

## **Testimony of Governor Laurence H. Meyer**

### *Disclosure requirements for home mortgage loans*

#### **Before the Subcommittee on Financial Institutions and Regulatory Relief of the Committee on Banking, Housing, and Urban Affairs, United States Senate**

**July 15, 1997**

The Board of Governors appreciates the opportunity to discuss our efforts to streamline the disclosure requirements for home mortgage loans under the Truth in Lending Act (TILA) and unify them with those of the Real Estate Settlement Procedures Act (RESPA).

Simplifying and streamlining the regulatory requirements under these two statutes is something that the Board and the Department of Housing and Urban Development (HUD) have been working on jointly for several years now. The results of our efforts, which are described in more detail later, generally have been well received. These regulatory changes have been relatively minor, however, because TILA and RESPA serve quite different purposes and contain distinct statutory disclosure requirements. Unquestionably, each statute directly affects consumer mortgage loan transactions, and the disclosure requirements are in fact related. But given the statutory requirements, there is little room for our agencies to simplify and combine disclosures in any significant way by regulation. The Board supports the congressional directive to explore ways to change the two statutes to better serve the home-buying public.

Our testimony discusses how TILA and Regulation Z regulate home mortgage lending. It describes the agencies' efforts to simplify and streamline TILA and RESPA, including our joint efforts over the years to harmonize the regulations whenever possible. Finally, the testimony outlines our plan to develop legislative recommendations.

The task facing the agencies has evolved over the past year. In the legislation enacted last September, the directive was to simplify and unify the disclosures given to consumers under the two existing statutes. That, in and of itself, can be viewed as a narrow mandate.

As you heard from industry and consumer representatives last week, however, there is a significant and growing interest in more sweeping reform. If it is possible for those parties, along with HUD and the Board, to reach consensus on reform, we have before us a unique opportunity to make significant changes to the way in which consumers shop for and obtain mortgage loans. These changes could improve the usefulness of the information that consumers receive, and at the same time reduce regulatory burden for the home mortgage industry. To the extent that beneficial change is possible, we hope to facilitate it in any way that we can.

### **The Truth in Lending Act**

The purpose of TILA is to promote the informed use of consumer credit, primarily through disclosure, with some substantive provisions. RESPA is both a disclosure law and one that

indirectly regulates prices. It requires disclosure about settlements costs, but also prohibits kickbacks and referral fees to protect consumers from unnecessarily high settlement costs, as the HUD testimony will explain.

TILA requires standardized disclosures about credit terms and costs. Creditors must disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for a loan secured by a consumer's home, and permits consumers to rescind certain transactions that involve their principal dwelling. The Board's Regulation Z implements the act, and an official staff commentary interprets the regulation.

The disclosure rules that creditors must follow vary depending on the type of credit that is being offered. For example, there are separate rules for closed-end credit, such as automobile or home mortgage loans, and for open-end credit, such as credit cards or home equity lines of credit. There are additional rules governing reverse mortgages, and mortgages that have rates and fees above a certain amount.

These regulatory requirements generally are derived from detailed disclosure provisions in TILA, except for certain rules governing adjustable rate mortgage loans. The statutory provisions dictate what information must be disclosed, the format in which it is disclosed, and when it is disclosed.

### **Regulatory streamlining efforts to date**

The Board has always made a conscious effort to ensure that TILA rules are compatible with RESPA. For example, Regulation Z has long permitted creditors to substitute both the RESPA good faith estimate and settlement statement (commonly referred to as the HUD-1) for the itemization of the "amount financed" disclosure required under TILA. When RESPA was amended in 1992 to cover subordinate lien loans, the Board worked closely with HUD on the regulations that implemented the changes. Thus, in amending Regulation X to cover those loans, HUD incorporated a number of the definitions and concepts found in the Board's Regulation Z. The amendments to Regulation X also permit Regulation Z's disclosures for home equity lines of credit to substitute for RESPA disclosures.

Over the past five years, the agencies have continued to work together to streamline the rules to the extent possible. One recent example was an amendment to the Regulation Z commentary designed to avoid conflict between RESPA's escrow accounting rules and TILA's rules for calculating prepaid finance charges, such as private mortgage insurance. We are confident that the cooperative relationships that have developed between the agencies will stand us in good stead as we tackle the job of preparing legislative recommendations.

Congressional efforts to simplify the disclosure schemes have been discussed and debated for several years now. In early 1995, there were legislative proposals that would have transferred authority for RESPA to the Board, a transfer that the Board opposed as it would not have satisfied concerns about the statute. These proposals also would have directed the Board to simplify the disclosures under TILA and RESPA. In light of this potential responsibility, the Board undertook a review of the regulatory and statutory requirements of both TILA and RESPA, to identify areas where it might be possible to streamline the two regulations. Because the proposed transfer of authority for RESPA would not have been

accompanied by any statutory changes, however, the list of potential regulatory changes was short. The list included things like changing the definition of a "business purpose loan" in Regulation X to match that in Regulation Z, developing a commentary to Regulation X similar to Regulation Z's, and adopting the same record retention requirements in Regulation X as are in Regulation Z.

During this process there were informal meetings with industry and consumer group representatives, and we also sought the views of the Board's Consumer Advisory Council. While representatives from all of these groups, including the Council, expressed some dissatisfaction with the current statutes and regulations, there were few concrete suggestions about how to improve the situation without major statutory changes. When Congress subsequently directed the Board and HUD to streamline the disclosures -- first by making regulatory changes if possible and second by making legislative recommendations -- we took the opportunity to formally ask interested parties what they would like to see by way of reform.

In December 1996, the Board and HUD published a joint Advance Notice of Proposed Rulemaking in the Federal Register (Attachment A). In that notice, the agencies requested specific recommendations on how TILA and RESPA disclosures could be made more consistent (including ways that the disclosures could be combined, simplified, or improved), and how the timing and format of the disclosures could be made more compatible. The Board and HUD received about 80 comment letters, primarily from creditors and their representatives, as is typically the case for agency proposals.

The comments covered a wide range of issues. Many commenters requested changes that required legislative action; for example, changing the timing of disclosures. A significant number of commenters requested more sweeping reform, such as eliminating the APR. In some instances, commenters recommended consolidating the disclosures in ways that, while not common in the industry, are permitted under the existing rules. For example, a significant number of commenters recommended the consolidation of the "early" TILA and RESPA disclosures for home purchase loans on a single form. The Board has subsequently clarified, through its commentary to Regulation Z, that there is no prohibition against putting multiple disclosures on the same page or form, provided the TILA disclosures are segregated from other information.

### **The need for legislative changes**

The timing rules and the different disclosure requirements in TILA and RESPA are major obstacles to harmonizing the rules by regulation, beyond the actions that the agencies have taken. (The chart in Attachment B identifies the sections of the statutes that require particular disclosures.) Following a review of the public comments and upon further analysis, the Board and HUD thus concluded earlier this year that legislative changes are needed to accomplish congressional purposes. The Board published a Federal Register notice on April 2, stating our belief that making minor regulatory amendments would not be significant enough either to materially improve the disclosures for consumers or to justify the cost of the changes for the industry. (Attachment C)

You asked the Board to comment on whether the purposes of TILA and RESPA might be better achieved by consolidation of the two statutes. At this stage it is not entirely clear whether targeted amendments to the existing statutes, or the creation of a new statute, would best accomplish the needed changes. These are among the issues that the Board and HUD

are currently considering and that we will address in our recommendations to Congress.

### **Timetable for legislative recommendations**

The Board and HUD have a number of efforts under way to help us in developing our legislative recommendations. The Board's Federal Register notice of April 2 reopened the comment period for an additional 90 days, so that interested parties could submit legislative proposals. That comment period ended on June 30, and we have received more than 100 comment letters. Perhaps due to coverage of the reform issue in a nationally syndicated column, most of the letters from this second round of comments are from consumers. Although the Board is still in the process of reviewing and analyzing the letters, we can provide some general impressions about them.

Consumers' primary concern is that they do not receive disclosures about mortgage costs earlier in the process. Under the existing rules, lenders are not required to provide the TILA disclosure, or a good faith estimate of the transaction costs, until at least three days after the consumer applies for the loan; and in order to apply, the consumer may have to pay a nonrefundable fee. Most consumers who commented would prefer to receive disclosures that help them comparison shop before they apply for a loan and pay a fee. Second, consumers want the cost disclosures to be as accurate as possible, so that they are not confronted with unexpected charges at the loan closing. And third, commenters generally believed that the disclosures could be less complex, and therefore more useful.

Creditors that commented continue to support more fundamental reform, and a number of them reported that they are working on legislative proposals. As mentioned earlier, it now appears that this process for change has moved beyond streamlining and unifying disclosures to consideration of significant statutory reform. Despite the closing of the comment period, the Board would welcome these proposals whenever their sponsors are ready to share them.

During the past two months, the Board and HUD have held meetings with a number of consumer advocacy and industry groups involved in the legislative reform process. These meetings have been designed to give interested parties an opportunity to share their concerns about TILA and RESPA, and ideas about reform, without having to be concerned that they are being locked into any particular position.

In addition, the Board and HUD will hold a joint public forum in which the groups involved in the RESPA/TILA reform initiative, as well as members of the public, can discuss the benefits of and problems associated with the current statutory schemes, and the principles that should guide any reform effort. This one-day forum will be held at the Federal Reserve Board on July 30.

Following the forum, the Board and HUD will identify potential areas for legislative recommendations. These meetings will address issues raised in the comment letters received, the information gathered from the public forum and informal meetings, and other background information. If needed, we may hold additional meetings in September with the groups involved in the reform process to discuss more specific proposals.

At the end of this process, likely some time in October, we will work with HUD to begin drafting the legislative recommendations. Our goal is to provide recommendations to the Congress by the end of the year.

▲ [Return to top](#)

## [1997 Testimony](#)

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[Home](#) | [News and events](#)

[Accessibility](#) | [Contact Us](#)

**Last update: July 15, 1997, 10:45 AM**

# FEDERAL RESERVE press release



For immediate release

December 26, 1996

The Federal Reserve Board today joined with the Department of Housing and Urban Development in issuing a request for public comment on possible amendments to the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Acts (RESPA).

Comment is requested by January 31, 1997.

The agencies' notice specifically requests comment on how to improve and consolidate disclosures given in home mortgage loan transactions subject to both TILA and RESPA.

A copy of the notice is attached.

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Attachment

**FEDERAL RESERVE SYSTEM  
12 CFR Part 226  
[Regulation Z; Docket No. R-0954]  
Truth in Lending**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
24 CFR Part 3500  
[Regulation X; Docket No. FR-4184-P-01]  
RIN 2502-AG86  
Real Estate Settlement Procedures**

**Advance Notice of Proposed Rulemaking on Improvement of Disclosures under the Real Estate Settlement Procedures Act and the Truth in Lending Act**

**AGENCIES:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD); Board of Governors of the Federal Reserve System (the Board) (collectively, the agencies).

**ACTION:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** This notice is issued jointly by HUD and the Board to initiate fact finding that will assist the agencies in revising disclosures to consumers under the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). The Economic Growth and Regulatory Paperwork Reduction Act of 1996 requires the agencies to simplify and improve these disclosures where possible, and to provide a single format satisfying the requirements of RESPA and TILA. To ensure that these disclosures meet the consumer protection goals of the statutes with minimal compliance burdens, HUD and the Board are soliciting comments from the public on what specific regulatory or legislative changes might achieve these goals. Following the consideration of the public comments and the agencies' own reviews, HUD and the Board plan to publish proposed amendments to their respective regulations, as appropriate, by March 1997.

**DATES:** Comments are due January 31, 1997.

**ADDRESSES:** Comments regarding this advance notice of proposed rulemaking may be sent to either agency.

**HUD:** Comments to HUD should be addressed to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of comments received will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**Board:** Comments to the Board should refer to Docket No. R-0954, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th

Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. When possible, comment letters should use a standard Courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text in machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 1/2 inch or 5 1/4 inch computer diskettes in any IBM-compatible DOS-based format. Comments received will be available for inspection in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

#### **FOR FURTHER INFORMATION CONTACT:**

**HUD:** David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Room 9146, telephone (202) 708-4560; or for legal questions, Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, Grant E. Mitchell, Senior Attorney for RESPA, or Rodrigo J. Alba, Attorney, Office of General Counsel, Room 9262, telephone (202) 708-1550. For hearing- and speech-impaired persons, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339. The address for the above-listed persons is: Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410.

**Board:** Sheilah A. Goodman or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or (202) 452-2412; for the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544. The telephone numbers for the agencies are not toll-free.

#### **SUPPLEMENTARY INFORMATION**

##### **I. Background**

On September 30, 1996, the President approved the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Title II of the Omnibus Consolidated Appropriations Act, 1997) (Pub. L. 104-208, 110 Stat. 3009) (the 1996 Act). Section 2101 of the 1996 Act requires the Board and HUD to simplify and improve the disclosures given in a mortgage transaction subject to TILA and RESPA, and to create a single disclosure that will satisfy the requirements of both statutes. The 1996 Act imposes a six-month deadline for the publication of any proposed regulations necessary to carry out the required changes within the context of the existing statutes. If legislation is necessary to accomplish the purpose of section 2101, the Board and HUD are required to submit legislative recommendations to the Congress.

## **A. The Real Estate Settlement Procedures Act**

The Real Estate Settlement Procedures Act of 1974 (12 USC 2601 *et seq.*) was enacted in large measure to ensure that the home-buying public is afforded timely and effective information about costs of settlement in mortgage transactions. To achieve this goal, RESPA mandates disclosures at various points in the home financing process for transactions involving "federally related mortgage loans," which include most financial transactions creating a lien on owner-occupied residential structures. RESPA is implemented by HUD's Regulation X (24 CFR part 3500).

Section 5 of RESPA (12 U.S.C. 2604) and §§ 3500.6 and 3500.7 of Regulation X, require that no later than three days after loan application, potential borrowers be provided with a Special Information Booklet and a good faith estimate of charges that they are likely to incur in connection with the settlement. If the lender requires the use of a particular settlement service provider and imposes any part of the cost on the borrower, the lender must provide an additional disclosure informing the borrower of the required use and identifying the designated provider and its relationship to the lender, along with an estimate of the charges imposed by the provider.

Section 6 of RESPA (12 U.S.C. 2605) requires that borrowers be provided with disclosures regarding the possibility of mortgage servicing transfers. These disclosure requirements are subject to the same delivery requirements as the good faith estimate.

Section 4 of RESPA (12 U.S.C. 2603) and § 3500.8 of Regulation X provide that, at or before closing, the borrower must receive a HUD-prescribed settlement statement, the HUD-1 form, or in transactions where there is no seller (refinancings, home equity loans and lines of credit), either the HUD-1 or the HUD-1A form. Under section 4, the forms must itemize all costs imposed on the borrower and the seller in connection with the settlement. Under § 3500.10 of Regulation X, the person conducting the settlement must, if requested, provide the borrower with a preliminary settlement statement one day prior to settlement.

Section 8 of RESPA (12 U.S.C. 2607) and § 3500.15 of Regulation X set forth additional disclosure requirements for referrals among related business entities. Specifically, RESPA creates an exemption providing that referrals to affiliates do not violate section 8 so long as certain conditions are satisfied. This provision's disclosure component provides that the business arrangement must be disclosed and a written estimate of the charges or range of charges generally made by the provider must be supplied to the person being referred.

For purposes of this fact finding effort, the agencies are focusing on those disclosures for which consolidation between RESPA and TILA is possible. RESPA and Regulation X impose other disclosure requirements in the mortgage finance process, including initial and annual escrow account statements (12 U.S.C. 2609(c); 24 CFR 3500.17(g)-(i)) and notice of transfer of servicing (12 U.S.C. 2605(b); 24 CFR 3500.21(d)). Since these two areas of

RESPA do not seem amenable to consolidation, however, the agencies do not contemplate any joint action regarding them at this time.

## **B. The Truth in Lending Act**

The purpose of the Truth in Lending Act (TILA) (15 U.S.C. 1601 et seq.) is to promote the informed use of consumer credit by requiring disclosures about credit terms and costs. The TILA requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for a loan secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226). An official staff commentary interprets the regulation.

The disclosure rules that creditors must follow depend upon the type of credit the creditor is offering. For example, Subpart B of Regulation Z (§§ 226.5 through 226.16) concerns open-end credit, such as home equity lines of credit. Subpart C (§§ 226.17 through 226.24), sets forth the provisions for closed-end credit, including purchase-money and refinance mortgage transactions.

Section 226.5a sets forth general disclosure requirements for home equity lines of credit, including format and timing rules. Section 226.17 contains the general disclosure requirements for closed-end credit, including format and timing rules. Section 226.18 provides the specific disclosures that must be given in all closed-end credit transactions, such as the APR, finance charge, and payment schedule. Section 226.19 provides that in purchase-money mortgage transactions subject to RESPA, good faith estimates of the disclosures required under § 226.18 must be provided within three days of application. That section also describes the special disclosures required for variable-rate transactions secured by the consumer's principal dwelling.

Disclosure requirements for assumptions, refinancings, and variable-rate adjustments are set forth in § 226.20. The requirements for transactions subject to the right of rescission appear in § 226.23. The agencies are focusing only on those disclosures where consolidation seems possible. Since the disclosures related to variable-rate adjustments and the right of rescission do not seem to be ones which could be consolidated, the Board does not contemplate any changes to these disclosures at this time.

Subpart E (§§ 226.31 through 226.33) contains the disclosure requirements for particular types of home mortgage transactions. Section 226.31 sets forth general disclosure requirements for these transactions, including format and timing rules. Section 226.32 contains the disclosure requirements for certain closed-end home mortgages with an annual percentage rate or points and fees above a certain level. Section 226.33 sets out the disclosure requirements for reverse mortgages.

## II. The simplification process

HUD and the Board have begun a review of Regulations X and Z to simplify, improve, and unify the disclosure requirements under RESPA and TILA as those statutes currently exist. The following table illustrates certain disclosures that may be relevant to this simplification process -- most of which are mandated by the statutes.

<b>Timing</b>	<b>TILA</b> 12 CFR 226	<b>RESPA</b> 24 CFR 3500
At or before referral		▶ Affiliated business arrangement disclosure (3500.15)
At or before application	▶ Home equity line of credit booklet and disclosure (226.5a) ▶ Adjustable rate booklet and disclosure (226.19b)	
Within three days of application	▶ TILA disclosure (including APR and finance charge) (226.19a)	▶ Special information booklet (3500.6) ▶ Good faith estimate (3500.7) ▶ Required providers (3500.7) ▶ Initial transfer of servicing disclosure (3500.21)
Three days before closing/ consummation	▶ Section 32 disclosures (226.32) ▶ Reverse mortgage disclosures (226.33)	
One day before closing/ consummation		▶ Right to inspect HUD-1 or HUD-1A (3500.10)
At closing/consummation	▶ TILA disclosure (226.18) ▶ Rescission notice (226.23)	▶ HUD-1 or HUD-1A (3500.8) ▶ Initial escrow account statement (within 45 days of closing) (3500.17)

### **A. Past efforts**

During the past several years, the agencies have been actively working together to try to ensure that TILA and RESPA regulations are as consistent as possible. Much of this was addressed in 1994 by HUD when it amended Regulation X to cover subordinate lien loans, and subsequently by the Board in updates to the Regulation Z commentary. For example, the regulations now use similar definitions for the terms "assumption," "refinance," "business day," and "business purpose."

Where possible, the agencies also have worked to streamline disclosure requirements. For example, Regulation Z permits creditors to substitute both the good faith estimate and the settlement statement required under RESPA for the itemization of the "amount financed" under TILA. Similarly, Regulation X permits Regulation Z's disclosure for home equity lines of credit to substitute for RESPA disclosures.

Where the requirements of the statutes do not overlap but are related, the agencies have provided guidance on compliance issues. For example, the Regulation Z commentary has been revised to avoid conflict between the RESPA escrow accounting rules and TILA's rules on calculating prepaid finance charges, such as private mortgage insurance.

HUD and the Board recognize that this revision process requires a careful balancing of competing interests. Consumers need timely and accurate information in order to make decisions, but too much information may confuse or intimidate the consumer, and thus may be counterproductive. Creditors need clear and workable rules that do not unnecessarily drive up compliance costs, which could lead to higher settlement costs for consumers. Therefore, the benefits of improvements to the regulations will be weighed against the cost of implementing and complying with those changes.

### **B. Issues for comment**

HUD and the Board request public comment on specific ways to simplify and improve the present disclosure scheme. To the extent possible, comments should be clearly separated into two parts: (1) Those that entail regulatory changes within the existing statutory framework, and (2) Those that require legislative change. The agencies request:

1. Specific recommendations on how disclosures presently required under RESPA and TILA can be made more consistent (including how the disclosures can be combined, simplified, or improved); and how the timing and format of such disclosures can be made more compatible.

2. Recommendations about ways to enhance the educational value for consumers of any of the present disclosures, including suggestions as to alternative methods of disclosure.

3. Any reports, documents, articles or other material that will assist the agencies in the present task.

After consideration of the public comments on this advance notice of proposed rulemaking and the agencies' own review, HUD and the Board will coordinate the publication of proposed amendments to their regulations to simplify and improve the present disclosure scheme, to the extent that the current statutory framework permits. Subsequently, the agencies also may submit recommendations to the Congress for legislative changes necessary to improve disclosure requirements.

Dated: December 23, 1996

(signed) Nicolas P. Retsinas  
Nicolas P. Retsinas, Assistant Secretary for  
Housing-Federal Housing Commissioner

By order of the Board of Governors of the Federal Reserve System, December 26, 1996.

(signed) William W. Wiles  
William W. Wiles  
Secretary of the Board

**Attachment B**

**Timing of disclosures for home-secured loans under TILA & RESPA \***

<b>Timing</b>	<b>TILA</b>	<b>RESPA</b>
At or before referral		▶ Affiliated business arrangements § 8(c)(4)(A)
At or before application	▶ Home-secured lines of credit § 127A(b) ** ▶ Adjustable rate mortgage loans (regulatory)	▶ Initial transfer of servicing notice § 6(a)
Within three days of application	▶ Home purchase loans § 128(b)(2)	▶ Special information booklet for home purchase loans only § 5(d) ▶ Good faith estimate § 5(d)
Three days before closing/ consummation	▶ "High cost" loans (but not for home purchases) § 129(b)(1) ▶ Reverse mortgage loans § 138(a)	
One day before closing/ consummation		▶ Right to inspect HUD-1 settlement statement § 4(b)(2)
At closing/consummation	▶ All transactions (except home purchases unless change in terms) § 128(b) ▶ Rescission notice § 125(a)	▶ HUD-1 settlement statement § 4(b) ▶ Initial escrow account statement (within 45 days of closing) § 10(c)(1)(B)
Post closing/consummation	▶ ARM notice of rate & payment changes (regulatory)	▶ Annual escrow statement § 10(c)(2)(B) ▶ Transfer of servicing notice § 6(b) & (c)

\* Citation reference the Acts.

\*\* The TILA rules for home-secured lines of credit substitute for certain RESPA disclosures.



# FEDERAL RESERVE press release

For immediate release

March 31, 1997

The Federal Reserve Board today announced that it is seeking additional public comment on possible legislative changes to the Truth in Lending Act (TILA).

Comment is requested by June 30, 1997.

In December 1996, the Board joined with the Department of Housing and Urban Development in publishing an advance notice of proposed rulemaking to consolidate disclosures given in home mortgage transactions subject to both TILA and the Real Estate Settlement Procedures Act (RESPA). After consideration of the comments, the Board has determined that to achieve the goals of the Congress, legislative changes are necessary to harmonize TILA and RESPA. Thus, the Board is publishing this notice to invite additional public comment on possible legislative action.

A copy of the notice is attached.

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Attachment

# **FEDERAL RESERVE SYSTEM**

## **12 CFR Part 226**

**[Regulation Z; Docket No. R-0954]**

### **Truth in Lending**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Request for comments.

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**SUMMARY:** The Economic Growth and Regulatory Paperwork Reduction Act of 1996 directs the Board and the Department of Housing and Urban Development (HUD), where possible, to simplify and improve consumer disclosures required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) and to provide a single format satisfying the requirements of those laws. If legislation is necessary to accomplish these goals, the agencies are to submit legislative recommendations to the Congress. In December 1996, the agencies published for comment an advance notice of proposed rulemaking. After consideration of the comments and further review, the Board has determined that regulatory changes alone would be inadequate to achieve the goals of the Congress and that legislative changes are necessary to harmonize TILA and RESPA. Later this year, the Board and HUD will prepare a report to the Congress concerning potential legislative changes. The Board is publishing this notice to invite additional public comment on possible legislative action.

**DATES:** Comments are due June 30, 1997.

**ADDRESSES:** Comments should refer to Docket No. R-0954, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, or to the security control room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street (between Constitution Avenue and C Street, NW). If accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format. Comments received will be available for inspection and copying in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

**FOR FURTHER INFORMATION CONTACT:** Sheilah A. Goodman or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667; for the hearing impaired only, Diane Jenkins, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

## **SUPPLEMENTARY INFORMATION:**

On September 30, 1996, the President signed into law the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, 110 Stat. 3009). Section 2101 of that act directs the Board and HUD to simplify and improve the disclosures given in a home mortgage transaction subject to TILA and RESPA, and to create a single disclosure that will satisfy the requirements of both statutes, if possible. If legislation is necessary to develop a single simplified disclosure, the Board and HUD are directed to submit legislative recommendations to the Congress.

The statutes impose numerous requirements and serve various purposes. TILA seeks to promote the informed use of consumer credit by requiring standardized disclosures about credit terms and costs. The disclosures are intended to focus consumers' attention on certain aspects of their transaction and to assist them in comparison shopping. TILA establishes additional disclosure requirements for home-secured loans, and in some cases permits consumers to rescind such loans. RESPA contains both disclosure and price-related provisions. It requires that certain disclosures be given at various points in most mortgage transactions to ensure that consumers receive timely and useful information about the costs associated with the transaction. It also prohibits kickbacks and referral fees to protect consumers from unnecessarily high settlement costs.

In December, the Board and HUD jointly published for comment an advance notice of proposed rulemaking on the issue of simplifying and combining the disclosure requirements of RESPA and TILA (61 FR 69055, Dec. 31, 1996). The notice requested comment on both regulatory and statutory changes to improve the current disclosure scheme. The Board and HUD received more than 80 comment letters, primarily from creditors and their representatives.

Public comments covered a wide range of issues, and are discussed below. Nearly all of the recommendations for reconciling the two regulations would require legislative action, such as certain suggested changes to the timing of disclosures under the two statutes. Some that would not require legislative change have been addressed already; where disclosures overlap the requirements have generally been consolidated. For example, Regulation Z permits creditors to substitute the good faith estimate and the settlement statement required under RESPA for the itemization of the "amount financed" under TILA. Similarly, Regulation X permits Regulation Z's disclosures for home equity lines of credit to substitute for the RESPA disclosures. Consistency between the regulations also increased when HUD amended Regulation X to cover subordinate lien loans, and through the Board's updates to the Regulation Z official staff commentary. For example, the agencies' regulations now use similar definitions for the terms "assumption," "refinance," and "business day."

The remainder of the recommendations for harmonizing TILA and RESPA generally involve small changes that could produce minor improvements in the disclosures, but probably would not be worth the corresponding compliance costs associated with the change, such as for retraining employees and printing new forms. More fundamentally, some com-

menters noted the importance of addressing the disclosure scheme under the two statutes in a comprehensive fashion rather than by piecemeal revisions.

Many other commenters recommended changes solely to Regulation Z -- changes that would not directly further the objective of creating a single simplified disclosure, but that could simplify compliance. For example, many commenters suggested simplifying the Regulation Z disclosures for adjustable rate mortgages, recommended consolidating the various model forms, or raised such matters as the permissibility of providing electronic disclosures.

After reviewing the comments, and upon further analysis in consultation with HUD, the Board has determined not to propose any changes to Regulation Z at this time. The Board believes that harmonizing TILA and RESPA to any significant degree requires changes that can only come about through legislative action. The Board will continue to work with HUD to develop legislative recommendations that would ease compliance for creditors and provide consumers useful information in a more timely manner. As part of this process, the Board will explore other mechanisms for obtaining further guidance from interested parties (such as public meetings or convening a working group), as suggested by many of the commenters. The Board is also reopening the comment period for three months to allow for additional public comment on legislative options.

In addition, the Board has several initiatives currently planned or under way that should assist in creating legislative recommendations, and that also will involve the consideration of many of the commenters' suggestions, discussed below, for amending Regulation Z. These initiatives include a consumer survey that the Board has commissioned, hearings that will be held in mid-1997 on the finance charge, a final rulemaking that involves streamlining certain adjustable rate mortgage loan disclosures, a proposal on electronic disclosures, and an upcoming comprehensive review of Regulation Z that will be undertaken pursuant to the Board's Regulatory Planning and Review program.

#### **Developing a single format and simplifying disclosure requirements**

Both TILA and RESPA require creditors to provide preliminary disclosures soon after they receive an application. A number of commenters recommended the consolidation of the "early" TILA and RESPA disclosures for home purchase loans on a single form, and some commenters included samples of their own forms which combined the TILA disclosures on half the page and the RESPA disclosure of the good faith estimate of settlement costs on the other half. The Board notes that Regulation Z already permits creditors to place multiple disclosures on the same page or document, provided that they segregate the TILA disclosures from other information and meet the general disclosure requirements, such as the clear and conspicuous standard. This interpretation is made explicit in the March 1997 update to the official staff commentary to Regulation Z (62 FR 10193, March 6, 1997).

Many commenters suggested that to achieve the goal of simplified disclosures, the agencies would have to develop a new disclosure scheme. In commenting on possible alternatives, a number of commenters noted that RESPA and TILA reflect differing but

related goals that exist within each statute and that they need to be harmonized. The goal for some of the disclosures is comparison shopping. These disclosures must be given very early, before the consumer has decided what transaction to enter into, and estimates of costs would suffice for these disclosures. The goal of other disclosures is to highlight certain specific features of the transaction. These disclosures can only be made once the terms of the transaction are agreed to, and must be accurate to be useful. More generally, TILA focuses on credit costs (interest, points, and document preparation fees, for example), while RESPA includes both credit costs and the costs associated with the property transaction (property appraisal, real estate taxes, and the downpayment, for example).

A number of commenters made recommendations on what information might be disclosed under a new disclosure scheme. Some suggested that the new disclosure should list all the fees paid in connection with the transaction (this would include, for example, the mortgage broker, application, hazard insurance, title search, and recording fees), a simple interest rate and perhaps the annual percentage rate (APR), and certain terms like the monthly payment amount and escrow amounts. They suggested that all of the other required disclosures -- including the amount financed, the finance charge, and the list of required providers -- be eliminated. Others recommended adding an itemization of the finance charge to the existing TILA disclosures and identifying all costs on the RESPA settlement statement as part of either the finance charge or the amount financed.

Some commenters recommended that the disclosures provided at application should have the same format and content as the disclosures provided at settlement. Other commenters recommended that the disclosures at application contain just a few items of the most significance for comparison shopping and the disclosures at settlement contain comprehensive information about the terms of the transaction. Some commenters recommended that the disclosures at application should contain estimates of the range of costs a consumer could expect to pay, while other commenters urged that the cost disclosures be as accurate as possible, particularly where the creditor has control over the cost, and be specific to the particular contemplated transaction.

Many commenters urged the Board and HUD to adopt consistent timing rules for disclosures. For TILA, the statute establishes the timing rules for all the required disclosures except those for variable-rate transactions (adjustable rate mortgages, or "ARMs"), which are set by regulation. The timing of disclosures goes to whether the purpose of the disclosures is to facilitate shopping, in which case the disclosures should be provided as early as possible, or to reveal critical features of the transaction, in which case the disclosures can only be provided once the details are resolved.

Several commenters urged that the scope of transactions covered by RESPA and TILA disclosure requirements be consistent. For example, RESPA's good faith estimate of closing costs is required for both purchase money and refinance transaction, while RESPA's special information booklet and the early TILA disclosures are required only for purchase money transactions. In preparing the report to the Congress on potential legislative changes, the Board will consider whether the current distinctions between purchase money transactions and refinancings, for example, are appropriate or whether, as some commenters recom-

mended, the disclosure requirements -- even if expanded -- should be the same for all transactions.

### **Improving disclosure requirements under TILA**

TILA requires the disclosure of the APR (the cost of credit as a yearly rate) and the finance charge (the cost of credit as a lump sum). A number of commenters expressed concerns regarding this framework. Several focused on the exclusion from the finance charge of certain fees that a consumer pays as part of mortgage transactions, such as appraisal and application fees. They asserted that the mixed treatment of mortgage costs increases the complexity of compliance and reduces the usefulness of the APR. In addition, the fees included in the calculation of the APR and finance charge under TILA do not wholly correspond to the fees disclosed under RESPA. Some asserted that the APR can be misleading because it assumes the loan is held to maturity, when most consumers hold their loans for a much shorter period. A few commenters objected to the inclusion in the finance charge of all the interest that would accrue over the life of the loan. They claimed the resulting APR is misleading because too much interest is included in the APR and because the interest is not discounted to its present value.

TILA requires that up to 16 items be disclosed in addition to the APR and finance charge. The commenters raised a number of general concerns about these other disclosures. Some questioned the value of certain disclosures required by the statute, including the total of payments and the security interest. Other commenters recommended modifications to certain disclosures. For example, creditors must disclose whether or not a penalty will be imposed if the obligation is prepaid in full. Some commenters asserted that the penalty should be disclosed only if it might be imposed. Several commenters recommended that the payment schedule disclosure be modified to require only the monthly payment amount, not the number of payments and dates too. Other commenters recommended that the disclosures concerning the contract reference, security interest, assumption policy, required deposit, demand feature, late payment, and prepayment penalty be explained in a booklet, perhaps as part of RESPA's special information booklet.

Other commenters noted that recent legislative changes have given the Board the authority to exempt certain transactions from TILA. The legislation directs the Board, in exercising this authority, to consider the amount of the loan, the financial sophistication of the borrower, and whether the loan is secured, among other factors. Some commenters made recommendations on how to exercise that authority, and recommended that similar exemptions be made under RESPA.

A number of commenters recommended changes to the right of rescission rules under TILA. They recommended limiting the types of transactions that are subject to the right of rescission and increasing the circumstances under which a consumer may waive that right. Some commenters recommended that creditors be required to provide a single copy of the notice of the right to rescind, instead of two copies as currently required.

A number of commenters recommended that the ARM disclosures be simplified. Detailed disclosures for ARM loans must be provided at application or before a nonrefundable fee is paid, whichever is earlier. Commenters recommended eliminating the requirement that a creditor provide a historical example of how rates had varied in the past. Several commenters recommended that the Board modify the requirements so that creditors disclose the actual terms of the transaction and the actual contract language.

Commenters also recommended improvements to the disclosures required for home-equity lines of credit. Several consumer group commenters urged that the disclosures for these transactions should reflect the particulars of the transaction and assume that the maximum amount of the line of credit is borrowed immediately, that only the minimum monthly payments are made, and that the interest rate will vary as it has in the past. A number of commenters recommended that the Board eliminate the requirement to disclose a historical example. Commenters also urged the Board to modify the disclosures for home-secured loans to facilitate comparisons between lines of credit and installment loans by including all fees in the calculation of the APR.

Commenters identified other minor adjustments to TILA's disclosure requirements. For example, several commenters recommended that the Board require creditors to disclose a simple interest rate in addition to the APR and an explanation of how the APR is related to the interest rate. One commenter recommended that the Board add an introductory statement to each disclosure, explaining the purpose of the disclosure. (The Board notes that the regulation does not preclude creditors from providing additional information, and creditors can currently make these disclosures, separate from the required disclosures, if they choose.) A number of commenters recommended that the Board provide guidance on the permissible use of electronic disclosures. Some commenters recommended some reorganization of the required disclosure booklets, and suggested that the Board and HUD combine the special information booklet, the home-equity line of credit booklet, and adjustable rate mortgage booklet into one.

### **Legislative Recommendations**

The information required to be disclosed under RESPA and TILA is extensive, the concepts disclosed are complex, and the statutes are written with different goals in mind. After consideration of the comments and further analysis, the Board has determined that the changes that could be made to Regulation Z alone would not achieve the goals the Congress identified: simplifying and improving the TILA and RESPA disclosures and providing a single format that satisfies the requirements of the two laws. Improving the TILA and RESPA disclosures to make them significantly shorter, easier to understand, and consistent requires legislative change.

The Board will continue to work with HUD to develop a set of legislative recommendations that would promote streamlined disclosures for transactions subject to both RESPA and TILA. In preparing the report, the Board and HUD will consider the issues raised by the commenters and take steps to seek additional public views, such as by jointly convening a

forum or task force. The public is invited to submit comments with any further suggestions they may have for legislative changes.

By order of the Board of Governors of the Federal Reserve System, March 28, 1997.

Jennifer J. Johnson,  
Deputy Secretary of the Board.