



NORTH DAKOTA
BANKERS
ASSOCIATION

April 8, 2008

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

Via Email Only to:
regs.comments@federalreserve.gov

RE: Regulation Z; Docket No. R-1305
Truth in Lending

Dear Secretary Johnson:

The North Dakota Bankers Association (“NDBA”) appreciates this opportunity to comment on the Board’s proposed amendments to Regulation Z. NDBA is a financial institution trade association the membership of which consists of state and national banks and federal savings associations which operate more than 300 offices throughout the state of North Dakota. NDBA banks include a few which are affiliates of large bank holding companies. However, all of our members are community banks in the truest sense, and all but one or two are “small” banks. Despite their size, all NDBA members strive to be able to offer a variety of fixed rate and adjustable rate mortgage products to North Dakotans. NDBA banks did not participate in the mortgage market frenzy which has evolved into “the subprime mortgage crisis”. North Dakotans who obtained mortgage loans from their local banks have not been victimized by them and are not facing foreclosure in unprecedented numbers. We note this not because we think the Board should ignore regulatory gaps that may have contributed to the current situation, but because we are deeply concerned about the unintended effects which the some of the proposed amendments to Regulation Z may have on our members and North Dakotans.

Increased Regulatory Burden Is The Primary Concern For Community Banks

Without exaggeration we caution the Board that each new layer of complex regulation which is imposed upon North Dakota’s community banks jeopardizes their ability to offer the regulated financial products to their customers. As mortgage regulation becomes more complicated and the risks that attend a compliance failure increase, small banks can be and are pushed out of the residential mortgage business. The result is that mortgage customers are driven away from conscientious local banks to other lenders and brokers who may not have either the types of community ties that rein in excess and greed or the regulation and supervision of a local bank. **This is a very real issue for community banks. We implore the Board to acknowledge this and to carefully tailor Regulation Z amendments to strictly limit the increased regulatory burden that is assigned to federally insured depository institutions and to eliminate the regulatory and supervisory advantages that the current regulatory scheme provides for non bank mortgage brokers, lenders, servicers and others who are involved in mortgage**



NORTH DAKOTA
BANKERS
ASSOCIATION

Jennifer Johnson, Secretary
Board of Governors
April 8, 2008
Page Two

lending. In short, new rules should not ensnare community banks because community banks did not cause the problem and are not part of the problem. Community banks and their customers do suffer real, adverse consequences as regulations increase a bank's costs and risks and impair its ability to offer a broad range of mortgage products to meet customer needs.

Discrete Adjustments to Revisions Proposed to Apply to All Mortgage Loans

Of course, we support the concepts that underlie the Board's proposed amendments to Regulation Z provisions that apply to all mortgage loans because banks have long operated under principles of meaningful disclosure and fair business practice. Nonetheless, we do believe that there are a few discrete changes which the Board should make in order to eliminate unintended traps. There are two clear examples of this. The first involves the proposed broker disclosure and fee agreement. Because a bank has no reasonable way to assess whether the broker fee disclosure and agreement was timely signed, the bank should be able to rely on the face of the document for that determination. Secondly, we believe that the proposed prohibition against a lender from making a loan if the lender "has reason to know" that an appraiser has been inappropriately influenced creates an ambiguity that only encourages uncertainty and litigation. Banks should not be at risk of being held liable for misconduct in the appraisal process unless the bank actually knows of that misconduct.

Higher Priced Mortgage Loans

There are serious concerns that the proposed definition for "higher priced mortgage loans" encompasses substantial numbers of prime loans as well as subprime loans because the proposed spread between the ARM and yield on Treasuries is only 3% for a first lien mortgage loan and 5% for subordinate lien loans. What are the consumer benefits that arise from subjecting prime loans to requirements that will increase their complexity for banks, increase their costs to consumers and stigmatize loans that are actually prime loans to a degree that that small, community banks feel constrained to make them? The Board must take this concern seriously and consider the adoption of a definition of "higher priced mortgage loans" that does not include and adversely impact the prime loan market.

Advertising and Consumer Testing

We agree that mortgage lender ads must be truthful and fair, and, accordingly support the proposed prohibited acts and practices. We also support the Board in its effort to limit the deceptive use of another lender's name in connection with mortgage product advertising, but would ask the board to consider a stronger measure to restrict the commercial use of a lender's



NORTH DAKOTA
BANKERS
ASSOCIATION

Jennifer Johnson, Secretary
Board of Governors
April 8, 2008
Page Three

name or logo without the lender's clear consent. North Dakota and several other states have adopted laws to address the issue of third party's "deceptive use of a bank's name" in the manner which we suggest. Strong state laws to protect against the misuse of a bank's identity in the form of its name and logo should not be undermined by a weak federal regulation. We also agree that lenders should be allowed to include in their TV and radio advertisements a toll free telephone number for consumers to use when they seek more information about a product, but ask the Board to adopt a similar alternative for Internet advertising by allowing a lender's online advertising to include a link to the mandatory disclosures.

"Consumer disclosure overload" is now widely acknowledged. For that reason, we encourage the Board to consumer test the efficacy of the proposed advertising disclosures before requiring banks to include them in their advertising. The testing should also evaluate whether alternative means of informing consumers about loan terms are more effective than the current system.

Again, thank you for the opportunity to comment on the proposed amendments to Regulation Z. Please address any comments or questions you may have regarding this letter to the undersigned.

Sincerely Yours,
NORTH DAKOTA BANKERS ASSOCIATION

Marilyn Foss
General Counsel