



January 13, 2011

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Sandra F. Braunstein
Director
Consumer and Community Affairs Division
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Room 8201
Washington, DC 20551

Dear Chairman Bernanke and Director Braunstein:

I am writing in reference to the Board of Governors for the Federal Reserve (Board) final rule on *Regulation Z; Docket No R-1366, Truth in Lending*, which implements regulations for loan originator compensation and steering.¹ Advocacy is concerned that the Board may not have published a compliance guide as required by the Small Business Regulatory Enforcement Fairness Act (SBREFA).² Advocacy recommends that the Board publish a compliance guide in the immediate future and extend the time for small entities to comply to reflect the delay in the availability of the guide.

Background

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Because Advocacy is an independent office within the Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the views of the SBA or of the Administration. Section 612 of the Regulatory Flexibility Act (RFA)³ requires Advocacy to monitor agency compliance with the Act, as amended by the SBREFA. In 1980, Congress enacted the RFA after determining that uniform federal regulations produced a disproportionate adverse economic hardship on small entities. In

¹ 75 Federal Register 58509 (Friday, September 24, 2010).

² 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).

³ Pub.L. No. 96-354, 94 Stat. 1164 (1981), *amended by* Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857 (1996) (codified as amended at 5 U.S.C. §§ 601-612 (2000))

order to minimize the burden of regulations on small entities, the RFA mandates that federal agencies consider the potential economic impact of federal regulations on small entities.

In 1996, Congress amended the RFA with SBREFA. Among other things, SBREFA requires agencies to provide plain English compliance guides to clearly explain each final rule that has a significant economic impact on a substantial number of small entities. The intent of section 212 of SBREFA is to ensure that small businesses have a way to understand complex and technical federal regulations.

The Need for a Compliance Guide

The Board's final rule on loan originator compensation and steering requires major changes to industry practices and procedures by April 1, 2011. Small entities have indicated that the requirements of some of these changes are unclear and confusing. They are concerned that the lack of clarity may lead to problems in compliance.

Advocacy reviewed the Board's website. Advocacy commends the Board for having a SBREFA compliance guide page on its website. However, although there are compliance guides for Regulations C, D, E, F, H, I, J, L, M, O, P, R, V, X, AA, BB, CC, DD, and GG, Advocacy was unable to find a compliance guide for Regulation Z.⁴

Section 212(a) (3) of SBREFA requires an agency to publish each compliance guide on the same date as the date of publication of the final rule or as soon as possible after that date and not later than the date on which the requirements of the rule become effective. In this particular instance, it is imperative that the agency immediately publish a compliance guide on Regulation Z and make it available on its website. It is extremely difficult and expensive to perform the requirements of this rulemaking without proper guidance from the Board. As stated in the preamble to the final rule, this rulemaking requires small entities to "alter certain business practices, develop new business models, re-train staff, and reprogram operational systems to ensure compliance with the final rule."⁵ Without proper guidance, a small entity could develop new business models, reprogram equipment and re-train staff only to learn that the steps taken do not comply with the new regulations. In such a situation, the small entity would incur additional costs that could be avoided if they have the compliance guide. It would be a waste of valuable resources that could be used to address other needs of the business.

As noted above, the intent of section 212 of SBREFA is to ensure that small businesses have a way to understand complex and technical federal regulations. The changes in Regulation Z are complicated and present the types of problems that section 212 was meant to address. Advocacy implores the Board to provide the necessary compliance guide in the immediate future. In addition, because of the complexity of this regulation, Advocacy respectfully requests that the Board provide small entities with additional time to comply since the small entity compliance guide was not made available at the time of publication of this rule.

⁴ See, <http://www.federalreserve.gov/bankinforeg/cgdefault.htm>.

⁵ 75 Federal Register at 58533.

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