INDEPENDENT COMMUNITY BANKERS of AMERICA

December 24, 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-1367

Re: Proposed Rule Amending Regulation Z as Part of a Comprehensive Review of the Truth in Lending Act's Rules for Open-End Home-Secured Credit or Home Equity Lines of Credit (HELOCs)

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on this proposed rule to amend Regulation Z as part of a comprehensive review of the Truth in Lending Act's (TILA's) rules for open-end home-secured credit or home equity lines of credit (HELOCs). ICBA commends the Federal Reserve for their extensive consumer testing in revising these proposed rules and proposed mortgage disclosures. However, ICBA has several concerns with these provisions and urges the Federal Reserve to consider our comments when drafting any final amendments to Regulation Z.

[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 $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.

Summary of Comments

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

- Finalization of the Regulation Z proposed rules regarding HELOCs should be delayed until the regulatory changes by the Department of Housing and Urban Development (HUD) outlined in the Real Estate Settlement Procedures Act (RESPA) can be in effect for several months and any problems or issues with these amendments can be examined. Finalization of the proposed rules should also be delayed pending additional congressional action regarding mortgage lending.

- The Federal Reserve should consider the resources of community banks when crafting additional regulatory requirements, so that the costs and burdens of further regulation will not drive community banks out of the HELOC market.

- The Federal Reserve should conduct extensive industry outreach, particularly to community banks around the country, before finalization of any proposed rules regarding HELOCs.

- Any mandatory compliance deadline with final regulatory amendments should be at least 18 months following publication of the final amendments.

- ICBA recommends several edits to the "Key Questions to Ask about Home Equity Lines of Credit" document which would provide further clarity regarding HELOC products.

- ICBA opposes the requirement that a disclosures table be provided to consumers with their disclosures received within three days after application, especially if a later table must be provided in the account opening disclosures.

- ICBA strongly supports the elimination of the effective APR from HELOC disclosures.

- ICBA opposes proposed requirements that fees and interest charges imposed as part of the plan be grouped together on periodic statements with the totals disclosed for the statement period and year-to-date.

- ICBA recommends that advance change-in-term notices be required to be provided 30 days in advance of the effective date of the change, instead of the proposed 45 days.

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- ICBA believes the Federal Reserve should allow financial institutions to determine when they can terminate a HELOC account, and not impose requirements that these accounts not be terminated in less than 30 days.

- Regarding suspensions and credit limit reductions based on decline in the property value, ICBA recommends that one of the safe harbors be changed and apply for plans with a combined loan-to-value ratio at origination of under 90 percent if the decline results in the initial difference between the credit limit and the available equity diminishing by 25%, instead of the proposed 50%.

- ICBA generally agrees with the Federal Reserve's proposed provisions regarding suspensions and credit limit reductions based on a material change in the consumer's financial circumstances, but urges the Federal Reserve to provide banks with flexibility in interpreting regulatory requirements.

- ICBA opposes the proposed requirement regarding reinstatement of accounts due to the great expense and burden being placed on the financial institution as a result of consumer's credit privileges being suspended.

Finalization of Regulation Z Proposed Rule Should be Delayed

While ICBA commends the Federal Reserve for their efforts in addressing problems in the current mortgage marketplace and their attempts at producing clear disclosures based on evidence from consumer testing, we strongly urge the Federal Reserve to delay finalizing this proposed rule until the regulatory changes by HUD outlined in RESPA (scheduled to take effect on January 1) can be in effect for several months and any problems or issues with these amendments can be examined. This approach is more practical and will allow both HUD and the Federal Reserve to review any outstanding issues before implementing further regulatory changes.

In addition, further regulatory changes on mortgages should be delayed pending any additional congressional action regarding mortgage lending. Because banks will be required to make massive operational changes to comply with these proposed extensive requirements, it would cause great burden if community banks were put in a position of making massive systems changes to comply with the proposed rules, and then later being required to revamp their systems to comply with future statutory requirements. This was the reality for community banks when the Federal Reserve published final regulatory amendments regarding open-end credit card disclosures last December, only to have most of these regulatory amendments become outdated after Congress passed the Credit Card Accountability, Responsibility and Disclosure Act of 2009. Community banks have been put in a burdensome position with the conflicting credit card laws and regulations, and it would be detrimental to their business operations to have this same compliance burden for mortgage lending.

The Business of Community Banks

In regard to this particular proposed rule, ICBA understands the purpose in revising Regulation Z to address HELOCs and appreciates the Federal Reserve's efforts in incorporating consumer testing in producing model forms that can be used for these loans. ICBA also understands the Federal Reserve's motivation in changing many Regulation Z provisions to address issues presented in the recent mortgage crisis, and its eagerness to further regulate financial institutions that engaged in irresponsible lending practices that led to our current economic state. Nevertheless, when drafting final amendments to Regulation Z, ICBA urges the Federal Reserve to consider the fact that community banks have always engaged in responsible mortgage lending practices due to their vested interest in their communities and the consumers they serve.

Furthermore, most community bank mortgage loans are held in portfolio and not sold on the secondary market; therefore the underwriting for these loans has historically been more conservative since the banks have a vested interest in how the loans perform. Community banks also take great time to educate and inform their customers about the consequences of their borrowing decisions, because of the banks' vested interest in the performance of these loans and the more familiar relationship with their customers.

ICBA strongly urges the Federal Reserve to consider these differences between community banks and large national financial institutions when crafting final rules, and to not punish community banks with harsh regulatory changes that will restrict their ability to lend to the consumers in their communities thereby making these consumers more dependent on the larger financial institutions that care more about profits than the financial health of the communities they serve. The reality is, the more regulatory changes that are forced onto smaller banks, the harder it will be for these banks to compete and offer loan products. Most community banks are understaffed and overworked as it is and the compliance resources of smaller more responsible financial institutions must be considered when crafting additional regulatory requirements.

Community Bank Outreach in Developing Regulatory Changes

In the proposed rule, the Federal Reserve states that many of the regulatory changes are based on consumer testing. Nevertheless, the Federal Reserve also states that in considering the proposed revisions, it sought to ensure that the proposal would not reduce access to credit, and sought to balance the potential benefits for consumers with the compliance burdens imposed on creditors.

In addition, the Federal Reserve states that throughout the review process leading to this proposal, the staff met with or conducted conference calls with industry and consumer group representatives, as well as consulted with other federal banking agencies. The Federal Reserve also states that it reviewed HELOC disclosures currently used by creditors, internal Board research on home equity lending, and surveys on HELOC usage and trends. While ICBA is pleased that the Federal Reserve conducted consumer testing in developing these revised disclosures and additional regulatory requirements, we are concerned that there was not enough industry outreach to community banks conducted when these disclosures and rules were being created, which is crucial in determining a proper balance between the potential benefit of regulatory changes for consumers with the compliance burdens for banks.

ICBA urges the Federal Reserve to continue industry outreach efforts when drafting the final rules for HELOC provisions and disclosures, particularly with community banks, which constitute 97% of all banks in the United States. In particular, given the large impact these rules would have on community banks, ICBA strongly encourages the Federal Reserve to conduct industry outreach meetings throughout the country and engage financial institutions of all sizes in discussions about the impact these regulatory changes will have on their mortgage business.

While ICBA understands the need to provide consumers with greater protections and more transparent disclosures, we have serious concerns that dramatic regulatory changes, if finalized without a thorough knowledge of community bank business practices, will result in too much regulatory burden for community banks and will consequently force many of these banks to exit the mortgage business. The lack of community bank representation in the mortgage marketplace will only affect consumers in a negative way, especially consumers in rural communities who have little access to larger national banks and who rely on their local community bank for all of their lending and banking needs.

In addition, ICBA would be open to meeting with Federal Reserve staff to discuss our comments in more detail, or alternatively, to organizing a meeting in Washington with community bankers and Federal Reserve staff so that our members can share their specific experiences regarding mortgage lending in their communities and the potential operational and compliance costs of these proposed regulatory changes.

Furthermore, ICBA notes that the Federal Reserve has not yet conducted consumer testing on the periodic statement and change-in-term notices but is planning to do so. We urge the Federal Reserve to conduct extensive consumer testing on these disclosures as well and not to rely on the information received when consumer testing for the credit card disclosures. While both credit cards and HELOCs are open-end credit plans, they are completely different products and consumers may read and process the information differently for a HELOC product that is secured by their dwelling. Therefore, ICBA does not think the consumer testing data from the credit card regulatory review should be considered at all when determining consumer behavior and understanding of HELOC disclosures.

Deadline for Compliance with Final Rules

The Federal Reserve states it contemplates providing creditors sufficient time to implement any revisions that may be adopted, and asks for comment on an appropriate implementation period.

ICBA Comments:

ICBA strongly recommends that any final rules amending Regulation Z to address HELOCs require a compliance deadline of no sooner than 18 months following the publication of the final rules. Any changes to the forms and processing of mortgage loans will require significant systems modifications and compliance costs, and community banks especially will need as much time as possible to comply with these changes. This is especially the reality given the increase in regulatory changes in the past year (e.g., Regulation E, SAFE Act, Regulation Z credit card and student loan amendments, RESPA amendments) and the fact that community banks do not have the compliance resources that larger financial institutions have. Allowing at least 18 months will enable community banks to effectively comply with any changes. The Federal Reserve understood the need for providing an appropriate amount of compliance time when it published amendments to Regulation Z regarding credit cards with a compliance date of over 18 months after the regulatory changes were published. We urge the Federal Reserve to apply this same standard when finalizing rules regarding HELOCs.

Disclosures at Application

Regulation Z requires creditors to provide to the consumer two types of disclosures at the time of application: a set of disclosures describing various features of a creditor's HELOC plans and a home-equity brochure published by the Federal Reserve, which provides information about how HELOCs work. Neither contains transaction-specific information about the terms of the HELOC dependent on underwriting, such as the APR or credit limit.

The proposal would require a creditor to provide to consumers at application a new one-page document published by the Federal Reserve entitled, "Key Questions to Ask about Home Equity Lines of Credit." The Federal Reserve proposed eliminating the requirement for creditors to provide the HELOC brochure at application. In addition, the proposal would replace the application disclosures with transaction-specific HELOC disclosure that must be given within three business days after application, but no later than account opening.

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ICBA Comments:

ICBA supports the requirement that this "Key Questions" document be provided to consumers and has the following edits to this proposed disclosure document:

- Question 1 – For the question, "Can my interest rate increase," the answer states that "Lines of credit usually have a variable interest rate, which means that the rate can increase or decrease from time to time. A lender may offer you a lower initial interest rate for a short time. However, after this period ends the rate will usually increase." ICBA recommends this last sentence instead state, "However after this period ends the rate may be subject to change" or "the rate may increase or decrease." We recommend this edit because for HELOCs with initial rates, it is not always accurate that the rate will "usually increase." The rates are typically variable which means they may increase or decrease depending on the market and the consumer's particular credit agreement. The answer should therefore reflect this more accurate scenario.

- Question 5 – Question 5 which asks, "Will I owe a balloon payment," includes the answer, "Under some plans, if you make only the minimum payments you will not pay off your entire balance by the end of the term. At that point, you will have to pay the remaining balance as a single lump-sum, known as a 'balloon payment'. If you cannot get another loan to repay this amount, or pay it off using your savings, you could lose your home." ICBA strongly recommends that the last sentence be edited to instead state, "When the balloon payment becomes due, consumers may repay the total amount due or alternatively refinance the loan or sell their home to repay the loan amount. You should review these alternatives with your financial institution before you agree to the loan terms." To state that consumers may lose their home could unintentionally cause them to fear balloon loan products which are common loan products provided by community banks, especially to consumers in rural communities whose properties may not qualify for more traditional mortgage loans.

- Question 6 – In question 6 which asks, "Do I have to pay any fees," many of the fees listed in the answer that consumers may have to pay may actually not be required by a financial institution. ICBA recommends that the answer to this question include a last sentence which states, "Because these fees may or may not be imposed by your lender on home equity line of credit accounts, consumers should verify with their lenders what fees may be charged to their specific account."

Disclosures Within Three Days After Application

Regulation Z currently requires the disclosure that must be provided on or with an application to contain information about the creditor's HELOC plans, including the length of the draw and repayment periods, how the minimum required payment is calculated, whether a balloon payment will be owed if a consumer only makes minimum required payments, payment examples and what fees are charged by the creditor to open, use, or maintain the plan. These disclosures do not include information dependent on a specific borrower's creditworthiness or the value of the dwelling, such as a credit limit or the APRs offered to the consumer, because the application disclosures are provided before underwriting takes place.

The Federal Reserve is proposing to replace the application disclosures with transaction-specific "early HELOC disclosures" that must be given within three business days after application but no later than account opening, and revise the format and content of the disclosures to make them more clear and conspicuous. The proposal would require creditors to include several additional disclosures in the early HELOC disclosures not currently required to be disclosed as part of the application disclosures, such as (1) the APRs and credit limit being offered; (2) a statement that the consumer has no obligation to accept the terms disclosed in the early HELOC disclosures and (3) if the creditor has a provision for the consumer's signature, a statement that a signature by the consumer only confirms receipt of the disclosure statement. The proposal would also impose stricter format requirements for the proposed early HELOC disclosures than currently are required for the application disclosures, and the early HELOC disclosures must be provided in the form of a table.

ICBA Comments:

While ICBA believes that some of these disclosures may be helpful for consumers, we think the disclosure of a table is unnecessary and overly burdensome for community banks, and provides little benefit to consumers given the disclosures are already clearly displayed on the document. This disclosure requirement does not seem as necessary as some of the other requirements, and we urge the Federal Reserve to not impose additional burdensome requirements unless there is a strong consumer need for them, which in this case, we do not believe there is.

Disclosures at Account Opening

Regulation Z currently requires creditors to disclose costs and terms before the first transaction is made for a HELOC. The disclosures must specify the circumstances under which a "finance charge" may be imposed and how it will be determined, including charges such as interest, transaction charges, minimum charges, each periodic rate of interest that may be applied to an outstanding balance as well as the corresponding APR. In addition, creditors must disclose the amount of certain charges other than finance charges, such as a late-payment charge. There are currently few formatting requirements for this information and these disclosures are typically interspersed among other contractual terms in the creditor's account agreement.

The proposal would revise the account opening disclosure requirements in two ways – by requiring a tabular summary of key terms and by reforming how and when cost disclosures must be made. The proposal would require specific costs and terms to be summarized in a table, which would be substantially similar to the early HELOC disclosure table that would be provided within three business days after application, except the account-opening table would show only the payment plan chosen by the consumer rather than a maximum of two plans required in the early HELOC disclosures, and the account-opening table would contain transaction fees and penalty fees not required in the early HELOC disclosure table.

ICBA Comments:

While ICBA understands the usefulness of providing this costs table disclosure at account opening, we think that given this requirement, the requirement that a costs table also be provided within three days after application is superfluous and unnecessary. While there could be some usefulness in the consumer having the ability to compare the table at account opening with the table they previously received, we do not find that this will be the case in this instance, given that the two tables will contain different cost and fee disclosures. ICBA believes that providing one table with this information should be an adequate disclosure for consumers, and if this table is required, we would prefer that it only be required at the account opening stage in the process where the information will be of most benefit to the consumer.

<u>Periodic Statements</u>

Currently, Regulation Z requires creditors to provide periodic statements reflecting the account activity for the billing cycle, which is typically one month. In addition to identifying each transaction on the account, creditors must identify each "finance charge" using that term, and each "other charge" assessed against the account during the statement period. Creditors must also disclose the periodic rate that applies to an outstanding balance and its corresponding APR. Creditors also must disclose an "effective" or "historical" APR for the billing cycle, which includes interest and finance charges.

The proposed rule would eliminate the requirement to disclose the effective APR for HELOCs, and creditors would no longer be required to characterize particular costs on the periodic statement as "finance charges." Instead, costs would be described either as "interest" or as a "fee." In addition, interest charges and fees

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imposed as part of the plan must be grouped together and totals disclosed for the statement period and year-to-date.

ICBA Comments:

ICBA strongly supports the elimination of the “effective” or “historical” APR, as this disclosure is confusing to consumers and provides them with little to no benefit. However, ICBA opposes the requirement that interest charges and fees imposed as part of the plan be grouped together and totals be provided on periodic statements. This requirement would be very burdensome for community banks, given the necessary systems changes.

Furthermore, while we understand the Federal Reserve’s motivation for requiring these type of disclosures for overdraft protection services on depository institutions’ periodic statements given the impact of the disclosure in this instance would be to show the consumer what they are spending on overdraft protection which are avoidable expenses within their control, we do not believe that consumers would have the same benefit with these disclosures on HELOC statements, since these interest charges and fees are agreed to by the consumer at account opening and are not necessarily due to the consumer’s operation of the account, as is the case with overdraft protection services. The cost and fee disclosures should instead be highlighted individually and not grouped together for the statement period and year-to-date.

Change-in-Terms Notices

Currently, Regulation Z requires creditors to send, in most cases, notices 15 days before the effective date of certain changes in the account terms. Advance notice is not required in all cases (i.e., if an interest rate increases due to a consumer’s default or delinquency or advance notice is not required), and no notice is required if the specific change is set forth in the account agreement.

The Federal Reserve proposes to revise the change-in-terms rules for HELOCs to parallel in most respects the revisions adopted for open-end unsecured credit, including the content, timing, and format of such notices. The proposal would expand the circumstances in which consumers receive advance notice of changed terms including increased rates, would provide consumers with earlier notice of 45 days in advance of the effective date of the change rather than 15 days and would impose new formatting requirements for the change-in-terms notices. The Federal Reserve is proposing that if a changed term is one that must be provided in the account-opening summary table, then creditors must also provide that change in a summary table on the change-in-terms notice. In addition, if a notice enclosed with a periodic statement discusses a change to a term that must be disclosed in the account-opening summary table or announces that a default rate will be imposed on the account, a table summarizing the impending change would have to appear on the periodic statement.

ICBA Comments:

ICBA thinks 30 days should be enough time for advance notice of changes in terms to HELOCs to be provided to consumers. Any delay beyond 30 days may confuse the consumer because implementation would extend beyond the next statement period. In addition, a lot can happen in 45 days regarding credit quality. If terms are being changed because the credit is deteriorating, a shorter period would be better.

Account Terminations

Regulation Z currently permits a creditor to terminate a HELOC for several reasons, including when the consumer has failed to meet the repayment terms of the agreement for any outstanding balance. The proposal would revise this provision to provide that a creditor may not terminate a HELOC plan for payment-related reasons unless the consumer has failed to make a required minimum periodic payment more than 30 days after the due date for that payment.

ICBA Comments:

In general, ICBA believes that 30 days should be enough time, but also believes the Federal Reserve should allow financial institutions to determine the amount of time before termination of an account. Contract terms should control this requirement instead of federal regulation, considering the bank must also balance the consumer interest with its safety and soundness interests. It would definitely not be in the best interest of a financial institution to be required to leave a line of credit open when there are delinquencies on the account.

Suspensions and Credit Limit Reductions Based on a Significant Decline in the Property Value

Regulation Z permits a creditor temporarily to suspend advances or reduce a credit line on a HELOC if the value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan. The commentary provides a safe harbor standard for determining whether a decline is significant, which is if it results in the initial difference between the credit limit and the available equity diminishing by 50 percent.

The proposal would revise the staff commentary to provide two safe harbors on which creditors could rely to determine whether a decline in property value is significant. First, for plans with a combined loan-to-value ratio at origination of 90 percent or higher, a five percent reduction in the property value on which the HELOC terms were based would constitute a significant decline in value. Second, for plans with a combined loan-to-value ratio at origination of under 90 percent, the existing safe harbor would be retained.

ICBA Comments:

ICBA is generally in favor of these safe harbors, but recommends the second safe harbor be changed and apply for plans with a combined loan-to value ratio at origination of under 90 percent when the decline results in the initial difference between the credit limit and the available equity diminishing by 25%, instead of the proposed 50%. Given the volatility of today's market, this tighter safe harbor would provide greater protection for banks and limit their exposure.

Suspensions and Credit Limit Reductions Based on a Material Change in the Consumer's Financial Circumstances

Regulation Z permits a creditor to suspend advances or reduce the credit limit of a HELOC when "the creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations of the plan because of a material change in the consumer's financial circumstances." The proposal would clarify that evidence of a material change in financial circumstances may include credit report information showing late payments or non-payments by the consumer, such as delinquencies, defaults, or derogatory collections or public record related to the consumer's failure to pay other obligations. The proposed rule would also clarify that any payment failures relied on to show a material change in the consumer's financial circumstances would need to have occurred within a reasonable time from the date of the creditor's review of the consumer's credit performance. The Federal Reserve is proposing a six month safe harbor for this "reasonable time" period.

ICBA Comments:

ICBA agrees that this is a fair requirement for both consumers and financial institutions and believes that a six month safe harbor in this instance is a reasonable time frame. However, ICBA urges the Federal Reserve to provide banks with flexibility in interpreting regulatory requirements, and to not impose subjective standards that will be difficult and burdensome for community banks to comply with.

Reinstatement of Accounts

Regulation Z requires creditors to reinstate credit privileges once no circumstances permitting a freeze or credit limit reduction under the statute or regulation exist. The Federal Reserve is proposing changes that would require additional information in notices of suspension or reduction about consumers' ongoing right to request reinstatement and creditors' obligation to investigate this request; require creditors to complete an investigation of a request within 30 days of receiving the request and to provide notice of the results to consumers whose credit privileges will not be restored; and require creditors to cover the costs associated with investigating the first reinstatement request by the consumer.

ICBA Comments:

ICBA is not in favor of this proposed requirement because this would provide a great expense and burden for community banks due to the consumer's inability to pay on their account. ICBA especially disagrees with the requirement that creditors complete an investigation of a request for reinstatement with 30 days, which is not a long time period, and to require that creditors cover the costs associated with this request. Again, this is a costly and burdensome requirement, especially for community banks that may not have the resources to quickly investigate these requests or the funds to pay for such investigation. If consumers wish to have their HELOC accounts reinstated, they should be obligated to pay for any investigation or fees associated with this reinstatement, and banks should be allowed at least 60 days to conduct these investigations.

ICBA thanks you for the opportunity to comment on this proposed rule. As you are aware, community banks are common-sense lenders that offer mortgage products on fair terms as a means of providing valuable services to their customers. In drafting final 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 that led us to our current economic crisis.

If you have any questions about this letter or need additional information, please do not hesitate to contact me at 202-659-8111 or Elizabeth.Eurgubian@icba.org. In addition, ICBA would be happy to meet with Federal Reserve staff to discuss these comments in further detail and provide additional insight from the community banker perspective.

Sincerely,

/s/

Elizabeth A. Eurgubian

Vice President & Regulatory Counsel