CUNA REGULATORY ADVOCACY

CUNA REGULATORY COMMENT CALL

January 14, 2008

Proposed Amendments to the Home Mortgage Provisions of Regulation Z

EXECUTIVE SUMMARY

- The Federal Reserve Board (Fed) has issued proposed amendments to Regulation Z and the official staff commentary that will establish new protections for consumers from unfair or deceptive home mortgage lending and advertising practices. The Home Ownership Equity Protection Act (HOEPA) provides the Fed with the authority to issue these rules.
- The proposal would establish a new category of "higher-priced mortgages," which would include those with annual percentage rates (APRs) that exceed the yield on Treasury securities of comparable maturity by at least three percentage points for first-lien loans, or five percentage points for subordinate-lien loans. This threshold should include nearly all subprime loans. For these loans, the proposal will require lenders to consider the borrower's ability to repay the loan, require verification of income and assets, impose limits on prepayment penalties, and require escrow accounts for taxes and insurance.
- For most other mortgage loans, including the "higher-priced mortgage loans", the proposal will restrict yield spread premiums, prohibit certain servicing practices, prohibit lenders from coercing appraisers, prohibit certain misleading and deceptive advertising, and require Truth in Lending Act (TILA) disclosures within three days after the mortgage application is submitted and before fees are charged, except for a credit report fee.

Comments on the proposal are due by April 8, 2008. Please submit your comments to CUNA by March 18, 2008. Please feel free to fax your responses to CUNA at 202-638-7052; e-mail them to Senior Vice President and Deputy General Counsel Mary Dunn at mdunn@cuna.com or to Senior Assistant General Counsel Jeff Bloch at jbloch@cuna.com; or mail them to Mary or Jeff in c/o CUNA's Regulatory Advocacy Department, 601 Pennsylvania Avenue, NW, South Building, 6th Floor, Washington, DC 20004. **If commenting directly to the Fed, you must refer to Docket No. R-1305**. You may also contact us if you

would like a copy of the proposal or you may access it on the Internet at the following address:
http://edocket.access.gpo.gov/2008/pdf/E7-25058.pdf

BACKGROUND

TILA is intended to promote the informed use of consumer credit by providing for disclosures about its terms and cost. TILA requires lenders to disclose the cost of credit as a dollar amount, and as an APR in a uniform manner. This uniformity is intended to assist consumers in comparison-shopping for credit. Regulation Z implements TILA, which contains official staff commentary that interprets the regulation and provides guidance in applying the regulation to specific transactions.

The Fed has authority under TILA and HOEPA to issue rules that protect consumers from unfair or deceptive home mortgage lending and advertising practices. Under pressure from some in Congress and consumer groups, the Fed issued the proposal to help curtail future subprime lending problems. The Fed is not acting in a vacuum. The House of Representatives has recently passed legislation to address these concerns, and legislation has recently been introduced in the Senate. Click here for more information about the legislation. The Fed also conducted hearings this past June that focused on many of the issues that are now being addressed in this proposed rule.

DESCRIPTION OF THE PROPOSED RULE AND CHANGES TO THE OFFICIAL STAFF COMMENTARY

I. "Higher-priced Mortgage Loans"

Many of the protections included in the proposed rule will only apply to "higher-priced mortgage loans." These will be defined as mortgage loans that are secured by the borrower's principal home in which the APR exceeds the yield on comparable Treasury securities by at least three percentage points for first-lien loans, or five percentage points for subordinate lien loans. These would include home purchase loans, refinancings of loans, and home equity loans. The threshold is intended to cover subprime loans and a portion of the "alt-A" loans, which are in the category between subprime and prime loans, while excluding the prime market in its entirety.

Home equity lines of credit (HELOCs), reverse mortgages, construction-only loans (but not the permanent financing that follows the construction loan), and bridge loans of twelve months or less would be excluded from the definition. Loans to purchase homes for investment purposes would also be excluded, as would loans to purchase second homes, unless the loan is secured by the borrower's principal home.

Although HELOCs are excluded, lenders may not structure mortgage loans as open-end transactions in order to evade the requirements under this proposal.

The thresholds described above are similar to the thresholds for reporting loan pricing information under Regulation C, the Home Mortgage Disclosure Act. However, there are differences with regard to which Treasury securities to use for the calculation. Under this proposal, variable-rate transactions with an initial fixed period of more than one year would be matched to Treasury securities with the maturity closest to the length of the fixed period. A loan with a fixed period of more than seven years would not be considered a variable loans and a one-year Treasury security would be used for fixed periods of less than, one year.

For fixed rate loans, the following Treasury securities would be used:

- A ten-year Treasury security would be the comparable security for a fixed rate loan of more than 20 years.
- A seven-year Treasury security would be the comparable security for a fixed rate loan of between seven and twenty years.
- A Treasury security with a maturity closest to the term of the loan would be the comparable security if the fixed rate loan is less than seven years.

The timing requirements are also slightly different than what is outlined in Regulation C. In the proposal, the Treasury security yield that would be used would be the yield as of the 15th of the month preceding the month in which the application is received. This differs from Regulation C, which refers to the month before the rate is locked, as opposed to the month when the application is received.

II. Proposed Rules for Higher-Priced Mortgage Loans

Disregard of Consumers' Ability to Repay

The proposal will prohibit a lender from engaging in a pattern or practice of making higher-priced mortgage loans without regard to the consumer's repayment ability at the time the loan is made. This repayment ability includes the consumer's current and reasonably expected income, current and reasonably expected obligations, employment, and assets other than the collateral. There is a similar prohibition for loans covered under HOEPA, although the thresholds for HOEPA loans cover a smaller portion of the subprime market.

Whether a lender has engaged in a prohibited pattern or practice will depend on the totality of the circumstances in the particular situation. Lenders will be able to consider assets, other than the collateral, for those consumers who do not have sufficient current income and cannot demonstrate a reasonable expectation of income. Expected employment may also be considered, such as for students who have obtained a professional degree and who are then expected to obtain

employment. Other expected obligations are also to be considered, such as additional loans that the consumer may be applying for at the time of application.

This prohibited pattern or practice will be presumed if the lender engages in a pattern or practice of failing to verify and document repayment ability. A credit report may be used to verify obligations.

This prohibited pattern or practice will also be presumed if the lender engages in a pattern or practice of failing to consider the consumer's ability to pay based on the fully-indexed rate (or the highest rate in the first seven years for "step-rate" loans) that includes expected property taxes and insurance. Failing to consider the borrower's debt-to-income ratio at the time the loan is made, and the borrower's residual income after paying the debt obligations, will also be presumed to be a prohibited pattern or practice. The proposal does not provide specific debt-to-income ratio ceilings or specific residual income levels.

There may be other patterns and practices that would also be considered a violation of these provisions. However, all of these may be rebutted with evidence that the lender did not disregard repayment ability. Also, the lender is only required to consider repayment ability during the first seven years of the loan term. This would not necessarily preclude all loans with sharp payment increases before seven years, such as in situations when the borrower documents the intent to sell the home within a shorter period of time.

<u>Verification of Income and Assets</u>

For higher-priced mortgage loans, lenders must verify the borrower's assets or income, including expected income, and can verify income and assets with an IRS W-2 form, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence. However, statements made by the consumer cannot be relied upon.

Lenders who fail to verify this information will not be in violation of these provisions if they can show that the amount of the income and assets relied upon was not materially greater than what the lender could have documented at the time the loan was made. Lenders also do not need to verify income and assets if they were not relied upon to determine repayment ability.

The proposal will still allow flexibility for lenders to adjust their underwriting standards for borrowers with irregular income or who are self-employed, as long as there is documentation of income or expected income. Also, lenders who have extended credit to borrowers and wish to extend new credit to the same borrower would not need to re-collect the documentation if those documents would not have changed since they were initially verified.

Prepayment Penalties

A higher-priced mortgage loan may not include a prepayment penalty unless:

- the borrower's debt-to-income ratio at the time the loan is made is no more than 50%, which would need to be verified (any reasonable calculation method may be used);
- the prepayment is not made using funds from a refinancing by the same creditor or its affiliate;
- the penalty term does not exceed five years from the time the loan is made; and
- the penalty is not prohibited under other applicable law.

The above criteria are the same as those that apply to loans covered under HOEPA. In addition, the proposal will also require that the period during which the lender may impose the prepayment penalty must expire at least 60 days before the first date in which the payments may increase under the terms of the loan. This requirement would apply even if the payment would not actually increase, due to interest rate levels or other factors at that time. However, the 60-day requirement would not apply if the borrower chooses to make higher payments or if higher payments result from a borrower's late payment, default, or delinquency.

Requirement to Escrow Tax and Insurance Payments

The proposal will prohibit lenders from making higher-priced mortgage loans secured by a first-lien without an escrow account for property taxes and homeowners insurance. This requirement will not apply to subordinate lien loans, and lenders may allow the borrower to cancel the escrow account after twelve months. Also, advertisements for a payment that does not include amounts for taxes and insurance must include a clear statement that the payment does not include these amounts and that the total payment amount will be higher. This statement must be within close proximity to the advertised payment amount.

III. Proposed Rules for All Mortgage Loans

As described below, the proposed rule would provide additional protections for mortgage loans in general, including the "higher-priced mortgage loans." However, these will not apply to HELOCs.

Creditor Payments to Mortgage Brokers

The proposal will provide protections to borrowers with regard to "yield spread premiums," which are the fees paid by a lender to a mortgage broker that are incorporated into the interest rate. For yield spread premiums, the proposal will prohibit such fees that exceed the amount that the broker and consumer had

agreed in advance would be the broker's total compensation. This agreement between the borrower and broker must also disclose that the consumer will pay the entire compensation, even if all or part is paid directly by the lender, and must also disclose that the lender's payment to the broker may influence the broker to offer loans that are less favorable than other loans that the borrower could obtain.

The broker and consumer must enter into this agreement before the consumer pays a fee or submits an application to the broker, whichever comes first, and the official staff commentary will provide model language for the disclosures that must be included in this agreement. Also, these restrictions will apply to the broker's compensation, and not to amounts that the broker is obligated to pass on to other settlement service providers.

The following are other means in which lenders may comply with these provisions:

- The lender complies with a state law that provides equivalent protections.
- The lender can demonstrate that the payments to the broker are not made in connection with the loan's interest rate, such as if the lender pays the same flat fee for all transactions, regardless of the interest rate.

Coercion of Appraisers

The proposal will prohibit lenders and brokers from coercing appraisers to misrepresent the value of a consumer's principal dwelling. The proposal will also prohibit lenders from extending credit when the lender knows or has reason to know that the appraiser has misstated the home's value, either at or before the loan is made. However, the loan can still be made if the lender reasonably determines that the appraisal is still accurate or if the loan is based on another appraisal that was not subject to improper influence. The official staff commentary will list a number of examples of actions that would violate these provisions, as well as examples of actions that would not violate these provisions.

Servicing Abuses

The proposal will prohibit loan servicers from engaging in the following practices:

- Failing to credit the borrower's payment as of the date it is received, unless the delay does not result in a finance or late charge or result in negative information being reported to a credit bureau. A lender that specifies payment requirements in writing and then accepts a non-conforming payment would be required to credit the payment within five days of receipt.
- Imposing a late fee or delinquency charge when it is due only to the borrower's failure to include a similar charge that was imposed on an earlier payment. This would apply to payments that otherwise would be a full

payment that is paid on time, but for the previously charged late fee or delinquency charge.

- Failing to provide a current schedule of all possible servicing fees and charges within a reasonable time after a borrower requests this information. This may be mailed to the borrower or the borrower may be directed to a website, as long as the website address is specific enough to direct the borrower to the information, as opposed to merely providing the home page address. The information provided to the borrower must include an explanation and the circumstances in which the fees and charges would be imposed. The fees may be listed as dollar amounts or as an hourly rate or percentage, if applicable, and must also include third-party fees that are passed on by the servicer to the borrower.
- Failing to provide an accurate payoff statement within a reasonable time after a request is made, either by the borrower or by a person acting on behalf of the borrower. Three days will be considered a reasonable time, although a longer time will be acceptable if servicers are experiencing an unusually high volume of refinancing requests.

III. Proposed Amendments to the Advertising Rules

As described below, the proposal will amend the advertising rules that apply to open-end home-equity plans, or HELOCs, and the advertising rules that apply to closed-end, home-secured loans.

Advertising Rules for Open-end Home-Equity Plans

The proposal will revise the "clear and conspicuous" standard for home-equity plan advertisements. For disclosures of introductory rates or payments, this standard will require that these disclosures be equally prominent and in close proximity to certain "triggering" terms, which would be the payment terms, finance charges, or other charges that may be imposed. Being in "close proximity" will mean that these disclosures will be immediately next to or directly above or below the triggering terms, without intervening text or graphical displays. "Prominent" will mean that the disclosures will be the same type size as the triggering terms.

These clear and conspicuous standards will also apply to home-equity plans in which a balloon payment may result. This means the balloon payment must be equally prominent and in close proximity to the minimum periodic payment, even if the balloon payment is uncertain or unlikely to occur.

These standards will also apply to advertisements for variable-rate home equity plans that state an initial annual percentage rate that is not based on the index and margin used to determine rate adjustments. For these plans, the disclosure of the initial rate must be equally prominent and in close proximity to the time period that the initial rate will be in effect and to a "reasonably current" annual

percentage rate that would have been in effect, using the margin and index. For direct mail advertisements, "reasonably current" would be a rate in effect within 60 days of the mailing. For advertisements in electronic form, it would be a rate in effect within 30 days before the advertisement was sent to the consumer's email address or posted on a website. For printed advertisements, it would be a rate in effect within 30 days of printing.

Under the proposal, if an advertisement for a home-equity plan states an introductory rate or payment, the advertisement must use the term "introductory" or "intro" in immediate proximity to each mention of the introductory rate or payment. Using this term within the same sentence as the payment will satisfy the "immediate proximity" requirement. The following must also be disclosed in a clear and conspicuous manner and with equal prominence and close proximity to each listing of the introductory rate or payment:

- The period of time during which the introductory rate or payment will apply.
- For an introductory rate, any annual percentage rate that will apply under the plan, whether that is a fixed or a variable rate.
- For an introductory payment, the amount and time periods of any payments that will apply, including possible balloon payments. Payments based on an index and margin must be based on a "reasonably current" index and margin, as described in the paragraph above.

The above listed information will be considered to be of equal prominence to the introductory rate or payment if it is of the same type size, and will be considered within close proximity if it is within the same paragraph as the introductory rate or payment. However, these disclosure requirements will not apply to envelopes or to banner and pop-up advertisements that are linked to an electronic application or solicitation.

For Internet and television advertisements, the text of the required open-end disclosures must not be obscured by techniques such as graphical displays, shading, coloration, or other means and must be displayed in a manner that the consumer can read. For oral advertisements, such as through the radio or television, the disclosures must be delivered at a speed and volume that the consumer can hear and comprehend. However, the advertiser does not have to ensure that a consumer understands the meaning of these disclosures. Also, for radio and television disclosures, the lender may also just state orally the applicable APR, and the fact that the rate may increase, and then provide a toll-free telephone number for the consumer to call for further information.

Electronic advertisements may continue to follow the Fed's recent electronic disclosure rules. These rules provide that if an electronic advertisement includes the required disclosures in a table or schedule, any triggering terms elsewhere in the advertisement must direct the consumer to the location of the table or schedule.

The proposal will also implement certain provisions of the 2005 bankruptcy law. For loans secured by the principal home in which the amount may exceed the fair market value of the loan, any advertisements for these loans must include a statement that the interest on the portion of the loan that exceeds the fair market value is not tax deductible for Federal income tax purposes. This statement must also advise the consumer to consult a tax advisor for more information on this issue. This will not apply to radio and television advertisements.

Advertising Rules for Closed-end, Home-Secured Loans

The following must be disclosed if an advertisement for a closed-end, home-secured loan states the amount of a payment:

- The amount of each payment that will apply over the term of the loan, including any balloon payment. For variable-rate loans, this would be a payment using a "reasonably current" index and margin, as defined above for open-end loans.
- The period of time during which each payment would apply.
- The fact that the payments do not include taxes and insurance premiums, if applicable. This requirement would not apply to subordinate lien loans.

The above information must be disclosed in close proximity and with equal prominence with the payment that is disclosed. "Close proximity" means immediately next to or directly above or below the payment information. "Equal prominence" means equal type size, although the information about tax and insurance payments need only be disclosed prominently and not necessarily of equal prominence to the advertised payment.

The following must be disclosed in an advertisement for a loan in which more than one simple interest rate may apply, except for radio and television advertisements:

- Each simple interest rate that may apply. For variable-rate loans, this would be a rate using a "reasonably current" index and margin, as defined above for open-end loans, although these requirements will not apply if the same index and margin is used throughout the loan term.
- The period of time during which each simple rate would apply.
- The APR for the loan.

The above information must be disclosed in close proximity and with equal prominence with the rate that is disclosed. Again, "close proximity" means immediately next to or directly above or below the rate information, and "equal prominence" means equal type size, although the APR may be disclosed with greater prominence.

As with the open-end advertisements described above, these disclosure requirements when payments or more than one simple rate is disclosed will not apply to envelopes or to banner and pop-up advertisements that are linked to an

electronic application or solicitation. Also, electronic advertisements may continue to follow the Fed's recent electronic disclosure rules. These rules provide that if an electronic advertisement provides the required disclosures in a table or schedule, any triggering terms elsewhere in the advertisement must direct the consumer to the location of the table or schedule.

For Internet and television advertisements, the text of the required closed-end disclosures must not be obscured by techniques such as graphical displays, shading, coloration, or other means and must be displayed in a manner the consumer can read. For oral advertisements, such as through the radio or television, the disclosures must be delivered at a speed and volume that the consumer can hear and comprehend. However, the advertiser does not have to ensure that a consumer understands the meaning of these disclosures. Also, for radio and television disclosures, the lender may also just orally state the APR and whether it may increase in the future and then provide a toll-free telephone number that the consumer may call to receive the additional, required closed-end disclosures. These include the amount of the downpayment and the terms of the repayment (which will now include any balloon payment).

Advertisements for home-secured loans may no longer include the periodic rate or include a rate lower than the rate at which interest is accruing that results in negative amortization. Loans with "buydowns" would require additional disclosures. These are loans in which a reduced interest rate and payment is offered to the borrower for a limited time. These additional disclosures include the amount of the downpayment, the terms of the repayment (which will now include any balloon payment), the APR and whether the APR may be increased.

For an advertisement of a discounted variable-rate transaction that advertises a reduced or discounted interest rate, the limited term in which this rate applies and the APR that will apply after this term must be disclosed with equal prominence and in close proximity to the reduced rate. When such an advertisement includes information showing the effect of the discount on the payment schedule, the disclosures must include the amount of the downpayment, the terms of the repayment (which will now include any balloon payment), the APR and whether the APR may be increased.

For all closed-end advertisements for home-secured loans in which the payments may vary because of the inclusion of mortgage insurance premiums, the official staff commentary will be revised to indicate that the advertisement may state the number and timing of payments, the amounts of the largest and smallest of those payments, and the fact that other payments will vary between these amounts. If the loan includes one series of low payments followed by a series of higher payments, the advertisement may state the number, time period, and amount of each payment. However, the amount of the higher payments must be based on the assumption that the borrower makes the lower payments for the maximum amount of time. If a balloon payment may result by making these lower

payments, the advertisement must disclose the amount and timing of the balloon payment, which must be with equal prominence and in close proximity to the minimum payment.

As with the changes to the open-end advertising rules, the proposal will implement certain provisions of the 2005 bankruptcy law for the closed-end advertising rules. Again, for loans secured by the principal home in which the amount may exceed the fair market value of the loan, any advertisements for these loans must include a statement that the interest on the portion of the loan that exceeds the fair market value is not tax deductible for Federal income tax purposes. This statement must also advise the consumer to consult a tax advisor for more information on this issue. This will not apply to radio and television advertisements.

In addition to the above disclosures, all other disclosures must be "clear and conspicuous. However, the proposal does not offer specifics as to format or type size requirements, other than the requirements described above.

The proposal will also prohibit the following seven specific advertising acts or practices for home-secured loans:

1) Using the term "fixed" for variable-rate or other transactions in which the payment may increase, unless the following conditions are met:
    - The phrase "adjustable-rate mortgage" or "variable-rate mortgage" must appear in the advertisement before the first use of the word "fixed" and must be at least as conspicuous as each use of the word "fixed."
    - Each use of the word "fixed" must be accompanied by an equally prominent and closely proximate statement of the time period in which the rate or payment is fixed. The statement must also indicate that the rate may vary or the payment may increase. This requirement as it applies to the disclosure of the payment will apply to any loan in which the advertised payment may increase, in addition to variable-rate loans.

    The following conditions must be met for an advertisement that includes both variable and non-variable loans in which payments may later increase:
    - The phrase "adjustable-rate mortgage," variable-rate mortgage," or "ARM" must appear in the advertisement with equal prominence as any use of the word "fixed."
    - Each use of the word "fixed" must be accompanied by an equally prominent and closely proximate statement of the time period in which the rate or payment is fixed. The statement must also indicate that the rate may vary or the payment may increase.

2) Making a comparison between a consumer's current actual or hypothetical payment or rate and an advertised "teaser" payment or rate unless:
   - The comparison includes all applicable payments and rates that will apply, along with the time period for each payment or rate, which must be of equal prominence and in close proximity to the "teaser" payment or rate.
     - There is a prominent statement in close proximity to the advertised payment that the payment does not include taxes and insurance, if applicable.

   For variable-rate loans based on an index and margin, the comparison must include:
     - A statement that the payment or rate is subject to adjustment, along with the time of the first adjustment, which must be equally prominent and in close proximity to the advertised payment or rate.
     - A prominent statement in close proximity to the advertised payment that the payment does not include taxes and insurance, if applicable.

   In general, any claim of the amount a consumer may save under an advertised loan will be considered a misleading comparison and will not be permitted.

3) Advertising a loan as part of a government loan program, a government-supported loan, or otherwise endorsed or sponsored by a federal or state government entity, unless it is a Federal Housing Administration or Veteran Administration loan.

4) Using the name of the borrower's current lender in a letter or other advertisement if it is not sent by that current lender, unless it discloses with equal prominence the name of the creditor who is submitting the advertisement, along with a clear and conspicuous statement that the creditor is not associated with the current lender.

5) Offering to eliminate debt or waive or forgive an existing loan with another lender. The official staff commentary provides numerous examples of claims that would be prohibited under this provision. However, the advertisement could still claim that the loan may reduce payments, consolidate debt, or shorten the term of the loan.

6) Using the terms "counselor" or "financial advisor" to refer to a for-profit mortgage broker or lender. This would not affect advertisements for legitimate credit counseling services, such as those provided by non-profit organizations or by financial advisors.

7) Providing certain disclosures in a foreign language while providing other disclosures in English. This would not affect advertisements that provide all

disclosures in both English and a foreign language or advertisements that are either entirely in English or entirely in a foreign language.

IV. Early Mortgage Loan Disclosures

Under the proposal, lenders would have to provide a good faith estimate of the loan costs, including a schedule of payments that would show any increases in payments over time, within three days after a consumer applies for any mortgage loan secured by a consumer's principal home and before the consumer pays a fee in connection with the application. Under the proposal, this would apply to mortgage refinancings, home equity loans, reverse mortgages, and home improvement loans. Currently, early cost estimates are only required for home-purchase loans. For hybrid and payment-option ARM loans, these disclosures would also include an APR that reflects the fully indexed rate. In addition, consumers could not be charged any fee until after they receive these early disclosures, except a reasonable fee for obtaining the consumer's credit report.

QUESTIONS TO CONSIDER REGARDING THE REGULATION Z PROPOSAL

(The Fed has specifically requested comment on the issues raised in these questions.)

- The proposed requirement to establish escrow accounts will not apply to subordinate lien loans. Are there any other proposed restrictions that should also not apply to subordinate lien loans?

- If the proposal were to apply to HELOCs, how should the APR threshold be set so it covers the subprime market while generally excluding the prime market?

- Should the proposed restrictions for higher-priced mortgage loans include bridge loans? Should bridge loans also be excluded from the current HOEPA requirements?

- To what extent will the proposed threshold for higher-priced mortgage loans cover the alt-A mortgage market, which is the market between prime and subprime? What are the costs and benefits of such a threshold? Would a different threshold better achieve the objective of covering the subprime market, while excluding the prime market and avoiding unintended consequences for the alt-A market? Will you internally set a lower threshold to ensure compliance with these proposed restrictions and what would the consequences be for consumers? To what extent do you think lenders will charge higher fees and lower APRs to avoid these restrictions and what would the consequences be for consumers?

- The higher-priced mortgage loan threshold is based on comparable Treasury securities. Do you agree with the proposed approach for matching these loans to the appropriate Treasury security, based on the application date, instead of the date the rate is locked? Is there a better approach?

- The proposal will prohibit a lender from engaging in a pattern or practice of making higher-priced mortgage loans without regard to the consumer's repayment ability. This will depend on the totality of the circumstances. Is further guidance needed as to what is a "pattern or practice?" If so, what type of guidance is needed? There will be a presumption of a violation if the lender fails to verify income, fails to consider the borrower's ability to pay the loan at the fully-indexed rate that includes taxes and insurance, and fails to consider the borrower's debt-to-income ratio or residual income. Are these appropriate and are there other presumptions that should be included? Will these presumptions adversely affect credit availability?

- As described above, failing to consider the ability to pay the loan at the fully-indexed rate will be considered a presumption of a violation. However, lenders only need to consider repayment ability for the first seven years of the loan. Should the time period be shorter than seven years and should this time period be modified to consider balloon payments? As for the presumption of a violation by not considering the borrower's debt-to-income ratio, should there be a presumption of a violation if the ratio is higher than a certain threshold, such as 50 percent? Should there be an exception for borrowers with high incomes, substantial assets, or other situations?

- Lenders will need to verify the income and assets they rely on with reliable third-party documents. To what extent will this reduce access to credit for certain borrowers, such as the self-employed who may not be able to provide such documentation? Is there a way to make these provisions more flexible, such as just prohibiting lenders from inflating income or being complicit when income is being inflated? Lenders will not be considered in violation if the amount of income and assets relied upon is not materially greater than the lender could have verified when the loan was made. Is this appropriate and should there be additional exceptions, such as excluding some or all subordinate lien loans from these provisions?

- Prepayment penalties will be limited to five years for higher-priced mortgage loans. Is this time period appropriate to protect and provide benefits to borrowers? The proposal will also require that the prepayment penalty period expire at least sixty days prior to the date in which the payment may increase. Is this an appropriate time period? Should this only apply to loans in which the payment may change within a certain number of years (such as three or five years)? Should certain types of loans be excluded from this requirement, such as graduated payment and step rate loans?

- Escrow accounts will be mandatory for first-lien, higher-priced mortgage loans and permit, but not require, lenders to offer borrowers an option to cancel escrow accounts twelve months after consummation of the loan. Do you support this requirement? Should lenders be required, rather than permitted, to allow borrowers to later opt-out? Should there be a different mandatory escrow period?

- Although HELOCs are excluded, lenders will not be permitted to structure mortgage loans as open-end transactions in order to evade the requirements under this proposal. Is this appropriate or should this be more narrow, by only applying this "anti-evasion" rule to HELOCs in which the borrower draws down all or most of the credit line right after the account is opened so as not to adversely affect legitimate open-end plans?

- For yield spread premiums, the proposal will prohibit such fees to the extent they exceed the amount that the broker and consumer had agreed in advance would be the broker's total compensation. An alternative means of compliance would be if the lender complies with a similar state law and another alternative would be if the payments to the broker are not determined by reference to the interest rate. Do you agree with these restrictions and alternative means of compliance? Do you agree that the agreement between the broker and consumer should be entered into before a fee is paid? Should these restrictions also apply to lender payments to their own employees? The proposal will apply this restriction to all mortgage loans. Should it be restricted to the higher-priced mortgage loans?

- Lenders and mortgage brokers will be prohibited from pressuring an appraiser to misrepresent the value of the home, and a lender will be prohibited from making the loan if it has reason to know the broker had pressured the appraiser, unless the lender determined that the appraisal was accurate or made the loan based on another appraisal. Do you agree with this approach?

- A servicer will be required to credit a payment as of the date of receipt. How should partial payments be addressed? The servicer may also specify reasonable payment requirements in writing. What would those be? Could they include a cut-off time, such as 5 PM?

- Servicers will be required to provide a specific schedule of servicing fees and charges, upon request by the borrower, which must include the dollar amount and an explanation of the fee. Do you agree with this requirement, including providing a dollar amount, which could also include an hourly rate or flat fee?

- Should any or all of these new protections for all mortgage loans apply to HELOCs, or at least certain types, such as purchase money HELOCs that are used to purchase the home?

- HOEPA currently prohibits negative amortization, interest rate increases after default, balloon payments on loans less than five years, and prepaid payments. Should these also apply to "higher-priced mortgage loans?" Would the benefits to consumers outweigh the costs to lenders?

- Should any of the advertising restrictions described above for closed-end, home-secured loans apply to home equity plans? Are there other advertising practices currently associated with home equity plans that should be restricted?

- For the additional advertising disclosures that would be required for loans that may, by its terms, exceed the value of the home, should these be only required for advertisements that state or imply that the amount of the credit will exceed the value of the home?

- The changes to the advertising rules will require certain information to be in "close proximity" to other information. For electronic advertisements, should this now require that this information be without requiring the consumer to use a link to obtain the information? What would be the costs and limitations if this change were made?

- Unless specified, the proposed changes to the advertising rules for closed-end home loans do not apply to radio and television advertisements. Should they apply? Are there other restrictions that should apply to radio and television advertisements?

- The changes to the advertising rules for variable-rate transactions assume a single index and margin. Is this a correct assumption? Are different rules needed for loans that may use multiple indexes and margins?

- The proposal will prohibit seven specific advertising practices for closed-end home loans. Are these appropriate and are there other practices that should be prohibited? One of these practices would be comparisons based on "teaser" rates. However, comparisons based on the assumed refinancing of non-mortgage debt into a new home loan would still be permitted on the assumption that this information is helpful for consumers. Do you agree with this approach?

- Under the proposal, lenders would have to provide a good faith estimate of the loan costs within three days after a consumer applies for any mortgage loan secured by a consumer's principal home and before the consumer pays a fee in connection with the application. Would the costs outweigh the benefits to consumers? Is more guidance needed to clarify which fees would be "in connection with the application?"