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November 20, 2009

Jennifer J. Johnson, Secretary  
Board of Governors of the  
Federal Reserve System  
20th Street & Constitution Avenue, NW  
Washington, DC 20551  
*Attention: Docket No. R-1370*

Re: Proposed Rule Amending Regulation Z to Implement Provisions of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009, Effective February 22, 2010

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)<sup>1</sup> appreciates the opportunity to comment on this proposed rule amending Regulation Z to implement provisions of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Credit Card Act) that are effective February 22, 2010. ICBA has some concerns with these provisions, and urges the Federal Reserve to consider our comments when drafting the final rules required by the Credit Card Act.

In particular, while ICBA understands that most of these proposed regulatory changes are mandated by statute, we urge the Federal Reserve to carefully

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<sup>1</sup>*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 \$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](http://www.icba.org).*

consider the compliance resources and staff of community banks as they finalize the regulation. While there is no one proposed regulatory change that in itself would severely affect a community bank's credit card business, the cumulative regulatory and compliance burden of these proposed amendments may cause some community banks to exit the credit card business altogether. The result would then be fewer credit card options for consumers and a greater concentration of the market share for the larger issuers.

ICBA's specific comments included in this letter can be summarized as follows:

- The effective date for the January 2009 Regulation Z amendments not affected by the Credit Card Act should continue to be July 1, 2010.
- ICBA supports the Federal Reserve's drafted definition of "credit card account[s] under an open-end consumer credit plan."
- ICBA recommends that the list of relevant facts and circumstances regarding whether a substitution or replacement is treated as the opening of a new account or a change in terms should not be an exclusive list, and the terms "most" and "few" should be further defined to provide more guidance. The rule should also clarify that credit cards issued because of fraud or because a card was lost or stolen should not be considered the opening of a new account or change in terms.
- ICBA recommends the Federal Reserve provide exceptions for payments received at the end of the month, such as an exception that a due date could be provided if it is the last date of the month, even if the particular date is different each month.
- ICBA recommends that payment due date requirements be flexible in allowing creditors to post the next business date as the due date, if the regulator monthly due date falls on a holiday or weekend.
- ICBA urges the Federal Reserve to allow community banks to disclose to consumers on periodic statements the way to access credit counseling information provided by the United States Trustee, in lieu requiring a toll free telephone number where the consumer can call to obtain this information from the creditor.
- ICBA urges the Federal Reserve to retain the exemption to the 36-month minimum payment warnings when there is a specified repayment period in the account agreement and the minimum payment will amortize the balance over this period.
- ICBA agrees that the account balance for estate accounts can be provided within 30 days of receiving a request. If a decedent's account is not paid

in full 30 days after the administrator or executor receives the balance information, the creditor should be able to impose fees and charges on the account.

- ICBA opposes any requirement to verify a consumer's information prior to opening an account or increasing a credit line as this is a business decision and should be optional. The Federal Reserve should not include this requirement, or should allow creditors to use income estimates. The Federal Reserve could also exempt credit card accounts under \$2,000 from the requirement.
- ICBA opposes any provision that prohibits creditors from increasing rates on an existing balance after the balance is transferred from one account to another issued by the same card issuers.
- ICBA recommends the Federal Reserve clarify that a creditor can state a single address for receiving payments; that a bank does not have to consider payments made at a branch location as conforming if they do not promote this payment method; and that banks are not required to treat payments as conforming if they are made after a branch's normal business hours.
- ICBA strongly recommends that creditors be provided with flexibility in implementing and disclosing the over-the-limit opt-in. ICBA also suggests that Regulation Z provide a safe harbor of 20 days, or the creditor's normal billing cycle, for creditors to implement a consumer's revocation request, and a safe harbor of at least five business days following the crediting of a consumer's payment before the creditor must replenish the available credit.
- ICBA disagrees with the requirement that creditors resubmit their credit card agreements after any change is made to the agreement. ICBA strongly supports an exception that would exempt creditors with fewer than 10,000 open credit card accounts from submitting credit card agreement to the Federal Reserve.

A more detailed explanation of ICBA's comments is included as follows below.

#### Effective Date

The supplementary information to the proposed rule notes that the effective date of the Federal Reserve's January 2009 Regulation Z rule is July 1, 2010, whereas the effective date of the provisions of the Credit Card Act implemented by this proposal is February 22, 2010. Because many of the provisions of the Credit Card Act as implemented by this proposal are closely related to the

provisions of the January 2009 Regulation Z rulemaking, the Federal Reserve is considering whether the February 22, 2010 effective date should also apply to the provisions of the January 2009 Regulation Z rulemaking that are not directly affected by the Credit Card Act, as well as the new and amended requirements proposed pursuant to the Credit Card Act.

ICBA strongly urges the Federal Reserve to only require the February 22, 2010 effective date for the Regulation Z amendments mandated by the Credit Card Act, and to not accelerate the effective date for the other Regulation Z amendments that became final in January 2009. The operational burden for community banks is already overwhelming, considering this final rulemaking will likely not be published until only a few weeks before the February 22, 2010 effective date. This gives banks little time to understand and dissect the rule, change their systems, and provide policies and training for their staff. Because all of these provisions require major changes to a bank's credit card operations, compliance procedures, forms, and employee training, providing the full amount of time to comply for the other Regulation Z credit card provisions allows banks to effectively prepare their systems and operating procedures to better insure their compliance.

Community banks do not have the compliance resources of the larger financial institutions and therefore, having the existing compliance time is even more crucial to their business operations. Allowing more time to comply with the rules is especially important when considering the formatting requirements for the required disclosures, which take a great amount of time to design and prepare. Furthermore, given all of the changes to financial services regulations this year (SAFE Act, Regulation E, RESPA, and Regulation Z amendments regarding mortgages and student loans), community banks are already overwhelmed with the costs and resources of complying with many new rules within a short amount of time. This makes the July 1, 2010 deadline for the additional credit card requirements all the more necessary.

Finally, the Federal Reserve understands the length of time it takes for financial institutions to alter systems to make these changes to their credit card disclosures and procedures, which is why the July 1, 2010 effective date was provided in the first place. The Federal Reserve should therefore not deviate from this original plan.

#### Scope of the Regulation

The Federal Reserve proposed to define "credit card account[s] under an open-end consumer credit plan" to mean "any credit account accessed by a credit card except a credit card that accesses a home equity plan subject to the requirements of § 226.5b or an overdraft line of credit accessed by a debit card."

ICBA is pleased with this definition and agrees with the Federal Reserve's decision to not include debit cards under this definition if they access overdraft protection, or credit cards that access home-equity lines of credit. This proposed scope is consistent with the intent and purpose of the Credit Card Act, which was to address the practices of credit cards that access revolving open-end lines of credit that are not home secured. ICBA agrees this definition should be included in the final rule as it is currently drafted.

### Substitution and Replacement Requirements

The proposed rule states that when a card issuer substitutes or replaces an existing credit card account with another, the card issuer must either provide notice of the terms of the new account or provide notice of the changes in terms of the existing account. The proposed rule provides flexibility regarding whether to treat the substitution or replacement of a card as the opening of a new account or a change in the terms of an existing account. The proposed rule also states that whether a substitution or replacement is treated as the opening of a new account or a change in terms of an existing account is determined in light of all the facts and circumstances and provides a list of relevant facts and circumstances which include: (1) whether the card issuer provides the consumer with a new credit card; (2) whether the card issuer provides the consumer with a new account number; (3) whether the account provides new features or benefits after the substitution or replacement (such as rewards or purchases); (4) whether the account can be used to conduct transactions at a greater or lesser number of merchants after the substitution or replacement; (5) whether the card issuer implemented the substitution or replacement on an individualized basis; and (6) whether the account becomes a different type of open-end plan after substitution or replacement (such as a charge card being replaced by a credit card). The proposed rule clarifies that when most of these facts and circumstances are present, then substitution or replacement likely constitutes the opening of a new account, and when few of these facts and circumstances are present, then it is likely a change in the terms of an existing account.

ICBA recommends that the terms "most" and "few" be further defined to provide clearer guidance to creditors. The Federal Reserve should also clarify that this list is not exclusive and that there may be other facts and circumstances a creditor may consider in determining whether the changes result in the opening of a new account. In addition, ICBA is not sure how factor (4) "whether the account can be used to conduct transactions at a greater or lesser number of merchants after the substitution or replacement" would be determined. How would a creditor be able to know if the card will be accepted at fewer or more merchants? This factor seems like it would not be within the creditor's knowledge or control, and ICBA asks that the factor be further clarified or deleted from this list of facts and circumstances.

Finally, the rule should expressly clarify that credit cards issued to consumers because the initial card account was closed due to fraud or because the card

was lost or stolen should not be considered the opening of a new account or change in terms.

### Payment Due Dates

The proposed rule requires that the payment due date be the same numerical date each month (e.g., having a due date that is the 25<sup>th</sup> of every month). The Federal Reserve notes that in practice, the requirement would preclude creditors from setting due dates that are the 29<sup>th</sup>, 30<sup>th</sup>, or 31<sup>st</sup> of the month.

Requiring the payment due date to be the same numerical date each month could present some challenges. For example, the requirement presents challenges for financial institutions in month-end activities, such as charge-offs, and also presents compressed mailing time, which will impact creditor resources. ICBA recommends that the Federal Reserve provide some exceptions for payments received at the end of the month, such as an exception that a due date could be the last date of the month, even if the particular date is different each month (e.g., the due date is the 30<sup>th</sup> in September, but the 31<sup>st</sup> in December.) This exception would address the spirit of this Credit Card Act requirement, which is to require creditors to maintain consistency in imposing payment due dates so that consumers are generally aware of when their payment is due, avoiding late fees and further finance charges. In addition, this exception would give creditors greater control in processing payments and utilizing the dates at the end of the month to collect and process payments.

The proposed rule also provides that if the payment due date is a day on which a creditor does not receive or accept payments by mail, then the creditor is required to treat a payment received the next business day as timely. For example, if a consumer's due date is the 4<sup>th</sup> of every month and a creditor does not accept or receive payments by mail on Thursday, July 4, then the creditor may not treat the mailed payment received on the following business date as late. But, the creditor must disclose July 4<sup>th</sup> as the due date on the periodic statement and may not disclose a July 5<sup>th</sup> due date.

This proposed requirement would also create operational difficulties, because some creditor systems are not capable of processing a payment received as an "on-time payment" if the payment is received after the posted due date on the periodic statement. This would require some creditors to apply back-end due diligence to insure that they are not inadvertently creating penalties, which can pose a significant burden on creditors. ICBA instead recommends that the requirement be flexible in allowing creditors to post the next business date as the due date if the regular monthly due date falls on a holiday or weekend. Again, such a requirement would be consistent with the spirit of the Credit Card Act, which was to require creditors to maintain some consistency in imposing payment due dates.

### Consumer Access to Credit Counseling/Debt Management Services

The proposed rule, pursuant to the Credit Card Act, provides that a card issuer must establish and maintain a toll free telephone number disclosed on the periodic statement from which consumers can obtain information about accessing credit counseling and debt management services. The proposed rule requires that a card issuer provide through the toll free telephone number the name, street address, telephone number, and website address for at least three organizations approved by the United States Trustee or a bankruptcy administrator to provide credit counseling services in the state in which the billing address for the account is located or the state specified by the consumer. The credit card issuers must also provide the consumer with the name, address, telephone number, and website for at least one organization that provides credit counseling services in a language other than English that is specified by the consumer. The United States Trustee collects this information for approved organizations and posts it to the public through its website. The Federal Reserve stated that creditors should provide information regarding at least three approved organizations because this will enable consumers to make a choice about the organization that best suits their needs.

ICBA is very concerned with the burden in providing this information. Smaller issuers may be unable to manage this requirement independently and will need to rely on processors or third-party vendors to support this function, resulting in increased costs to the financial institution. If there is already a national database and website, creditors should be able to include this information to consumers in various ways, such as on their periodic statements. This would provide consumers with access to the proper information without having to rely on the financial institution to expressly direct them to this information.

The Federal Reserve is also proposing that the card issuer must verify and update the information it provides for consistency with the information provided by the United States Trustee or bankruptcy administrator at least annually. ICBA agrees that this information should be updated no more frequently than annually, and again, is strongly in favor of requiring a disclosure of the national database and website in lieu of the bank directly providing the specific information.

### Minimum Payment Warnings

Regulation Z requires disclosures on the periodic statement of the total costs in interest and principal to repay the outstanding balance if only minimum payments are made, and information about repayment of the outstanding balance in 36 months. The final regulatory amendments published in January 2009 provided an exemption to the minimum payment warnings when there was a specified repayment period in the account agreement and the minimum payment will amortize the balance over this period. The proposed rule eliminates this exemption.

ICBA urges that this exemption should be retained, since the 36-month disclosure would not be a helpful consumer disclosure if the fixed period is more than three years. All of these regulatory amendments require substantial consumer disclosures, and ICBA urges the Federal Reserve not to further require unnecessary disclosures that are not helpful to consumers and can potentially draw their attention away from the disclosures that are useful to them.

### Estate Accounts

The Federal Reserve is proposing to require creditors to adopt reasonable procedures designed to insure that any administrator or executor of a deceased accountholder's estate can determine the amount of and pay the decedent's credit card account balance in a timely manner. The account balance could be provided by telephone or written statement but would be required within 30 days of receiving a request. Creditors would be able to retain, to an appropriate extent, procedures which may already be in place.

ICBA agrees that the account balance could be provided by telephone or written statement within 30 days of receiving a request, and supports the provision that creditors would be able to retain procedures which may already be in place. ICBA has no further comments regarding this provision.

Creditors also would be prohibited from imposing fees and charges on a deceased consumer's account upon receiving a request for the balance amount from an administrator or executor of an estate. Creditors may impose finance charges and fees for the days preceding receipt of a request and charges may be imposed if a joint accountholder remains on the account, but not if the credit card is held solely by the decedent or with an authorized user.

ICBA recommends that after providing enough time for an administrator or executor to put in order a decedent's estate and pay in full his or her account, a creditor should be permitted to treat the decedent's account like other credit card accounts. Mandating a greater amount of time for these accounts could put financial institutions at greater risk. A proper time period would be no sooner than 30 days after the administrator or executor receives the requested balance information. If a decedent's account is not paid in full by this time, creditors should be permitted to resume the imposition of fees and charges on the account in the same manner as they do with their other accounts.

### Ability to Repay

The Credit Card Act requires a creditor to consider a consumer's ability to make the required payments before opening a credit card account or increasing a credit limit. The Federal Reserve is proposing to require a creditor to evaluate a consumer's ability to repay by reviewing a consumer's income or assets as well

as his current obligations. Although the proposal would not require that creditors verify information before the account is open, the Federal Reserve is seeking comment on whether verification should be required.

ICBA opposes any requirement that creditors verify this consumer information as verifying information prior to opening an account or increasing a credit line is a business decision and should be optional. A creditor must balance the operational burdens, processing delays, and customer service with prudent decision-making procedures. To make this a requirement would be problematic, especially for credit line increases where the creditor may want to increase a consumer's credit line, but does not have updated income information. In this instance, consumers who have made their payments on time and used their credit card responsibly would not qualify for a credit line increase because the creditor may not have up-to-date income information. Such a requirement would only hurt consumers and impede their ability to receive credit. If the Federal Reserve decides to make income verification a requirement, we strongly urge that creditors be allowed to use income estimates based on a consumer's prior income, type of job, or consumer reporting agency data. The Federal Reserve could also provide a de minimis exception and exempt credit card accounts from this requirement if they have smaller dollar limits, such as under \$2,000. For a smaller dollar account, income verification would be even less meaningful given the low credit limit.

Furthermore, any information verification requirements should not be required for existing account holders that have opened accounts prior to February 22, 2010. If these consumers are effectively making payments and maintaining credit card accounts in good standing, creditors should be able to provide credit line increases without verifying information and should instead be allowed to depend on the performance of the account and the consumer's credit history. Information verification for accounts opened prior to February 22, 2010 would be very burdensome for creditors who did not have the procedures in place to obtain this information at account opening.

#### Limitations on Increasing APR, Fees, or Charges

The Credit Card Act generally prohibits creditors from increasing certain rates, fees, or finance charges ("rates") during the first year after the account is opened. If a consumer opens multiple accounts with the same card issuer and 30 days after the subsequent account is opened has the option of engaging in transactions using either account, then the opening of the subsequent account constitutes an "account opening" for purposes of the prohibition and the creditor is prohibited from increasing the rates within a year unless one of the stated exceptions is met.

In addition, the prohibitions on increasing the rate would apply to an existing balance after the balance is transferred from one account to another issued by

the same card issuer, its affiliate, or subsidiary. These transfers would be treated as a continuation of the existing account relationship rather than the creation of a new account relationship.

ICBA opposes this provision because credit card offers from community banks would be negatively impacted if creditors were prohibited from increasing a rate when a cardholder's account balance is transferred. In addition, community banks that are unable to track the balance transfers would likely no longer offer the service without closing the old account, which would be an inconvenience to the cardholder.

#### Timely Receipt of Payments

The proposed rule prohibits a creditor from imposing a late fee or finance charge on a consumer's account if the creditor receives the consumer's payment in an identifiable form by 5:00 p.m. on the date the payment is due. Specifically, a creditor is prohibited from setting a cut-off time for payments by mail, electronic means, telephone, or in person earlier than 5:00 p.m.

ICBA recommends the Federal Reserve clarify that a creditor can state a single address for receiving payments, if there are multiple branches or processing locations. This clarification would be helpful for banks that may have some branches that are not capable of processing these payments or that have different business operating hours. In addition, ICBA recommends the Federal Reserve clarify that a bank does not have to consider payments made at a branch location as conforming if they do not promote this type of payment method. Furthermore, for banks that do offer to accept payments made at branch locations, the rule should clarify that these banks are not required to treat these payments as conforming if they are made after the branch's normal business hours (e.g., payments dropped in a bank payment slot, etc.).

#### Over-the-Limit Transactions

The Credit Card Act requires a creditor to provide a notice of any fees that may be assessed for over-the-limit transactions and to obtain a consumer's express election, or opt-in, before the creditor may impose these fees. The creditor may provide the opt-in notice orally, electronically, or in writing and must also have provided the opt-in notice immediately prior to and contemporaneously with obtaining the consent. Although the opt-in notice may be provided orally, electronically, or in writing, the revocation notice must be in writing and on the front page of each periodic statement in which a fee was assessed in that period. Creditors may provide an opt-in notice to all of its accountholders on or with the first periodic statement sent after the effective date of the final rule.

### *Segregating the Opt-in Notice*

The Federal Reserve is seeking comment on whether creditors should be required to segregate the opt-in notice. The Federal Reserve notes that such a requirement may insure that the information is not obscured within other account documents, for example, in preprinted language in the account-opening disclosures, and overlooked by the consumer leading the consumer to inadvertently consent to having over-the-limit transactions paid.

ICBA recommends that community banks be given the option of whether to segregate the opt-in notice or include the notice with the other account disclosures, which will allow them to comply with the requirement within their best capabilities. Community banks understand their customers better than anyone, and providing greater flexibility with this and other disclosure requirements allows them to better tailor their disclosures to best meet the needs of their particular consumers.

### *Providing Three Methods to Opt in and Revoke Consent*

The Federal Reserve is also seeking comment on whether to allow consumers to opt in and to revoke that consent using each of the three methods permitted in the proposal (orally, electronically and in writing). With regard to consumers' ability to opt in and revoke their consent to receive over-the-limit fees, ICBA thinks that financial institutions definitely should not be required to provide all three methods, as the cost in administering this requirement would be extensive for community banks that lack the resources of larger financial institutions. Many community banks have varying capabilities, and some do not have the technical capability or staff to receive this information electronically or orally. ICBA instead suggests that creditors be free to provide any of these methods of opting in to the service or revoking consent.

### *Content of Opt-in Notice*

The opt-in notice must contain certain information and may include potential benefits of opting in or a statement that an over-the-limit transaction may not be paid. The Federal Reserve is seeking comment on whether additional information should be permitted in the opt-in notice beyond what is expressly stated in the proposal.

ICBA agrees that additional information included in the opt-in notice could result in overwhelming the required content; however, we believe this is best left up to the judgment of the individual creditors. Therefore, ICBA is in favor of allowing creditors flexibility in providing additional information in the opt-in notice that relates to the opt-in if the creditor so chooses. Again, allowing greater flexibility in tailoring these disclosures better assists community banks in addressing the needs of their particular customers.

### *Allowing Fees Prior to Consent*

A creditor would be prohibited from applying an over-the-limit fee in circumstances where the creditor must pay a transaction that exceeds the consumer's credit limit. The Federal Reserve also is seeking comment on whether there should be an exception to allow over-the-limit fees prior to a consumer's consent in these situations.

ICBA strongly supports an exception in this situation. VISA and MasterCard rules require creditors to accept transactions under a certain floor limit that exceed a customer's credit limit. Because creditors do not have the option of declining certain transactions that exceed the credit limit, they should be permitted to charge the appropriate fee.

### *Requirement to Provide Written Confirmation of Opt-in*

The Federal Reserve is seeking comment on whether creditors should be required to provide consumers with a written confirmation once the consumer has opted in to verify that the consumer intended to make the election. The Federal Reserve states that in the case of telephone or in-person requests in particular, written confirmation may be appropriate to evidence the consumer's intent to opt in to the service. A creditor could comply with such a requirement, for example, by sending a letter to the consumer acknowledging that the consumer has elected to opt in to the creditor's service, or, in the case of a mailed request, the creditor could provide a copy of the consumer's completed opt-in form.

ICBA strongly opposes such a requirement, as a written confirmation to follow up on a consumer's election would be burdensome, costly, and confusing to consumers who are already inundated with mail and disclosures regarding their credit card accounts. The cost to mail written confirmation to all cardholders would be an unnecessary expense given there would be no benefit to the consumer. If a creditor wishes to provide a confirmation to their consumers to insure there is no confusion regarding their intent, and they believe the costs do not outweigh the benefits, then they should be able to provide such confirmation at their option. Furthermore, if the Federal Reserve decides to move forward with this requirement, banks should have the flexibility to provide electronic confirmation or confirmation on the first periodic statement following the opt-in.

### *Safe Harbor for Implementing Revocation Requests*

The Federal Reserve is also proposing to require creditors to implement a consumer's revocation request as soon as reasonably practicable after the creditor receives the request, and is seeking comment on whether there should be a safe harbor for implementing revocation requests.

ICBA believes that a safe harbor for this provision would assist community banks with compliance. The safe harbor should be twenty days or the creditor's normal billing cycle, which would provide adequate time for the delivery and processing of requests.

The Federal Reserve is considering requiring creditors to implement revocation requests within the same time period that a creditor generally takes to implement opt-in requests. Processing opt-in and revocation requests vary depending on the volume of requests and among creditors, which would make requiring the same time period difficult to gauge and monitor. Therefore, ICBA suggests that the provision state that a creditor must implement a consumer's revocation request as soon as reasonably practicable after receiving the request, and that a safe harbor of 20 days or the creditor's normal billing cycle be provided.

#### *Safe Harbor for Crediting a Consumer's Payment*

The proposed rule prohibits a creditor from assessing an over-the-limit fee or charge that is caused by its failure to promptly replenish a consumer's available credit after receiving payment sufficient to reduce his or her account balance below the credit limit.

ICBA suggests that the Federal Reserve provide a safe harbor of at least five business days following the crediting of a consumer's payment by which a creditor must replenish a consumer's available credit. This would provide sufficient time for a creditor to mitigate loss as a result of fraud or returned payments.

The proposed rule would also prohibit the assessment of an over-the-limit fee if the credit limit was exceeded solely because of fees or interest charged by the creditor to the consumer's account during the billing cycle. ICBA requests that this provision be stricken from the rule as it would require extensive programming of data systems.

#### *Obtaining Consent Prior to the Effective Date*

The Federal Reserve is also seeking comment regarding whether a creditor should be allowed to obtain consumer consent for the payment of over-the-limit transactions prior to the effective date of the final rule and, if so, under what circumstances. The Federal Reserve notes that this approach could allow creditors to phase in their processing of consumer opt-ins and alleviate the compliance burden that may otherwise occur if notices could not be sent, and opt-ins obtained, until February 22, 2010. ICBA agrees with this approach and sees no problem with allowing creditors to obtain this consent if they so choose.

### Internet Posting of Credit Card Agreements

The proposed rule states that creditors will be required to post agreements for open-end consumer credit card plans on their websites and to submit those agreements to the Federal Reserve for posting on a publicly-available website established and maintained by the agency. If a creditor makes a change to a credit card agreement previously submitted to the Federal Reserve, regardless of whether that change affects the substance of the agreement, the creditor would be required to resubmit the entire revised agreement to the Federal Reserve. The Federal Reserve is seeking comment on what changes would merit resubmission of an agreement.

ICBA strongly disagrees with a requirement that creditors resubmit their credit card agreements after any change is made to the agreement. Often, creditors will make minor technical changes to their agreements throughout the year, and these changes often include fixing typographical errors or other minor errors that do not affect the nature of the agreement. Requiring creditors to resubmit their agreements to the Federal Reserve after these minor changes are made would be a significant burden for community banks and would likely discourage such corrections more than once or twice a year. ICBA suggests that creditors be required to resubmit credit agreements to the Federal Reserve only when they have made substantive changes to the disclosures required by the Truth in Lending Act, such as changes to the annual percentage rates, fees, and due dates.

In addition, ICBA strongly supports an exception that would exempt creditors with fewer than 10,000 open credit card accounts from submitting any agreements to the Federal Reserve. This requirement would not be useful for community banks with limited credit card portfolios, whose customers are limited to the small community where the community bank is located. Community banks are in direct contact with their customers everyday, and this information is therefore already accessible to their current and prospective customers. This provision was clearly intended for national banks with a larger client base.

Finally, the proposed rule states that creditors must provide each cardholder with access to his or her specific credit card agreement by either posting and maintaining the agreement on the issuer's website or by making a copy of the agreement available to the cardholder upon request. If a creditor makes agreements available upon request, then the creditor must send or make available a copy of the agreement no later than 10 business days after the issuer receives the cardholder's request. ICBA supports the option that a creditor may send or make available a copy of the agreement no later than 10 business days after it receives the cardholder's request, and has no suggested changes to this provision as it is currently drafted.

ICBA thanks you for the opportunity to comment on this proposed rule. As you are aware, community banks are common-sense lenders that offer credit cards on fair terms as a means of providing valuable services to their customers. In finalizing these amendments, please keep in mind that community banks care about customer service more than anything else, and have not engaged in the misleading practices conducted by some of the larger financial institutions.

ICBA looks forward to reviewing the final regulatory amendments by early next year, as well as the Federal Reserve's proposed rule to administer the Credit Card Act provisions effective in August 22, 2010. If you have any questions about this letter or need additional information, please do not hesitate to contact me or Lilly Thomas by telephone at 202-659-8111, or by email at [Elizabeth.Eurgubian@icba.org](mailto:Elizabeth.Eurgubian@icba.org) or [Lilly.Thomas@icba.org](mailto:Lilly.Thomas@icba.org).

Sincerely,

/s/

Elizabeth A. Eurgubian  
Regulatory Counsel