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January 14, 2010

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: Docket No. R-1378

Dear Ms. Johnson:

The Independent Community Bankers of America<sup>1</sup> (ICBA) appreciates the opportunity to comment on the interim final rule implementing Section 404(a) of the Helping Families Save Their Homes Act, which established a new requirement for notifying consumers of the sale or transfer of their mortgage loans.

#### Background

The Helping Families Save Their Homes Act amended the Truth in Lending Act to establish a new rule that requires a purchaser or assignee that acquires a mortgage loan to provide certain disclosures no later than 30 days after the date on which the loan is acquired. This includes loans acquired through mergers, acquisitions, or reorganizations if ownership of the loan is transferred to a different legal entity.

This interim final rule applies new disclosure requirements to any person or entity that acquires ownership of at least one existing consumer mortgage loan in a 12 month period, whether the acquisition occurs as a result of a purchase or other transfer or assignment. Additionally, these requirements apply only if the legal title to the debt obligation is acquired and therefore would not apply when the note holder issues mortgage-backed securities but does not transfer legal title to the loan.

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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).

### ICBA Position

ICBA agrees with the scope of the rule's coverage and the exclusion of persons who are not regularly engaged in the business of purchasing or investing in consumer mortgage loans. However, a threshold of one loan in a 12 month period is too low and does not include instances where it might be necessary to transfer ownership of more than one debt obligation owned by an individual not frequently involved in such transactions.

As an example, an individual homeowner might choose to provide seller financing each time he sells his home and hold the notes throughout his lifetime. At a later date, ownership of his debt obligations may need to be transferred to another family member or to a trust within a 12 month period if the original note holder dies. In this case, more than one debt obligation may be transferred within a year to persons who are not regularly engaged in the business of purchasing or investing in consumer mortgage loans and would not have systems in place to comply with these requirements. Therefore, we recommend that the Board use the same standard that applies when determining whether a person is regularly engaged in extending consumer credit - disclosure requirements would apply to persons that acquire more than five consumer mortgage transactions in the preceding or current calendar year.

The required disclosures must be delivered on or before the 30th day following the date a covered person acquired a mortgage loan as long as the covered person still owns the loan on the 30th day after the acquisition. No disclosures would be required if the covered person transfers or assigns the loan to another party before the 30th day. This exception was created to avoid possible confusion to consumers if they receive multiple and/or outdated contact information because the loan is subsequently sold or transferred multiple times.

Excepting covered persons who no longer own the mortgage loan shortly after an acquisition enables consumers to more easily determine the final owner of their mortgage. Often, consumers are not aware of the mortgage finance process and could potentially become confused if they receive multiple and outdated contact information from interim or temporary holders of a mortgage loan. However, 30 days does not provide sufficient time to receive and review documentation, as well as to enter information into a processing system and send disclosures. We respectfully suggest an exception that requires a covered person to provide disclosures as long as the covered person still owns the loan on the 60<sup>th</sup> day after the loan is assigned or transferred.

If an original creditor or owner of a mortgage sells or transfers the legal title of a mortgage to secure business financing, but does not recognize the transaction as a sale on its books and records for accounting purposes, the acquiring party is not subject to the disclosure requirements. However, if the transferor does not repurchase the mortgage loan, the acquiring party must make the required

disclosures within 30 days after the date that the transaction is recognized as an acquisition. While ICBA agrees with providing this exception so as not to complicate compliance, impose unnecessary burden and expense, or confuse consumers, making this exception contingent on how the original creditor recognizes the transaction on its books and records may be confusing and potentially lead to non-compliance. The acquiring party will not know how the seller treats the sale and repurchase agreement on its books. We suggest that an exception be made when a mortgage loan is transferred to a covered person in connection with a repurchase agreement regardless of how the loan is recognized on the original owner's books and records.

The disclosures must identify the loan that was acquired and, consistent with the statute, include the acquiring party's name, address, and telephone number. If there is more than one acquiring party, only one disclosure must be sent, but information must be provided for each of them. The ICBA believes providing information regarding all covered persons in a transaction may be confusing for the consumer. The address and telephone number of the party assuming responsibility for providing disclosures and servicing the loan should be included in the disclosure to provide consumers a clear indication of where to send payments and answer questions about the loan.

In addition to disclosing the location of where ownership of the debt is recorded, the covered person has the option of disclosing the location where the security interest in the property is or may be recorded. However, the rules state that the disclosure does not need to state the address for the governmental office where the covered person's ownership interest is recorded. It would be sufficient to state that the transaction is or may be recorded in the office of public land records or the recorder of deeds office "for the county or local jurisdiction where the property is located."

While it is important to disclose to the consumer the location of where the security interest is recorded, a specific postal address may not be readily accessible to the acquiring party and would not provide a significant benefit to consumers. Additionally, consumers typically do not need the specific address at the time their loans are transferred, and while the name of the government office would not change, its postal address may, which would confuse consumers who may refer to the disclosure at a later date.

If you have any questions or need additional information, please do not hesitate to contact me at 202-659-8111 or by email at [Lilly.Thomas@icba.org](mailto:Lilly.Thomas@icba.org).

Sincerely,

/s/

Lilly Thomas  
Vice President and Regulatory Counsel