



February 1, 2011

VIA ELECTRONIC TRANSMISSION &
REGULAR MAIL

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
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Sandra F. Braunstein,
Director
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Re: Compliance Guide for Regulation Z; Docket No. R-1366, Truth in Lending

Dear Chairman Bernanke and Director Braunstein:

Thank you for preparing a compliance guide for the Board of Governors for the Federal Reserve (Board) final rule on *Regulation Z; Docket No. R-1366, Truth in Lending* in response to the Office of Advocacy's letter dated January 13, 2011. Advocacy appreciates the Board's efforts in making the guide readily available. However, Advocacy is concerned that the guide may not meet the requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA).¹ Advocacy recommends that the Board amend its guide so that it is in compliance with the law.

Section 212(a)(4) of SBREFA sets forth the requirements for a compliance guide. It states:

“(4) Compliance actions.--

“(A) In general.--Each guide shall explain the actions a small entity is required to take to comply with a rule.

“(B) Explanation.--The explanation under subparagraph (A)--

¹ Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

- “(i) shall include a description of actions needed to meet the requirements of a rule, to enable a small entity to know when such requirements are met (*emphasis added*); and
- “(ii) if determined appropriate by the agency, may include a description of possible procedures, such as conducting tests, that may assist a small entity in meeting such requirements, except that, compliance with any procedures described pursuant to this section does not establish compliance with the rule, or establish a presumption or inference of such compliance.
- “(C) **Procedures.**--Procedures described under subparagraph (B)(ii)--
- “(i) shall be suggestions to assist small entities; and
- “(ii) shall not be additional requirements, or diminish requirements, relating to the rule.
- “(5) **Agency preparation of guides.**--The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities and may cooperate with associations of small entities to develop and distribute such guides. An agency may prepare guides and apply this section with respect to a rule or a group of related rules.

Advocacy is concerned that the agency has not met the obligation to “include a description of actions needed to meet the requirements of a rule, to enable a small entity to know when such requirements are met.” Advocacy does not believe that the guide has sufficient information to enable a small entity to know when the requirements have been met. Small entities have advised Advocacy that the guidance answers almost none of the questions that the industry has about the rule and view it as simply a summary of a complex issue and not guidance on how to comply with the requirements of the rule. For example, if a mortgage broker receives compensation from a consumer directly, can the broker pay the loan officers that work for them based on a pre-arranged agreement? As noted above, the Board has an obligation to provide the industry with a description of the actions needed to comply with Regulation Z in a manner specific enough that will enable a small entity to know if it has met the requirements of the rule. Advocacy strongly encourages the Board to amend its compliance guide to provide appropriate instructions.

Advocacy also understands that the Board may not be aware of how many of the rule’s elements require specification. Advocacy is available to facilitate a meeting between the small entities and the Board in terms of clarifying which issues the small entities believe need clarification and guidance. Advocacy believes that such a meeting would not only benefit the small entities, but it would provide the Board with some insight into the problematic areas of the rule.

Advocacy recognizes that this rule is a priority for the Board in terms of consumer protection. However, it is also important for consumers to receive services from businesses that fully comprehend the requirements of this rule. Issuing a proper compliance guide not only helps the small entities, it also assists the Board in meeting its goal of protecting consumers. Because the effective date of the rule is rapidly approaching at a time that industry does not feel as though it has workable guidance, Advocacy once again encourages the Board to postpone the implementation date for small entities. A delay to educate small entities on the proper implementation of the requirements of the rule will benefit the entities and the consumers who utilize their services.

If you have any questions regarding these comments or if Advocacy can be of any assistance, please do not hesitate to contact Jennifer Smith at (202) 205-6943.

Sincerely,

/s/

Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy

/s/

Jennifer A. Smith
Assistant Chief Counsel
For Economic Regulation & Banking

Cc: The Honorable Cass Sunstein, OIRA/OMB