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Comments:

The Independent Bankers Association of Texas, a trade association representing approximately 600 independent community banks domiciled in Texas, offers these comments on certain aspects of the proposed revisions to Regulation Z. All members of IBAT make residential mortgage loans and will be affected by these changes. First, we would note that the changes relating to appraisals and relationships with appraisers address a growing problem in the area of mortgage fraud. So long as the exceptions remain in the regulation, this change should provide another tool in the fight against this crime. It is critical, however, that lenders be able to communicate with appraisers to assure that the appraiser has the information necessary to have a good basis for the valuation. Thus, it would be appropriate to include clarification that the additional information that may be shared includes a copy of the contract of sale as well as a copy of plans and specs for construction projects. This would fit logically in the commentary. Next, we applaud the changes that should facilitate obtaining valid payoff information. Currently, many community bankers have observed that it is very difficult to obtain payoffs in order to refinance a residential mortgage. These proposed changes should correct this dilemma. We would strongly recommend that the changes relating to mortgage broker fees be coordinated with proposed changes to the regulations implementing the Real Estate Settlement

Procedures Act (RESPA). Also, the proposal indicates that this section does not preempt state law that imposes a comparable disclosure duty. Currently, Texas regulations (7 TAC §80.9) require very explicit disclosures regarding the relationships of the parties, oversight by the Texas Department of Savings & Mortgage Lending, and the fees to be charged, among other things. What process should be followed to determine that in fact this disclosure satisfies the changes in Regulation Z? As noted above, many of the changes in this proposal address concerns of the community banking community as well as of consumers. However, we believe that §226.35 relating to prohibited acts or practices in connection higher-priced mortgage loans begins with a flawed definition of a "higher-priced" loan. As proposed, the term includes mortgage loans whose APR will exceed the yield on comparable Treasury securities by three or more percentage points for first lien transactions. The proposal then goes on to clarify what is meant by "comparable" Treasury securities. As drafted, a twenty year or longer note would refer to the ten year maturity securities for fixed rate transactions. According to the Federal Reserve Statistical Release dated March 31, 2008, the Treasury constant maturities 10-year note on March 28 had a rate of 3.47. On that same week, according to Yahoo! Real Estate, the average rate on a 30 year fixed mortgage loan in Austin, Texas was 6.338%. Thus, it appears that a significant number of typical mortgage loans would be categorized as "higher-priced" in this market. For jumbo loans, the potential is even greater that the loans will be considered higher-priced. One interesting dilemma posed by this proposal is the collision with the safety and soundness requirements for asset/liability management. Community banks typically do not refer to Treasury instruments in pricing their residential mortgage loans. Rather, they look to their cost of funds. Their asset/liability committees are tasked with maintaining an appropriate, safe margin between their cost of funds and the interest rates on various products. The proposed definition of higher-priced mortgage loans is counter to the banks' efforts to operate in a safe and sound manner, with appropriate pricing mechanisms. Instead of tying these additional protections to so-called higher-priced loans, we would suggest that a more appropriate test would be to tie the protections to sub-prime transactions. Although there is existing federal regulatory guidance on sub-prime lending, we would suggest that the definition of "sub-prime" should apply a multi-factor test, including credit score and leverage ratios. The consequences of falling into the higher-priced category present a significant regulatory burden for community banks. At this time, we believe that only about 40% of mortgage loans in Texas are escrowed for insurance and taxes. If a significant number of loans are now considered "higher-priced" with the requirement for escrows, many lenders will be forced to acquire systems to collect, maintain, service, and report escrow accounts. Those systems require data processing and personnel changes, which represent significant initial and ongoing costs. In addition to the additional regulatory burden, this arbitrary requirement of escrows also creates a potential customer relations problem. Certain customers do not want the bank to manage their escrow account. Rather, they are disciplined enough to establish their own system to manage insurance and taxes, whether through their own savings account or through use of anticipated year-end income sources. The proposal only permits the consumer to cancel the escrow after one year. Consumers should be able to make this request before closing. Another concern with the new prohibited acts or practices is the rule relating to consideration of repayment ability. Community banks do not make loans based on collateral value. If they did, they would lose money. Foreclosure, holding “other real estate owned,” and re-sale costs are too significant to justify such a practice. Thus, the prohibition is not the issue. Rather, bankers are worried about the documentation requirements in order to support their practices. The commentary adds requirements to not only verify income but also obligations and assets. Debt to income ratios must be considered, but there is no “safe harbor”. The potential for subjective analysis is simply too great in this area. Texas community banks applaud this regulatory effort to address abuses in the residential mortgage lending area. However, we strongly urge fine-tuning in the areas identified above in order to avoid the possibility of credit constriction at the community bank level.
