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May 26, 2009

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

Re: Proposed rule to amend Regulation Z which implements the Truth in Lending Act (TILA) following passage of the Higher Education Opportunity Act (HEOA) [Docket No. R-1353]

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)<sup>1</sup> appreciates the opportunity to comment on the Federal Reserve's rulemaking to implement the provisions of the Higher Education Opportunity Act (HEOA) enacted on August 14, 2008. Title X of the HEOA amends the Truth in Lending Act (TILA) by adding disclosure and timing requirements that apply to creditors that make private education loans, which are defined as loans made expressly for postsecondary educational expenses not including open-end credit, real estate-secured loans and loans made, insured or guaranteed by the Federal government under title IV of the Higher Education Act of 1965. The HEOA also amends TILA by adding limitations on certain practices by creditors, such as limitations on "co-branding" their products with educational institutions while marketing private education loans, requiring creditors to obtain a self-certification form signed by the consumer before

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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).*

consummating the loan and requiring creditors with preferred lender arrangements with educational institutions to provide certain information to those institutions.

ICBA understands and appreciates the need for greater disclosures for students obtaining private education loans, especially in today's economic environment, and we understand Congress' intent in providing these additional requirements based on the questionable marketing and lending practices of larger education loan lenders. Nevertheless, ICBA has strong concerns with this proposed rule because it would force these disclosure and timing requirements on smaller financial institutions whose primary business is not private education loans.

In particular, we have concerns with the definition of "private education loan" under the proposed rule. The proposed rule defines "private education loan" as a loan that "(i) is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965; (ii) is extended, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends; and (iii) does not include open-end credit or any loan that is secured by real property or a dwelling." (12 CFR § 226.37(b)(5)). The proposed rule requires disclosures at three points in the lending process for loans that meet this definition: at application, when the loan is approved and not less than three business days before the loan is disbursed. The consumer is also given 30 days to accept the loan and a three business-day period to cancel the loan, which begins after all the disclosures are provided.

ICBA strongly urges the Federal Reserve to include in the definition only those loans that are made entirely for the purpose of paying for postsecondary educational expenses, and to exclude multi-purpose loans from these additional disclosure and timing requirements. The current definition would cover loan funds that may be used for a variety of purposes, which means a small consumer loan provided for household purposes could be covered under the new requirements if a percentage of the loan funds were used to pay for a student's postsecondary educational expenses, which could include meals and other basic expenses. In this instance, the bank would have to provide these lengthy disclosures even if they do not have an education loan program. Community banks frequently provide small loans for household use and we doubt it was the intent of Congress to require these additional disclosures be provided if a small portion of these loan funds happens to be used to pay for a student's postsecondary educational expenses, which could very well include any payment for housing or food while the student is in school.

While the proposed Commentary clarifies the consumer must expressly indicate that the proceeds of the loan will be used to pay for postsecondary educational expenses, this rule puts the bank in the position of having to include a section on their loan applications to determine how, exactly, all of the loan funds will be used. For lenders that do not have education lending programs in place, these new requirements could result in loans being turned down if the consumer states that some of the loan proceeds will be used to pay for postsecondary educational expenses and the community bank is not prepared or does not have the resources to provide these additional disclosures.

Furthermore, the proposed Commentary states that for multi-purpose loans, “the creditor must base the disclosures on the entire amount of the loan, even if only a part of the proceeds is intended for postsecondary educational expenses.” (12 CFR § 226.37(b)(5)-2). Basing the disclosures on the entire amount of the loan when only a portion of the loan will be used for postsecondary educational expenses mandates the use of inaccurate disclosures. This is especially the case for the required disclosure on the private education loan approval model form that “You may qualify for Federal education loans,” with the contact information that is only applicable to education loans. This disclosure may mislead consumers into thinking that Federal assistance also applies to the portion of their loan that is not for educational expenses. If the purpose of the HEOA and amendments to Regulation Z is to provide students with accurate and timely disclosures about their education loans, these disclosures would be completely misleading considering only a portion of the funds will be used for postsecondary educational expenses. The follow example also illustrates this point:

\*\*\*A consumer comes to a community bank to seek a \$3,000 closed end loan to pay for general household expenses. They express on the loan application that \$200 of the funds will be used to buy books for their child who will be attending a university. As a result, the bank must now provide the new required approval and final disclosures and provide a 30 day period for the consumer to accept the loan as well as a three business-day right to cancel the loan. All loan disclosures that include fees and monthly payment information will be based on the \$3,000 loan amount, and not the \$200 loan amount that will actually go to a postsecondary educational expense.

The Federal Reserve stated in the Supplementary Information that basing the disclosures on the entire amount of the loan even if only a part of the proceeds is intended for postsecondary educational expenses “would be the least administratively burdensome for creditors and would also be clearer to consumers,” and that “this provision is necessary and appropriate to assure a meaningful disclosure of credit terms for consumers.” (74 Fed. Reg. 12471). In actuality, providing disclosures based on the entire loan amount when only a portion will go to postsecondary educational expenses is completely misleading and confusing to the consumer and is contradictory to the intent of the statute, which is to provide greater transparency for private education loans. This example above succinctly illustrates why multi-purpose loans should be excluded from all of the additional requirements in this proposed rule.

In addition, the 30 day acceptance period and three business-day right to cancel requirements for multi-purpose loans would be a significant burden to community bank customers who often turn to their community banks for loans because of a hardship or because they need access to funds quickly. If these customers are put in a position of having to wait to receive their loans due to these timing requirements, then they may seek out other more costly financing options, such as credit cards that carry higher interest rates.

Finally, including multi-purpose loans in this definition does not address the problem that Congress intended to address, which was to further regulate the practices of large education loan lenders to insure that students are fully aware of the cost of their education loan transactions and any alternatives. Congress did not intend to require community banks that provide small closed end loans for household use to now be required to provide lengthy education loan disclosures if a small portion of the loan will be used for postsecondary educational expenses. If this were the case, then Congress would have also covered credit card transactions under these requirements if a student happens to use their credit card to pay for food or basic expenses while they are in school.

In closing, ICBA understands the purpose of the HEOA and the proposed amendments to Regulation Z is to provide consumers with additional protections through clearer disclosures and to prohibit the misleading practices that have been conducted by larger financial institutions that have private education loan programs. Nevertheless, we urge the Federal Reserve to make the adjustments we recommend above so the business of responsible financial institutions, such as community banks, and service to their customers is not disrupted.

Thank you for the opportunity to comment. If you have any questions or need additional information, please do not hesitate to contact Elizabeth Eurgubian at 202-659-8111 or by email at [Elizabeth.Eurgubian@icba.org](mailto:Elizabeth.Eurgubian@icba.org).

Sincerely,

/s/

Karen M. Thomas  
Executive Vice President,  
Government Relations