ABA Staff Analysis: Interim Rule Amending Regulation Z:
Summary Information Regarding Interest Rates and Payment Changes
September 2010

Summary

The Board published interim rule (75 FR 58469-58489) changes and soliciting comments for amendments to Regulation Z, which implements the Truth in Lending Act (TILA). The new interim rule implements Congressional directives contained in the Mortgage Disclosure Improvement Act of 2008 (MDIA), which amended TILA to add new timing requirements and consumer protections in home-secured transactions.¹ Under this interim rule, creditors that extend credit secured by real property or a dwelling must disclose summarized information about interest rates and payment changes. The interest rate and payment summary tables replace the payment schedule previously required as part of the TILA disclosure for mortgage transactions. The interim rule mandates that such summaries be presented in tabular format. The rule adds a statement informing consumers that they are not guaranteed to be able to refinance their loans in the future.

Effective Dates

This interim rule is effective October 25, 2010. Board clarifies that compliance with its requirements is optional until January 30, 2011. In order to comply with the time deadlines imposed by MDIA, the new rule requirements are mandatory for transactions for which an application for credit is received by the creditor on or after January 30, 2011.

The Board is also soliciting comments on this interim rule, which must be received on or before November 23, 2010. The Board states that it is issuing an interim rule, rather than a final rule, because it intends to conduct additional testing of this and other disclosure requirements, and may revise these interim provisions further in light of further testing results.

Scope

The Board’s interim rule applies to closed-end credit transactions secured by real property or a dwelling, and excludes loans secured interests in timeshare plans. The rule therefore requires interest rate and payment summary tables for all transactions secured by real property or a dwelling, including fixed-rate, fixed-payment mortgages.

- **Reverse Mortgages**: Under the interim rules, reverse mortgages are subject to Section 226.18(s) and (t), but they will be excluded from the definition of a “negative amortization mortgage.”
- **Timeshares**: Loans secured by interests in timeshare plans are not subject to new Section 226.18(s) and (t), but would be subject to Section 226.18(g) requiring an exact payment schedule to be disclosed in accordance with the provisions of that section.

Rule Content

For full understanding of the new disclosures mandated under the interim rule, readers must examine the model forms set forth by the Board under Appendix H to the regulations. These model forms are reproduced below, as an attachment to this summary.

Interest Rate and Payment Summary

The Board is adopting a new Section 226.18(s) that will replace the current payment schedule disclosure for closed-end consumer credits (found in Section 226.18(g)) with a new interest rate and payment summary table for a transaction secured by real property or a dwelling. Section 226.18(g) will remain in place, but will apply only to loans that are not secured by real property or a dwelling; that section is therefore amended to exclude property or dwelling-secured transactions from its coverage.

The Board crafted the interim rules in a manner that permits their application to all types of loan products. The precise detail and presentation of the disclosure will vary upon the specific characteristics of the particular loan product. Since the application of these new rules to actual products can vary according to the details of the individual products, the interim rule and accompanying commentaries provide various sets of examples to properly illustrate the correct application of the new provisions.

The new Section 226.18(s) requires creditors to disclose the contract interest rate, regular periodic payment, and balloon payment if applicable. Creditors must provide the information about interest rates and payments in the form of a table, and creditors are not permitted to include other, unrelated information in the table. For all amortizing loans, creditors must separately itemize an estimate of the amount for taxes and insurance if the creditor will establish an escrow account. Under § 226.18(s)(1), the table must be in a minimum 10-point font to ensure that it is clear and conspicuous. (TILA’s current font and size requirements generally state that no minimum type size is mandated for the disclosures.)

The regulatory elements applicable to the various combinations of interest rate products are as follow—

Amortizing Loans (18(s)(2)(i))

- For a fixed-rate mortgage with no scheduled payment increases or balloon payments, the creditor discloses only one interest rate. Creditors must disclose the interest rate applicable at consummation.
- Fixed-rate loans with payment increases require the creditor to disclose the interest rate along with each payment increase, even if the interest rate does not change.
  - Section 226.18(s)(2)(i)(C) provides that, where payment increases will not coincide with an interest rate adjustment, the creditor must include a column that discloses the interest rate that would apply at the time the adjustment is scheduled to occur, and the date on which the increase would occur. For a fixed-rate mortgage, the creditor shows the same interest rate twice.
- For adjustable-rate or step-rate amortizing loans, the rule requires up to three interest rates and corresponding periodic payments, including the maximum possible interest rate and payment. Section 128(b)(2)(C) requires creditors to disclose examples of payment increases, including the maximum possible payment, for adjustable-rate mortgages and other mortgages where payments may vary.
  - Section 226.18(s)(2)(i)(B)(1), requires disclosure of the interest rate at consummation and the period of time until the first adjustment, labeled as “introductory rate and monthly payment.”
  - Section 226.18(s)(2)(i)(B)(2) requires disclosure of the maximum possible rate at any time during the first five years after consummation, even if that is not the first adjustment, and the earliest date that rate may apply.
  - Section 226.18(s)(2)(i)(B)(3) requires creditors to disclose the maximum interest rate that could apply at any time, and the earliest date on which that rate could apply, as required by TILA Section 128(b)(2)(C).
  - Section 226.18(s)(2)(i)(C) provides that, where payment increases will not coincide with an interest rate adjustment, the creditor must include a column that discloses the interest rate that would apply at the time the adjustment is scheduled to occur, and the date on which the increase would occur. In such instances, creditors must include a column that

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discloses the interest rate that will apply at the time of the increase, the date the increase is scheduled to occur, and an appropriate description such as “first increase” or “first adjustment,” as appropriate.

Negative Amortizing Loans (18(s)(2)(ii))

- For negative amortization loans, for which any scheduled payment may cause the principal balance to increase, Section 226.18(s)(2)(ii) requires disclosure of the interest rate applicable at consummation.
- For ARM loans that do not provide any limitations on interest rate increases (“caps”), the creditor must disclose the rate applicable at consummation and assume that the interest rate reaches the maximum at the next adjustment.
- Section 226.18(s)(6) requires a statement of the amount of the increase in the loan’s principal balance if the consumer makes only minimum payments and the earliest month and year in which the minimum payment will recast to a fully amortizing payment, assuming that the interest-rate reaches its maximum at the earliest possible time.
  - To further inform consumers, this section requires a statement directly above the summary table explaining that the loan offers payment options. The explanation preceding the table also must state the maximum possible interest rate and the smallest number of months or years in which the interest rate could reach its maximum.

Introductory Rate Disclosure for Amortizing Adjustable-Rate Mortgages (18(s)(2)(iii))

- In instances of adjustable-rate mortgages that have an introductory or “teaser” rate set below the sum of the index and margin used for later adjustments, Section 226.18(s)(2)(iii) requires—
  - An explanation of the introductory rate below the table;
  - Disclosure of the introductory rate, how long it will last, and that the interest rate will increase at the first scheduled adjustment even if market rates do not increase;
  - The fully indexed rate that otherwise would apply at consummation.
- The Board clarifies that for “early” disclosures required to be delivered within three business days after receipt of an application (under § 226.19(a)(1)), the fully-indexed rate disclosed under Section 226.18(s)(2)(iii)(C) may be based on the index in effect at the time the disclosure is provided. This is set forth in Comment 18(s)(2)(iii)(C)-1.

Principal, Interest Payments, and Escrows (18(s)(3)(i))

- Section 226.18(s)(3)(i) requires disclosure of the principal and interest payment that corresponds to each interest rate disclosed under Section 226.18(s)(2)(i). Under Section 226.18(s)(3)(i), if all regular periodic payments include principal and interest, each disclosed payment amount must be listed in a single row in the table with a description such as “principal and interest.”
- Section 226.18(s)(3)(i)(C) provides that, if an escrow account will be established, the creditor must disclose the estimated payment amount for taxes and insurance, including any mortgage insurance. The rules provide that the escrow amount must include mortgage insurance premiums even if they are not escrowed.
  - The Board has determined that escrow payments are an important piece of consumer information, and under these new rules, for purposes of transactions secured by real property or a dwelling, creditors may no longer opt to exclude escrow accounts as provided in existing Section 226.18(g).
  - The Board is further considering whether taxes and insurance estimates should be included even when no escrow account is established.
  - Comment 18(s)(3)(i)(C)-1 clarifies the types of taxes and insurance that are required to be included in the estimate.
    - Include amounts for property taxes and mortgage-related insurance items required by the creditor, such as insurance against loss of or damage to property,
or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer’s default or other credit loss.

- Exclude premiums for credit insurance, debt suspension and debt cancellation agreements.
- Note that payment amounts under § 226.18(s)(3)(i) should reflect the consumer’s mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law.

- Payment amounts under § 226.18(s)(3)(i) should reflect the consumer’s mortgage insurance payments. This amount is included whether or not the loan carries an escrow account. The mortgage insurance premiums must be calculated until the date on which the creditor must automatically terminate coverage under applicable law (even though the consumer may have a right to request that the insurance be cancelled earlier).
- Section 226.18(s)(3)(i)(D) requires disclosure of the total estimated monthly payment, which includes the sum of the principal and interest payments (required under Section 226.18(s)(3)(i)(A) or (B)), and the estimated taxes and insurance payments required to be disclosed (under Section 226.18(s)(3)(i)(C)).

Payments for Negative Amortization Loans (18(s)(4))

- For each interest rate disclosed under § 226.18(s)(2)(ii) for a negative amortization loan, the creditor must disclose payments in two separate rows, as follows—
  - First row shows the fully amortizing payment for each interest rate;
  - Second row shows the minimum required payment for each rate, until the recast point. At the recast point, the minimum payment row shows the fully amortizing payment.
    - The interest rate and payment summary would display only two payment options, even if the terms of the legal obligation provide for others—the option to make minimum payments that result in negative amortization, and the option to make fully amortizing payments.
- Under Section 226.18(s)(4)(i)(C), creditor must provide a statement that the minimum payment will cover only some of the accrued interest and none of the principal and will cause the principal balance to increase.
- Section 226.18(s)(4)(ii) requires disclosure of the fully amortizing payment that will be required at “recasts” (when minimum payments no longer are permitted and fully amortizing payments are required). This payment amount must reflect the maximum possible interest rate that will be applicable at that time, based on the contract terms.
- Section 226.18(s)(4)(iii) requires disclosure of the fully amortizing payment, assuming that the consumer makes only fully amortizing payments beginning at consummation. The fully amortizing payment row must be completed for each interest rate required to be disclosed.

Balloon Payments (18(s)(5))

- In instances of balloon notes, Section 226.18(s)(5)(i) provides that the balloon payment must be disclosed in the last row of the table rather than in a column, unless it coincides with an interest rate adjustment or other payment increase such as the expiration of an interest-only option. If a balloon coincides with an interest rate adjustment or other payment increase, the balloon payment is disclosed in the table as that payment increase.
- Section 226.18(s)(5)(i) provides that a payment is a balloon payment if it is more than twice the amount of other payments.

MDIA Refinancing Warning

MDIA amended TILA to require creditors to disclose for variable rate transactions, in conspicuous type size and format, that there is no guarantee that the consumer will be able to refinance the transaction to

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To implement this change, the Board is adding new provisions under Section 226.18(t).

- Section 226.18(t)(1) requires creditors to disclose a statement that there is no guarantee that the consumer will be able to refinance the loan to obtain a lower interest rate and payment.
  - The Board is expanding the scope of this requirement to include fixed-rate transactions secured by a dwelling, as well as transactions secured by real property without a dwelling.
- Section 226.18(t)(2) provides format requirements for the MDIA refinancing warning. The statement must be made in a form substantially similar to Model Clause H-4(K) in Appendix H.

**Model Forms and Clauses**

The interim rule sets forth model clauses to illustrate the new requirements under this regulation.

- **Model Clause H-4(E)** illustrates the interest rate and payment summary table required under Section 226.18(s) for a fixed-rate mortgage transaction.
- **Model Clause H-4(F)** illustrates the table for an adjustable-rate or a step-rate mortgage transaction.
- **Model Clause H-4(G)** illustrates the table for a mortgage transaction with negative amortization.
- **Model Clause H-4(H)** illustrates the table for a fixed-rate loan with interest-only terms.
- **Model Clause H-4(I)** illustrates the introductory rate disclosure required by Section 226.18(s)(2)(iii) if an adjustable-rate mortgage has an introductory rate.
- **Model Clause H-4(J)** illustrates the balloon payment disclosure required by Section 226.18(s)(5) for a mortgage with a balloon payment term.
- **Model Clause H-4(K)** illustrates the no-guarantee-to-refinance statement required by Section 226.18(t).

The model forms and clauses are set forth below.

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**Model Forms and Clauses**

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**H-4(E) Fixed Rate Mortgage Interest Rate and Payment Summary Model Clause**

**INTEREST RATE AND PAYMENT SUMMARY**

<table>
<thead>
<tr>
<th></th>
<th>Rate &amp; Monthly Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate</td>
<td>____%</td>
</tr>
<tr>
<td>Principal + Interest Payment</td>
<td>$____</td>
</tr>
<tr>
<td>Est. Taxes + Insurance (Escrow)</td>
<td>$____</td>
</tr>
<tr>
<td></td>
<td>[Includes [Private] Mortgage Insurance]</td>
</tr>
<tr>
<td>Total Est. Monthly Payment</td>
<td>$____</td>
</tr>
</tbody>
</table>

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**H-4(F) Adjustable-Rate Mortgage or Step-Rate Mortgage Interest Rate and Payment Summary Model Clause**

**INTEREST RATE AND PAYMENT SUMMARY**

<table>
<thead>
<tr>
<th></th>
<th>INTRODUCTORY Rate &amp; Monthly Payment (for first period)</th>
<th>[MAXIMUM during FIRST FIVE YEARS (date)]</th>
<th>MAXIMUM EVER (as early as (date))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate</td>
<td>____ %</td>
<td>[____ %]</td>
<td>____ %</td>
</tr>
<tr>
<td>Principal + Interest Payment</td>
<td>$____</td>
<td>[$____]</td>
<td>$____</td>
</tr>
<tr>
<td>Est. Taxes + Insurance ([Escrow])</td>
<td>[$____]</td>
<td>[$____]</td>
<td>[$____]</td>
</tr>
<tr>
<td>• Includes [Private] Mortgage Insurance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Est. Monthly Payment</strong></td>
<td>$____</td>
<td>[$____]</td>
<td>$____</td>
</tr>
</tbody>
</table>

**H-4(G) Mortgage with Negative Amortization Interest Rate and Payment Summary Model Clause**

**INTEREST RATE AND PAYMENT SUMMARY**

(This loan offers you several monthly payment options. The table below shows you what your payments would be under two of these options if the interest rate reached its maximum of ____% in the (period) of this loan.)

(All payments shown in the table include $____ for estimated taxes and insurance in [escrow].)

<table>
<thead>
<tr>
<th></th>
<th>(Date) (([period] [intro]))</th>
<th>(Date) (1st adjustment)</th>
<th>(Date) (2nd adjustment)</th>
<th>(Date) + every (period) after</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Interest Rate</td>
<td>____ %</td>
<td>[____ %]</td>
<td>[____ %]</td>
<td>____ % (max. ever)</td>
</tr>
<tr>
<td><strong>Full Payment Option</strong></td>
<td>$____</td>
<td>[$____]</td>
<td>[$____]</td>
<td>$____</td>
</tr>
<tr>
<td>Monthly payments cover all principal and interest.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Minimum Payment Option</strong></td>
<td>$____</td>
<td>[$____]</td>
<td>[$____]</td>
<td>$____</td>
</tr>
<tr>
<td>Initial monthly payments cover no principal and only some interest and increase your loan amount.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*You will borrow an additional $____ by (date) if you make only minimum payments on this loan.*

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H-4(H) Fixed Rate Mortgage with Interest Only Interest Rate and Payment Summary Model Clause

**INTEREST RATE AND PAYMENT SUMMARY**

<table>
<thead>
<tr>
<th></th>
<th>INTRODUCTORY Rate &amp; Monthly Payment (for first ___ years)</th>
<th>MAXIMUM EVER (as early as ___)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate</td>
<td>____%</td>
<td>____%</td>
</tr>
<tr>
<td>Principal Payment</td>
<td>- none -</td>
<td>____%</td>
</tr>
<tr>
<td>Interest Payment</td>
<td>$____</td>
<td>$____</td>
</tr>
<tr>
<td>Est. Taxes + Insurance (Escrow)</td>
<td>$____</td>
<td>$____</td>
</tr>
<tr>
<td>Total Est. Monthly Payment</td>
<td>$____</td>
<td>$____</td>
</tr>
</tbody>
</table>

**H-4(I)—Introductory Rate Model Clause**

**Introductory Rate Notice**

You have a discounted introductory rate of ___________% that ends after (period).

In the (period in sequence), even if market rates do not change, this rate will increase to ___%.

**H-4(J)—Balloon Payment Model Clause**

**Final Balloon Payment due (date):** $____

**H-4(K)—“No-Guarantee-to-Refinance” Statement Model Clause**

There is no guarantee that you will be able to refinance to lower your rate and payments.

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Questions? Contact Rod Alba for more information.

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