpose of resolving conflicts and uncertainties, thus facilitating compliance for creditors. Consequently, to the extent this interim rule has any effect on the Board's prior regulatory flexibility analysis, it is to reduce the overall impact of the September 2010 Interim Rule on all entities, including small entities.[15]

Based on input from our members, who are obliged to make the changes to implement the Rules, we respectfully but very strongly disagree with both statements.

The statement in the Paperwork Reduction Act analysis that the revised Rule "does not add to the disclosure requirements" ignores the fact that the revised Rule *changes* the requirement as to loans with a rate change after five years. A changed requirement means automated and other systems must be changed so they will stop retrieving and using data as required under the first Rule. Then additional systems changes must be implemented to cause the systems to retrieve and use the data required by the revised Rule. At the same time, a new compliance approach needs to be designed, technology resources need to be removed from other ongoing projects, and retraining and even hiring of new staff becomes essential. There are *certainly* new regulatory burdens and costs resulting from the Rules and ongoing changes, even if the revised disclosure is similar to the prior disclosure.

Moreover, removing a requirement is far more involved than flipping a switch. It measurably adds regulatory burden and increases costs. Requiring creditors to revise systems to exclude requirements affects other systems and makes these changes time consuming and costly.

The revised Rule suggests that the implementation of commentary is optional though creditors may be influenced to implement it because it reflects the Board's intent. Implementing the revised commentary, however, is plainly necessary and adds regulatory burden and costs, too.

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[14] 75 Fed. Reg. 81836, 81841 (December 29, 2011).
[15] *Id.*

Also, in its first interim final Rule, the Board stated it "has not identified any less burdensome alternatives that would achieve the same purpose."[16] Not only does the Board not address, in either Rule, the significantly less burdensome alternative of using the RESPA disclosures to implement TILA § 128(b)(2)(C), it does not state any reason for not pursuing this very reasonable alternative.

A third cost that should have been examined is that the Interim Final Rules, both the first one and the revised one, as indicated, will not be in force for long. As indicated, the RESPA and TILA disclosures are a priority to be integrated shortly, as the Dodd-Frank Act requires. Once integrated, creditors will need to implement a number of changes to the Rules and forms, including to the Interest Rate and Payment Summary. That means soon removing many of the very systems changes the Interim Final Rules require.

As a result, both of the Interim Final Rules require costly implementation to provide disclosures that overlap with RESPA for a short time, which add to consumer confusion and increased costs.

2. *The Board's February 1 Announcement Should Apply to this Rule*

We agree with the Board's February 1, 2011 announcement:

> [T]he Board has carefully evaluated whether there would be public benefit in proceeding with the rulemakings initiated with the Board's August 2009 and September 2010 proposals at this time. Because the Board's 2009 and 2010 TILA proposals would substantially revise the disclosures for mortgage transactions, any new disclosures adopted by the Board would be subject to the CFPB's further revision in carrying out its mandate to combine the TILA and RESPA disclosures. In addition, a combined TILA-RESPA disclosure rule could well be proposed by the CFPB before any new disclosure requirements issued by the Board could be fully implemented. For these reasons, the Board has determined that proceeding with the 2009 and 2010 proposals would not be in the public interest. Although there are specific provisions of these Board proposals that would not be affected by the CFPB's development of joint TILA-RESPA disclosures, adopting those portions of the Board's proposals in a piecemeal fashion would be of limited benefit, and the issuance of multiple rules with different implementation periods would create compliance difficulties.

We also agree with the Board's statement that piecemeal rulemakings create compliance difficulties. Following that reasoning, we believe *all* of the revised mortgage disclosure requirements, including the Interim Final Rule, the revised interim final Rule, as well as the RESPA-TILA integration changes, should be instituted in one rulemaking, not through several piecemeal rulemakings.

As indicated, we stress that creditors should have the option of simply complying with the RESPA rule and if they choose complying with current practice under TILA, the first

[16] 75 Fed. Reg. 58470, 58481 (September 24, 2010).

interim final Rule, or by complying with the revised Rule. Such an approach would acknowledge that some creditors are further along than others considering the questions that persist in implementing the Rules.

In sum, it is simply not the case that the revised Rule will "reduce the overall impact . . . on all entities." The revised Rule will add to the regulatory burden for all entities and their costs, which consumers will ultimately bear.

II. HUD Already Requires Disclosures under RESPA that Serve MDIA's Purpose, Making MDIA Disclosures Largely Redundant and Unnecessary

Congress enacted the MDIA in July 2008, and it requires disclosures for consumer mortgage loans on which the interest rate or payment may vary. The MDIA necessitates the Board to require the disclosures by January 30, 2011. Following MDIA's enactment, in November 2008, the Department of Housing and Urban Development (HUD) revised its Regulation X under RESPA. HUD required in Good Faith Estimates (GFEs) the following disclosures to consumers about mortgage payments that may vary:

Can your interest rate rise?	☐ No	☐ Yes, it can rise to a maximum of %. The first change will be in .
Even if you make payments on time, can your loan balance rise?	☐ No	☐ Yes, it can rise to a maximum of $
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	☐ No	☐ Yes, the first increase can be in and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment penalty?	☐ No	☐ Yes, your maximum prepayment penalty is $.
Does your loan have a balloon payment?	☐ No	☐ Yes, you have a balloon payment of $ due in years.

In the same rulemaking, HUD also revised its Settlement Statement (HUD-1) to require the following disclosure about payments that may vary:

Can your interest rate rise?	☐ No. ☐ Yes, it can rise to a maximum of ___%. The first change will be on ___ and can change again every ___ after ___. Every change date, your interest rate can increase or decrease by ___%. Over the life of the loan, your interest rate is guaranteed to never be lower than ___% or higher than ___%.
Even if you make payments on time, can your loan balance rise?	☐ No. ☐ Yes, it can rise to a maximum of $___.
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☐ No. ☐ Yes, the first increase can be on ___ and the monthly amount owed can rise to $___. The maximum it can ever rise to is $___.
Does your loan have a prepayment penalty?	☐ No. ☐ Yes, your maximum prepayment penalty is $___.
Does your loan have a balloon payment?	☐ No. ☐ Yes, you have a balloon payment of $___ due in ___ years on ___.

HUD required use of these disclosures nationwide beginning January 1, 2010, over a year ago.

In August 2009, the Board proposed a rule to require, among other things, a new Interest Rate and Payment Summary about loans on which payments may vary, to implement the MDIA. This disclosure differs by loan product. For example, on a hybrid adjustable rate mortgage (ARM) loan, the Board's interim final Rules both require the following disclosure:

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY Rate & Monthly Payment (for first (*period*))	**[MAXIMUM during FIRST FIVE YEARS** (*date*)]	**MAXIMUM EVER** (as early as (*date*))
Interest Rate	___%	[___%]	___%
Principal + Interest Payment	$_____	[$_____]	$_____
Est. Taxes + Insurance [(Escrow)] • [Includes [Private] Mortgage Insurance]	[$_____]	[$_____]	[$_____]
Total Est. Monthly Payment	$_____	[$_____]	$_____

The disclosures that HUD requires and that the Board requires are different in appearance but are clearly very similar in substance. Looking at either disclosure, consumers can plainly see that their payment may change, and they can plainly see how high it might go.

The MDIA does not require a disclosure in the exact format the Board requires. TILA § 128(b)(2)(C) merely requires disclosure of the following:

- Examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract. *Both the RESPA and TILA disclosures incorporate examples of payment adjustments.*

- An example that reflects the maximum payment amount of the regular required

payments on the extension of credit, based on the maximum interest rate allowed under the contract. *Both RESPA and TILA rules require disclosure of the life-of-the-loan maximum payment.*

- The fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust afterwards potentially to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount. *Both the RESPA and TILA disclosures meet the requirement to disclose the payment change possibilities.*

While it is true that MDIA required the Board to mandate new disclosures and to conduct consumer testing, we believe that the Board may carry out these mandates by simply permitting the use of the HUD disclosures and by adopting HUD's consumer testing, as we have recommended in the past. The Interest Rate and Payment Summary requires more than the MDIA requires, so it is unnecessary to implement the MDIA. Such an approach would be consistent with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) which was enacted subsequent to the MDIA, and which calls for centralization of RESPA and TILA authorities and has a triple mandate that RESPA and TILA disclosures be integrated.

III. The Rules Will Be Short Lived Considering the Triple Congressional Mandate to Integrate RESPA and TILA Disclosures

As the Board is aware, the enactment of Dodd-Frank in 2010 established the new Bureau and mandates that, as of the "designated transfer date" of July 21, 2011, the Bureau will take over responsibility for TILA and RESPA. The law in three places mandates that RESPA and TILA disclosures be integrated.[17] The Bureau has made this a top priority.

Considering that both the Rules require disclosures that overlap and do not work well with RESPA disclosures, the Rules are highly likely to be revised during the integration effort. Accordingly, these Rules can be expected to become obsolete shortly. Considering this likelihood and the difficulties with the Rule, the rationale for requiring the disclosures under the interim Rules is not apparent.

The Rules have no helpful purpose and will be replaced soon. The only reason we cannot advocate for their repeal is that all creditors have been implementing both Rules and it will take considerable time and resources to undo all the systems changes. We therefore urge the Board not to require compliance with the Rules, but not to prohibit compliance with either Rule.

IV. The Rules Require Several Technical Changes That Militate Against Making the Rules Mandatory at this Date

[17] Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, requires integration in each § 1032(f), § 1098(2)(A), as well as in § 1100A(5). 124 Stat. at 2007, 2103-04, and 2108.

In many key areas, in addition to those discussed earlier, the Rules do not provide sufficient guidance to facilitate compliance, militating in favor of making the Rules optional. These concerns include:

A. The Rule Does Not Explicitly Permit Rounding Consistent With Loan Terms

The Rules do not permit rounding interest rates consistent with loan terms. ARM loans commonly provide that interest rates are rounded off when they adjust. Section 226.18(s)(7)(vi) defines the fully-indexed rate to be "the interest rate calculated using the index value and margin at the time of consummation." If rounding were not permitted consistent with the loan terms, inaccurate disclosures would result.

For example, a loan may have a margin of two percentage points, and provide for rounding to the nearest one-eighth of one percentage point (0.125 percent). During the look-back period, the index may be 0.98 percent or 1.02 percent. In both cases, the actual rate would be 3.0 percent after rounding. If the creditor were required to ignore rounding, the disclosure would need to reflect 3.02 percent, which is inaccurate. Additionally, this disclosure may cause consumers not to understand that their loans round the interest rate.

To fix this problem, the Board should clarify that, under § 226.18(s)(7)(vi), creditors may round interest rates consistent with anticipated loan terms in calculating the fully-indexed rate.

B. If a Rate is Discounted by More Than a Cap, an Inaccurate Disclosure is Required

The Rules do not provide guidance on disclosures for loans that can be discounted by more than the cap. If a loan has a discounted initial interest rate, § 226.18(s)(2)(iii) requires a disclosure that "You have a discounted introductory rate of ___ % that ends after (period). In the (period in sequence), even if market rates do not change, this rate will increase to ___ %." Section (s)(2)(iii)(C) requires disclosure, in the second blank, of the fully-indexed rate.

If the loan has a rate that is discounted and that is capable of reaching the fully discounted rate when the introductory rate ends, this makes sense. But the rate may be discounted more than rate cap on the first adjustment. In this event, after the first adjustment, the loan will still have a discounted rate. The required disclosure of the fully indexed rate in this case would be inaccurate.

To fix this problem, the Board should revise (s)(2)(iii)(C) to require disclosure of the highest rate that could apply under the loan terms.

C. The Rules' Treatment of Balloon Loans is Unclear

The Rules do not provide clear guidance on disclosures of balloon loans. The Rules

require certain disclosures about balloon loans. They define a balloon payment as "a payment that is more than two times a regular periodic payment [.]"[18] For ARMs where there is a balloon payment, it is unclear which of the interest rates possible over the life of the loan are to be used in calculating the "regular periodic payment [.]" It is also unclear whether the regular periodic payment includes any amounts regularly and periodically paid into an escrow account and if so, at what point in time. In order to fix these problems, the Rules should provide clear guidance on balloon loans.

D. The Rules are Unclear on How the New Forms Are to Be Provided in Conjunction with Other Forms

The Rules do not provide guidance on how the Board expects creditors to format the Interest Rate and Payment Summary in relation to other disclosures. The Interest Rate and Payment Summary tables are not integrated into existing TILA disclosures. In order to fix the problem, the Rules should, for example, explicitly permit creditors to provide the forms either on a separate piece of paper or in other disclosures in any reasonable manner not otherwise prohibited.

E. Ambiguity About Payment Variations Relating Solely to Number of Days in a Month

The Rules have ambiguous requirements regarding payment variations resulting solely from the fact that months have different numbers of days. The revised Rule revises comment 18(s)(2)(i)(C)-1 to clarify that payment increases without regard to an interest rate adjustment exclude "minor payment variations resulting solely from the fact that that months have different numbers of days." However, the inclusion of the word "minor" in this language renders the direction ambiguous. It implies that there are some non-minor, or major, payment variations resulting solely from the fact that those months have different numbers of days that would receive different treatment. We believe the Board did not intend to distinguish between minor and major payment variations relating solely to the number of days in a month. To fix this problem, the word "minor" needs to be removed.

VI. Conclusion

While we appreciate the Board's efforts in this area, for the reasons detailed in this letter we urge that creditors be provided the option of simply complying with the RESPA rule to satisfy the interim final Rules; requirements and, if they choose, to comply with current practice under TILA, the first interim final Rule, or with the revised Rule for loans the Rules cover. Optionality is particularly important to ensure the continued availability of important loan products, including buydowns to facilitate homeownership.

The purpose of both Rules was to implement an MDIA provision enacted in July 2008. The Rules have disrupted the housing markets. The Rules cover more loans and require more than what the MDIA requires. The Rules do not work well with RESPA disclosures that have been in place for over a year. The Rules directly conflict with a 2010 triple

[18] 12 C.F.R. § 226.18(s)(5)(i).

Congressional mandate that mortgage disclosures be integrated. These successive Rules without prior comment are not within, at least the spirit, of the Administrative Procedure Act. Board Staff seems unsure what the Rules require, the industry is quite unsure, while compliance with the first Rule became mandatory last month. In enacting the MDIA, Congress intended none of this.

Moreover, the original and revised interim final Rules are likely to be in place for only a short time before being replaced. For all of these reasons, we urge that further costs of implementing both interim final Rules are unnecessary and should not be borne by consumers.

Again, we appreciate the opportunity to comment. Please contact the undersigned organizations if you have any questions.

Sincerely,

American Bankers Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Leading Builders of America
Mortgage Bankers Association
National Association of Homebuilders

cc: Office of Management Budget
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