ICBA
INDEPENDENT COMMUNITY BANKERS of AMERICA

July 18, 2008

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Truth in Lending, Regulation Z, Docket No. R-1286

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the Federal Reserve's proposed revisions to the Truth-in-Lending Act (TILA) rules for open-end, non-home secured (revolving) credit, primarily credit cards.

Summary of ICBA Comments

ICBA generally reaffirms the comments we filed last summer on the pending changes proposed for open-end, non-home secured credit under Regulation Z. In addition, we are developing and will file separately comments on the changes proposed to implement provisions of the Federal Trade Commission Act against unfair or deceptive acts or practices (UDAP) that will apply to credit cards.

Overall, ICBA supports the changes in this proposal designed to supplement and coordinate with the other pending changes. For the most part, the changes being considered will convey information to consumers that should help them better understand how their credit card accounts operate, a goal ICBA strongly supports. As with any

[1] The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold more than $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

regulatory changes, alterations to procedures and operations will be burdensome and there will be costs to adapt, but ICBA firmly believes that most of the proposed changes will further demonstrate that community banks are straightforward and trustworthy lenders.

ICBA supports letting creditors respond electronically to electronic inquiries. ICBA also supports the proposed clarification to permit a creditor to collect a membership fee if the consumer can reject the plan and receive a refund of any fees after disclosures are furnished. ICBA concurs with the safe harbor that would let creditors deem an account rejected if there are no transactions during the first 60 days after the account is opened. However, ICBA believes that if a consumer activates an account that should be clearly deemed acceptance of the terms and conditions of the account.

ICBA also agrees with the proposed changes regarding the term and usage of "grace period" as a step that will better communicate information to consumers. ICBA also welcomes the proposed model language. Similarly, ICBA supports the proposed changes designed to better convey and communicate the impact of a default. While ICBA does not oppose the requirement to include information about a minimum finance charge, we question whether the $1.00 threshold is appropriate. Instead, ICBA recommends a higher threshold, perhaps $5.00, as a more meaningful cut-off. ICBA also agrees it is appropriate to disclose information about foreign currency charges.

Finally, ICBA agrees with the proposed changes for cut-off times, convenience checks and other additional changes, but has some recommendations for adjustments to improve the final rules for all concerned. Once the rules are finalized, it is critically important that community banks be given sufficient time to adapt and adjust procedures, update software and operations and train employees on the changes. Moreover, it is critically important that ***all*** changes impacting credit cards have one effective date since multiple effective dates will only increase costs and regulatory burden.

Background

Last summer, the Federal Reserve proposed extensive changes to the TILA rules implemented by Regulation Z. TILA is intended to provide meaningful disclosures of credit terms to help consumers shop for credit and compare terms while also protecting them from unfair credit practices. The 2007 proposal, still pending, would change disclosures provided at application, account opening, on periodic statements, in advertising and in change-in-term notices. This current proposal supplements the 2007 proposed changes and coordinates with more substantial changes concurrently proposed by the Federal Reserve, the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA) to implement rules against unfair or deceptive acts or practices (UDAP). ICBA will file comments on the UDAP proposal under separate cover prior to the August 4 deadline. This comment letter addresses the new revisions proposed under Regulation Z.

ICBA filed extensive comments on the previously proposed revisions.[2] Generally, ICBA supported the proposed changes. Although we felt the changes would be burdensome and recommended a number of revisions, ICBA believes that in the long run the 2007 proposal, if adopted substantially as proposed, would clearly demonstrate that community banks are common-sense lenders that offer credit cards with straightforward terms not subject to frequent changes. Fundamentally, the proposals will benefit community bank customers since clearer and simpler disclosures will ensure consumers are fully informed about how their credit card accounts operate and will demonstrate that community banks offer credit cards with lower rates, lower fees and fewer penalties and junk fees.

Overview of the Proposal

These new revisions would update several of the disclosures proposed in 2007. These updates are intended to make information easier to understand and more meaningful for consumers. For example, if adopted as proposed, mandatory use of the term “grace period” would be eliminated and creditors instead would use the phrase “how to avoid paying interest” or similar terminology. A *de minimis* $1.00 would be added as a threshold for requiring creditors to disclose any minimum interest or finance charge, although smaller amounts could still be disclosed at the creditor’s option. Credit card issuers also would be required to disclose fees connected to foreign currency purchases in the table furnished at application as well as the penalty rate that applies when credit privileges are terminated.

Other changes proposed to prevent abuses for so-called subprime cards would be beefed up. When initial disclosures are given orally for a card with fees and other charges at account opening that consume over 25% of the available credit, new mandatory oral disclosures would be required to explain the actual credit available along with a second oral disclosure on the ability to reject the card without incurring fees other than any standard application fee that applies to all applicants.

Several new disclosures would be added. If a convenience check is sent to a credit cardholder, this proposal mandates a new disclosure that specifies the date when the check must be used to take advantage of any special discount rate. A new requirement would clarify how existing balances would be affected by any rate increase while another new provision would define a cut-off time before 5:00 pm local time for receiving payments as generally unreasonable. Where there is a disputed transaction, this proposal would specify that the creditor could not deny a claim solely because the cardholder does not comply with a request for a police report or written affidavit. And finally, where a deferred interest plan advertises “no interest” or similar terms, the proposal would require a new disclosure in near proximity that explains how this will operate (model terms are also included in the proposal).

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[2] ICBA’s comments are at http://www.icba.org/files/ICBASites/PDFs/cl101207.pdf. A news release outlining ICBA’s comments is at http://www.icba.org/news/newsreleasedetail.cfm?ItemNumber=38611&sn.ItemNumber=1733&tn.ItemNumber=1915.

The Proposal

Electronic Disclosures. As a result of comments received in 2007, the Federal Reserve plans to clarify that when a consumer requests a service in electronic format, such as through a creditor's website, required disclosures can be provided electronically without regard to E-Sign Act requirements.[3]

ICBA supports letting banks respond to electronic inquiries electronically. This is a logical step that also alleviates compliance burden. It is a common sense approach that will satisfy consumer expectations and let community banks provide information for customers without having to cross unnecessary regulatory barriers. It will also let community banks respond to customer requests more quickly, more efficiently and at lower costs.

Membership Fees. Currently, creditors can collect or obtain a promise to pay a membership fee before providing disclosures but only if the applicant can reject the card and receive a refund of fees once the disclosures are received. Additional clarification would be provided to help explain how this provision operates, including a safe harbor that lets creditors deem a card rejected if there are no transactions or payments 60 days after disclosures are mailed. Moreover, the card would not be "accepted" if the consumer merely calls to activate the card or the issuer assesses fees on the account.

ICBA generally believes the clarification is appropriate. Consumers should have the opportunity to reject a card after being given the disclosures and a reasonable amount of time to review the disclosures – but guidelines should be included in the final rule that outline what is "reasonable" and it should not be open-ended.[4] If the card is rejected after the disclosures are provided, then it is appropriate to refund any fees that have been collected.

ICBA concurs with the proposed safe harbor that would let an issuer deem a card rejected if there are no transactions during the first 60 days after disclosures are furnished. This lets the bank control costs and eliminates accounts consumers are unlikely to use. Moreover, with current sensitivity to fraud and identity theft, letting banks deem cards "rejected" may be useful as a tool that may help address those issues as well. However, since there may be instances when a consumer wants to have a line of credit to hold for future use or possible emergencies, and while ICBA supports banks having the option to deem an account closed if there is no activity during the first 60 days, ***ICBA recommends the commentary include a "best practice" that encourages issuers to notify a customer that the inactivity will cause the account to be closed.***

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[3] Electronic Signatures in Global and National Commerce Act, 15 U. S. C. 7001 *et seq*. Briefly, E-Sign generally permits a creditor to provide disclosures electronically but only after the consumer has received notice and consented to receiving the information electronically.

[4] ICBA does not have a specific recommendation for a timeframe but it would be logical to coordinate with other elements and 60 days seems to be the appropriate outer boundary for "reasonableness."

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While we generally agree with these elements of the proposal, ***ICBA opposes the provision that a card is not deemed accepted solely by the consumer calling to activate the account.*** While assessing fees where a consumer has done nothing should not be deemed acceptance, when a consumer calls or uses the Internet to activate the card, he or she has taken affirmative action that should be deemed as accepting the account. The final rule should be revised so that an affirmative step by the consumer, including calling to activate the card, is acceptance of the terms and conditions.

Grace Period. The 2007 proposal would have required creditors to use the term "grace period" when discussing the timeframe during which no interest or finance charges are imposed if the cardholder makes payment by a specified date. The goal of the 2007 proposal was to promote uniformity for presenting information to consumers. However, based on findings from additional consumer testing as well as industry comments, the Federal Reserve now proposes to drop the mandatory requirement for using the term "grace period." To better convey the concept underlying the term, creditors instead would be encouraged to use the phrase "how to avoid paying interest" or similar terminology in tabular disclosures.

ICBA agrees with this proposed change regarding the term "grace period." The proposed language more accurately reflects and describes what occurs on the account and makes it simpler for consumers to understand. More important, the change reflects the findings of consumer testing, further demonstrating the importance of consumer testing, a step ICBA has and will continue to strongly support. ICBA is concerned, though, that the lack of standard terminology may cause confusion and believes "how to avoid paying interest" is an appropriate term that should be uniformly required.

The proposal would include the following model language for creditors: *Your due date is [at least] ____ days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire balance (excluding promotional balances) by the due date each month.*

ICBA supports the use of model language. However, we recommend that the phrase be changed somewhat to clarify that a payment must be received by the due date to avoid interest. It would be clearer if the model language stated that, "we will not charge you interest on purchases if your payment *is received* by the due date." That will help consumers understand that dropping a payment in the mailbox the night before it is due will not avoid interest charges.

For creditors that do not offer a grace period, the proposal would recommend the following language: *We will begin charging interest on purchases on the transaction date*. The table provided at account opening would still have to include information on the date by which or period within which any credit extended for purchases may be repaid without incurring a finance charge. Again, ICBA supports the model language.

Penalty Rates. The 2007 proposal included several changes designed to better explain and help consumers understand penalty rates. To further improve consumer understanding of the impact caused by a default, this proposal would no longer give creditors the option of not disclosing an increase in the rate when credit privileges are terminated. Instead, that information would have to be provided.

ICBA finds it appropriate to require disclosure of the increased rate due to default. Whenever the rate is changed, customers should be notified of the change and how it affects the account. Such a change should also help resolve a common complaint.

While some contend that information provided in the initial disclosures sufficiently describes possible penalties, the amount of time between the initial disclosures and when a penalty rate may apply can be substantial. Moreover, since the credit card industry is extremely dynamic and since consumers may carry numerous cards, it helps to remind consumers about specific terms and conditions when a penalty rate takes effect. Perhaps most important, notice at the time of the increase demonstrates to consumers the ramifications from failing to adhere to their responsibilities under the account agreement.

Minimum Finance Charge. Industry representatives believe there is no need to disclose a minimum finance charge that may be imposed during a statement cycle. On the other hand, consumer groups argue that *any* minimum finance charge must be included in disclosure tables. As a compromise, the Federal Reserve proposes requiring a disclosure of any fixed or minimum finance charge that is over $1.00.[5] Issuers would still have the option of disclosing smaller amounts. The minimum finance charge information also would have to be included in account opening disclosure tables.

ICBA does not oppose requiring disclosure of a minimum finance charge. However, ICBA believes the $1.00 level is too small to be useful as a threshold. Such a low threshold is essentially meaningless. When operational costs are considered, for most banks it will be simpler to disclose any and all amounts. To provide a meaningful threshold, ***ICBA recommends raising the amount to at least $5.00.***

Foreign Transaction Charges. Originally, the Federal Reserve proposed excluding fees for transactions in foreign currency from the disclosure table for applications and solicitations but would have required this information be included in the account-opening table. To promote consistency, the Federal Reserve now proposes requiring the fees be disclosed in both tables.

ICBA agrees that fees for transactions in foreign currency should be included in the disclosure tables included with applications or solicitations and at account opening. Lack of understanding of these fees is an increasingly common consumer complaint. Including the information in the disclosure tables will help ensure consumers are aware of the charges, will help reduce complaints, and will also help ensure consumers have the opportunity to compare information about different accounts.

[5] The minimum threshold would be adjusted when changes cumulative changes in the Consumer Price Index equals or exceeds $1.00.

Balance Computation Method. Currently, Federal Reserve regulations describe four specific balance computation methods. If an issuer uses a method other than one of the four named methods, it must explain in detail how that applies to an account. One of the changes under the UDAP proposal would prevent banks from using the two-cycle balance method. However, the Federal Reserve does not propose eliminating the description from Regulation Z since non-depository institution creditors would still be able to use the double cycle method.[6]

ICBA does not oppose continuing to include this description. However, inasmuch as the ability to use the two-cycle balance method will be restricted and unavailable for banks if the UDAP proposals are adopted, ***ICBA strongly recommends that the final revisions to Regulation Z also make it clear that the availability of this calculation method is restricted to non-depository credit card issuers.***

Payment Allocation and Available Credit. The separate UDAP proposal addresses how creditors allocate payments to the outstanding balance on an account if different interest rates apply to different balance segments. To the extent those proposed changes are finalized, the Federal Reserve would eliminate the disclosures proposed in 2007 that were intended to explain how payments are allocated. The UDAP proposal also would impose restrictions and new requirements where fees and charges consume over 25% of the credit line when an account is opened. If those proposals are adopted, additional adjustments will be made to the disclosure provisions under the TILA proposal. ***ICBA agrees it is appropriate to coordinate the two rules and therefore supports these proposed changes.***

Payment Due Date and Time. Another change proposed in 2007 would affect disclosures about due dates and payment cut-off times. Under this proposal, the creditor's cut-off hour for receiving mailed payments could not be earlier than 5:00 pm at the location where the creditor has designated the payment is to be sent (any other time would be deemed unreasonable). The agency is still assessing whether it should require clear disclosures in near proximity to cut-off times for other forms of payment such as those made over the Internet or by telephone.

ICBA agrees with the restriction on cut-off time. At this stage, ICBA does not have any additional recommendations for other adjustments to when payments are due.

Another new provision would be added to clarify that if a payment due date falls on a date when mail service is unavailable or where the creditor does not accept mail, a creditor could not treat a payment received on the next business day as late. Again, ***ICBA agrees with this step***. Imposing this restriction will end abusive practices and ensure fairness for consumers.

Convenience Checks. The 2007 proposal would require additional disclosures for convenience checks that can be used to access a credit card account. In addition to those proposed disclosures on the rate and fees that apply to convenience checks, this

[6] At this time, the Federal Trade Commission does not anticipate issuing parallel rules under its own authority for non-depository issuers of credit cards.

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proposal would require issuers to disclose the date any promotional rate expires along with information about whether and at what rate checks will be honored after that date.

ICBA agrees with this requirement. It is logical to provide this information for consumers and helps clarify the terms that apply to convenience checks.

Other Changes. Several additional changes are proposed for credit card. First, if a single-merchant card has been inactive for 24 months, a new general purpose card could not be issued without request; ***ICBA agrees with this proposed restriction***.

Second, while a card issuer may reasonably request a cardholder to cooperate with the investigation of a billing error claim, it could not refuse to investigate merely because the consumer fails to provide a written affidavit or a police report (although lack of sufficient information due to a consumer's refusal to cooperate would let an issuer terminate the investigation); ***ICBA does not entirely disagree with this guidance, but believes the final revisions should make it clear that issuers can use lack of cooperation or failure to provide information as a factor in resolving the claim.*** Generally, when a consumer is reluctant to provide information or furnish a police report, it indicates other problems associated with the error. For instance, the consumer may have given the card to his or her child with specific instructions or limits on what could be spent but then when those limits are ignored expects the bank to absorb the difference. Or, the inappropriate activity may have been conducted by a family member and the refusal to cooperate is because the cardholder does not want the police involved. If a bank has standard procedures for resolving a claim that are not unreasonable or unduly burdensome for the customer, and those requirements are uniformly applied, then failure to cooperate or follow standard bank requirements, including the requirement that the complaint should be written, should be sufficient to let the bank terminate the investigation. This protects the bank – and its other customers – from fraud.

Third, the proposal would restore a provision requiring a creditor to determine whether services or property were actually delivered when there is a claim of non-performance. ***ICBA seriously questions this element of the proposal and believes it needs to be revised.*** The bank is not in the best position to verify or determine whether services are provided or property delivered. Therefore, consumers should be required to make a good-faith effort to first resolve the matter with the merchant or service-provider. Generally, while ICBA does not disagree with requiring the issuer to conduct a "reasonable" investigation, since "reasonable" is highly subjective, the Federal Reserve should further outline the parameters of what constitutes a "reasonable" investigation to avoid potential disputes between issuers, consumers and examiners. At a minimum, the final guidance should provide that a good-faith attempt by the bank to contact and verify the information with the provider is sufficient.

Fourth, a new definition would be added for special discounted rates during the life of an account, i.e., a "promotional rate" (generally, any rate lower than the standard rate for a specific period). ***ICBA generally finds this definition useful.*** The terminology gives consumers clearer information about what rate applies to the account.

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Finally, for deferred interest programs, the proposal would require disclosure in close proximity about the period of time for which interest is deferred. The disclosure would have to be equally prominent to satisfy the requirement that it be clear and conspicuous. "Deferred interest" would be defined as a finance charge on balances or transactions that a consumer is not obligated to pay if the balance or transactions are paid in full by a specified date (interest waived in a traditional grace period would be specifically excluded from the definition). However, the disclosure would not be required on an envelope used to mail a deferred interest offer even though the envelope might have a banner announcing the offer. ***ICBA agrees with this disclosure requirement.*** Providing consumers with this information is appropriate and will help consumers understand the terms and conditions of the program. Properly communicating this information is the foundation for good customer relations and helps avoid possible future conflicts.

Effective Date. The Federal Reserve plans to ensure creditors have sufficient time to implement and adapt to the changes once they are finalized. While ICBA would welcome longer than one year to transition to the new requirements, especially since these are not the only changes taking place that community banks must address, we also recognize that some may argue the final rules should take effect sooner. Therefore, ***ICBA strongly urges the Federal Reserve to allow at least 12 months once the final rules are issued since community banks need time to adjust and adapt the changes to their programs.*** Since income from credit cards can be marginal and cards are often provided solely as a customer service by some community banks, any shorter timeframe could discourage some community banks from continuing to offer these products and services.

Currently, there are a number of proposals pending that would impact credit cards. ***ICBA strongly urges the Federal Reserve to ensure that any final changes are coordinated so that all changes take effect on the same date***. Multiple effective dates will only unnecessarily add to the regulatory burdens and costs without any real benefits.

Conclusion

ICBA strongly believes that providing consumers with appropriate information helps them properly manage their banking relationships. Consumers should understand the terms and conditions that apply to their accounts. That is one reason why ICBA has long been an advocate of consumer testing and commends the Federal Reserve for using that tool to develop these proposals.

With the explosion in the use of credit cards, the programs and variety of account relationships have become increasingly complex. For the average consumer, the restrictions, terms and requirements are difficult to grasp. Therefore, ICBA supports steps that facilitate consumer understanding of their accounts and their responsibilities to properly manage their banking relationships.

At the same time, it is important that the Federal Reserve and other regulators continue to recognize the convenience and cost-effectiveness provided by credit cards for all consumers. The growth of the credit card industry over the last 50 years is testament to the vitality of this payment channel. Restrictions that become barriers for providers to continuing to offer these services, no matter how well intended, do a disservice to consumers in the long run by reducing competition and consumer options. Complex regulations or costly requirements will drive smaller providers out of the business. ICBA strongly cautions the Federal Reserve to keep these considerations at the forefront as they finalize these proposals. Already, we are seeing a rapid consolidation of the credit card market, and any additional restrictions or barriers could further drive the market towards oligopolies.

Fundamentally, the goal should be simple, cost-effective disclosures that are easily read and clearly understood by consumers, bankers and examiners. The key is ensuring that the costs associated with restrictions do not have unintended consequences which make it more difficult for community banks to offer the service or which return us to the days when credit cards were restricted to the elite well-to-do consumer.

Thank you for the opportunity to comment. If you have any additional questions or need further information, please contact the undersigned by telephone at 202-659-8111 or by e-mail at robert.rowe@icba.org.

Sincerely,

/s/

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