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Comments:

By electronic delivery February 27, 2008 Re: FRB Docket No. R-1305; Truth in Lending Proposed Rule; 73 Federal Register 6; January 9, 2008 Ladies and Gentlemen: Independence Bank of Kentucky appreciates the opportunity to comment on the proposed rule for the Truth in Lending Act (TILA) issued by the Federal Reserve Board (Agency). As discussed in more detail below, we recognize and appreciate the Agency's attempt to revise the Truth in Lending Act as implemented by Regulation Z in a workable manner that limits regulatory burden while it protects consumers' privilege of homeownership. However, we believe that the proposal may result in limiting the consumers' ability to obtain real estate mortgage loans from reputable financial institutions while doing little to deter non-regulated mortgage brokers from continuing predatory lending practices. We ask that consideration be given to our concerns for parts of the proposal which if adopted as stated, would limit our ability to provide safe and sound mortgage loans to future home owners. We believe that the rule changes as proposed for Regulation Z will, in the end, limit banks' ability to lend and further damage an already strained real estate mortgage environment. Summary of Comments: Independence Bank applauds the Agency for establishing more defined rules regarding the advertisement of real estate related lending. We believe that the clarity and definition found in the proposed rule levels the playing field among competitors and provides consumers with enough information to shop effectively. We also believe that the proposal requiring a prompt response to payoff requests and the appropriate posting of payments will have the intended result of providing lower cost mortgage loans to consumers. The restriction for coercion with appraiser will not affect financial institutions that are regulated and examined by a government agency, so we agree that if it is enforceable for non-regulated institutions, this change as proposed would be a beneficial and necessary change to the TILA. Unfortunately, these promising elements are ultimately compromised by the following issues: (1) establishment of the higher priced loan setting a threshold of 3% and 5% over the Treasury security rates for first and subordinate liens respectively; (2) across the board restriction on bank employed loan originators and mortgage brokers; and (3) placing the burden of monitoring mortgage broker disclosures on the banking industry. We provide suggestions on how to address each of these issues, at least to some degree, and offer comments to several other questions noted in the Agency's request for comment. Background: Independence Bank is well aware of the issues facing our economy, specifically within the real estate mortgage market. We were not surprised by the call of Congress and special interest groups for increased regulation and enforcement actions. However, we maintain that the proposal will place, once again, more regulatory burden on financial institutions that generally have not participated in the bulk of the subprime lending market. We believe that it is unfortunate that Congress and others fail to recognize that it was the actions of entities that are not considered financial institutions, such as mortgage brokers, that played the most significant role in the current struggles of the mortgage market. Independence Bank, as with many community banks, has invested greatly in the communities we serve and has long established our safe and sound mortgage lending practices. Our efforts to maintain the integrity of the financial system demonstrate that we are dedicated partners in ensuring that our customers receive products that are well-matched with their financial situation and long term financial success. Based on the fact that all banks are held to an already high standard for mortgage lending by consumer protection regulations and safety and soundness requirements, we ask that the Agency consider the following discussion when issuing any final changes to TILA. We also request that the Agency give full consideration to the effect that the proposed restrictions may have on the community banks' ability to serve the mortgage needs of our small town and rural home owners. Discussion: In response to the Agency's request for comment, Independence Bank would like to share our concerns and make recommendations for viable solutions specifically regarding the three issues noted above. We will also address a few other questions from the Agency's request for comment in an effort to ensure that the mortgage consumer market is not further harmed by potential unavailable credit. The Agency asked: 1. Whether or not the threshold for the APR at Treasury security rates plus 3% or more for first-lien loans, or 5% or more for subordinate-lien loans is satisfactory for catching subprime loans? The Board also asks for comments on whether or not exceptions should be made for junior lien loans based on loan amount, LTV or length of term OR whether it should exempt junior lien loans altogether. We will address both in one comment. Our concern is that legitimate mortgage loans for mobile homes and short term financing (less than ten years) that fall outside the “bridge loan” definition will all be in the higher-priced loan category. With the rapid decrease in the current Treasury security rates, the proposed 3% to 5% range will make an APR of approximately 8.5% or more a higher-priced loan. For example a five year, $10,000 mortgage for purchase of a mobile home at 6.5% interest rate and closing costs of $650 would have an APR of 9.346%. With a monthly payment of approximately $195 it is not only affordable to the customer, but profitable to the bank. This, however, would be considered a higher priced loan at the 3% to 5% range over the Treasury security yield, as proposed. Also, using 2007 treasury yields compared to the APRs originated in 2007, approximately 25% of our mortgages, mostly short term mobile home or refinanced mortgage secured loans, would fall into the higher-priced loan category. These loans are neither unaffordable nor subprime, just short term. We believe that setting the range as proposed will generate unnecessary burden and increased cost to both the consumer and the bank; making it less attractive and therefore less likely that short term credit will be available. It is our experience that these types of loans are both practical and cost-effective for our low to moderate income clients; which is a market that we strive to serve especially with regard to home ownership. We would ask for the Agency to give consideration to setting a range of 4% and 6% over the Treasury security rates for first and subordinate liens respectively. While this rate will catch loans that would be considered subprime, it would lessen the impact to short term mortgage borrowers. Using the same data for 2007 as mentioned above, but incorporating the 4% and 6% range, we found that less than 4% of our mortgage loans would qualify as higher-priced loans. At the very least, we would ask for consideration of the term and purpose of the mortgage loan not necessarily just the lien status when applying a value over the Treasury security rates in determining a higher-price loan category. 2. The Board is seeking “specific” comments on whether or not it should impose the same restriction on bank employed loan originators as it does for mortgage brokers and, if so how the restrictions should be imposed. As a bank, we are already sufficient governed under Section 32 of RESPA and by principles of safety and soundness regarding our interaction with third party provider and incentive plans for our employees. Adding additional regulations will only muddy the waters. As a regulatory agency, we are confident that the Agency will agree that banks are extensively examined in both areas mentioned above and would concur that additional regulation in this area would be nothing by redundant and burdensome with little results. 3. The Board seeks comments on the cost benefits of the proposal (with regard to credit payment to mortgage brokers) including the proposed alternative means of compliance. We ardently agree that clear and timely disclosures should be made for any costs to a consumer, especially when it is related to homeownership. At Independence Bank, we take very seriously our responsibility to educate our customers, but we do not believe that we should bear the burden of making sure others follow the same practices. The financial institutions of the United States have become the police for the Bank Secrecy Act and anti-money laundering at an enormous expense to the industry. While we are happy to do our part in protecting our country, displacing the policing of the actions of mortgage brokers and mortgage originators will only add more expense and responsibility on an industry that is already besieged with compulsory overhead. To this end, we do not believe that banks should become responsible for the monitoring the content and timing of delivery for disclosures that this proposal will require mortgage brokers to make to their clients. We feel that it would be more cost effective to set a flat fee that banks can control based solely on the type of mortgage loan and not on the interest rate offered. We also believe that bank employed mortgage originators should be exempt from restriction on fee based incentive, if the regulating agency of the bank has already determine that criteria for the incentive payment plan is appropriate under current regulation. Additionally, we would like to respond to the following Board sought comments 4. Whether or not a HELOC used for purchase money or refinancing of an existing mortgage loan using the consumer's residence as collateral should fall under the restrictions of an APR that exceeds the comparable Treasury security by 3% or more for first-lien loans, or 5% or more for subordinate-lien loans? Home equity lines of credit should not be considered under the proposed restriction of a higher-priced loan regardless of the purpose of the original distribution against the line. Experience has taught us that HELOC proceeds for the purpose of the purchasing a primary residence generally falls under the same definition as a bridge loan, which are exempt in the Agency's proposal. Also, future HELOC distributions are under the control of both the bank and the borrower should changes occur in our community's overall economic condition or the borrower's personal financial status. 5. The Board asks if the bank would consider lowering its interest rate and increasing "non-trigger" fees OR turning away credits that we would normally make to avoid making higher-priced loans. If so, please discuss the potential consequences to the consumers. Independence Bank has by policy abstained from making loan under the current HOEPA rules. We would strongly consider making this our policy for higher-priced mortgage loans. As mentioned in discussion comment #1 above, we would have turned away approximately 25% or 333 of the 1,314 originated mortgage loan had this proposal been effective in 2007 as written. Given that we are in small rural communities, decreasing the availability of residential mortgage loans by 25% would significantly impact the accessibility of home credit and potentially devastate the real estate market in our footprint. Turning away credit could only have two possible solutions 1) stagnation of real estate loan market; or 2) credit becoming available only through mortgage brokers or finance companies that deal strictly with high cost, low quality subprime mortgages. Unfortunately, the consequence could only compound an all ready critical situation. 6. The Board asks if more clarification is needed to define “pattern or practice” with regard to the proposed regulation changes. Although it would be nice to have something concrete, it could prove to place even more difficultly on banks for the prevention of a pattern or practice from occurring. So, as tempting as this is, we do not think that the Agency should attempt to provide a hard and fast definition of “pattern or practice” or go beyond the clarification already provided in Regulation Z. We would suggest that reference could be made to the information provided in 12 CFR Section 226.34 (a) (4) (2). 7. Lastly, the Board wants to know if the implementation period of 6 months in enough time for bank’s to full implement the rule changes. We believe that a 6 month implementation period may be sufficient for the bulk of the proposal, unless we are facing other regulatory changes within this same time frame. Conclusion: Independence Bank appreciates the opportunity to make comment on this proposal and extends to the Agency our continued support in development of regulations that limits burden to the industry but yet protects consumers. We would also be happy to provide additional information or comment as necessary for clarification. Please contact our Compliance Officer at Independence Bank, 2425 Frederica St, Owensboro, Kentucky (270) 686-1776. Footnote 1. 12 CFR Section 226.34 (a) (4) (2): Pattern or practice of extending credit-repayment ability. Whether a creditor is engaging or has engaged in a pattern or practice of violations of this section depends on the totality of the circumstances in the particular case. While a pattern or practice is not established by isolated, random, or accidental acts, it can be established without the use of a statistical process. In addition, a creditor might act under a lending policy (whether written or unwritten) and that action alone could establish a pattern or practice of making loans in violation of this section.