LouisianaBankers
ASSOCIATION

April 21, 2011

By electronic delivery to:
Regs.comments@federalreserve.gov

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1406

Re: Proposed Rule amending Regulation Z to implement certain amendments to TILA made by the Dodd-Frank Wall Street Reform & Consumer Protection Act. Requirement of establishing escrow accounts for higher-priced mortgage loans secured by a first lien on a dwelling – exemptions of certain loans from the escrow requirements.
[Docket No. R-1406]

Dear Ms. Johnson:

The Louisiana Bankers Association (LBA) appreciates the opportunity to comment on the Federal Reserve's Proposed Rule amending Regulation Z to implement certain amendments to the Truth in Lending Act (TILA) made by the Dodd-Frank Wall Street Reform & Consumer Protection Act (Dodd Frank). The LBA is the sole state trade association for the commercial banking industry in Louisiana. The members of the LBA are comprised of some 99% of the federally chartered and state chartered banks, savings banks, and savings and loan associations operating in Louisiana. There are 165 commercial banks, savings banks and savings & loan associations located in Louisiana, and only 8 of them have assets exceeding one billion dollars. Thus, most of the financial institutions operating in Louisiana are smaller community banks.

We strongly urge the Federal Reserve to amend this Proposed Rule to broaden the exception to the escrow requirements to allow for community banks to qualify for the exception. Congress, through the enactment of Dodd Frank, specifically recognized the appropriateness and necessity of exceptions to the escrow requirements. Section 1461 of Dodd Frank, amending TILA by adding 129D, specifically provides for exemptions to the escrow requirements for community bank - lenders as follows:

> *(c) Exemptions- The Board may, by regulation, exempt from the requirements of subsection (a) a creditor that--*
>
> *(1) operates predominantly in rural or underserved areas;*
>
> *(2) together with all affiliates, has total annual mortgage loan originations that o not exceed a limit set by the Board;*
>
> *(3) retains its mortgage loan originations in portfolio; and*

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(4) meets any asset size threshold and any other criteria the Board may establish, consistent with the purposes of this subtitle.

Dodd-Frank Section 1461.

The Federal Reserve's proposed rule providing exceptions to escrow requirements (12 CFR 226.45(b)(2)) is far more restrictive than what was contemplated by Congress in Section 1461 of Dodd Frank. In addition, the proposed exemptions do not reasonably balance the interests of protecting the borrower with the cost of compliance. Many banks that acted responsibly with their loan customers will not be able to meet the requirements of the exemptions.

There is a rational reason for not requiring residential mortgage loans to escrow for insurance and taxes when the lender holds the loan for its portfolio. When a lender makes a portfolio loan the lender intends to hold the loan and have the borrower as a bank customer for an extended period. It is in the best interest of both the borrower and the lender to make sure that the borrower can afford to pay the required taxes and insurance related to the mortgaged property.

In comparison, the interests of the borrower and the lender or broker may have not always been aligned when the residential mortgage is originated for the secondary market. Secondary market mortgage loans are held by the lender or broker for a very short time, if at all. The broker or originator for a secondary market loan makes fees at the time the loan is made and is not focused on the long-term viability of the loan. The secondary market mortgage loan is the type of loan where requirements for escrowing for taxes and insurance can serve a useful purpose in making a borrower aware of their responsibility to pay for hazard insurance and taxes. It is submitted that the qualifying criteria for a lender to be exempt from the escrow requirements are more restrictive than the criteria provided in Dodd Frank. The exceptions contained in the Proposed Rules are not closely tailored to the criteria of the Dodd Frank Act and will certainly impose a hardship on many Louisiana community banks who act responsibly.

<u>50% of creditor's first-lien higher-priced loans in counties designated by the Board as "rural or underserved":</u>

Many bankers and citizens familiar with Louisiana would tell you that the entire state is rural except for the major cities of New Orleans, Baton Rouge, Lafayette, Lake Charles, Alexandria, Shreveport and Monroe. The definitions of "rural" and "underserved" used in the Proposed Rules are too restrictive and do not reflect the geographic reality of our region of the country. The term "rural" should not include micropolitan areas. According to the U.S. Office of Management and Budget (OMB) a micro area contains an urban core of at least 10,000 (but less than 50,000) population. There are several areas within the State of Louisiana that are classified as micropolitan areas based on the 2000 census numbers that should not be areas precluded from the exception. For example, Abbeville, Louisiana has a population of 53,807 and is classified as a micropolitan area. Another example is Bastrop, Louisiana, which has a population of 31,021 and is also classified as a micropolitan area. Another designated micropolitan area is Jennings, Louisiana, with a population of 31, 435. The term "micro" means small, and these small rural areas should be eligible for the rural exception for escrowing found in 12 CFR 226.45(b)(2)(iii)(A).

The "rural" definition is restricted further by limiting eligibility for the exception if the lender makes certain loans in counties/parishes that are ADJACENT to a metropolitan or micropolitan area. 12 CFR 226.45(b)(2)(iv)(A) of the Proposed Rule provides as follows:

(iv) For purposes of paragraph (b)(2)(iii)(A) of this section:
(A) A county is "rural" during a calendar year if it is not in a metropolitan statistical area or a micropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget, and:
(1) it is not adjacent to any metropolitan area or micropolitan area; or
(2) it is adjacent to a metropolitan area with fewer than one million residents or adjacent to a micropolitan area, and it contains no town with 2500 or more residents.
12 CFR 226.45 (b)(2)(iv)(A).

This definition or restriction means that a lender would be limited in making loans adjacent to micropolitan areas- towns with a population of 10,000 residents, unless the adjacent town has 2500 or fewer residents. This severely restricts many lenders in Louisiana from qualifying for the exception where all would agree that the area is rural. The LBA urges the Federal Reserve to revise its definition of "rural" to allow a community bank that makes loans in small rural towns to still qualify for the "rural" exception.

Threshold of 100 or fewer loans is too low:
The Federal Reserve's Proposed Rule providing exemptions to the requirement for escrow accounts will not apply to many community banks. The proposed rule has a *de minimis* threshold for lenders who do not make many residential mortgage loans. Yet, the threshold is set too low. The threshold of originating 100 or fewer loans secured by a first lien on real property or a dwelling means that banks will have to provide escrow accounts where the volume of loans is so low that the bank will lose money providing the escrow accounts. It has been stated by representatives of the Federal Reserve on two different occasions when Louisiana bankers met with the office that it is understood that in order to break even with providing the service of escrow accounts a bank would need to maintain at least 400 or 500 escrow accounts. Thus, the threshold for requiring escrow accounts has been set substantially below the volume needed for a community bank to not lose money by providing this mandated service. The exception criteria should be set at a meaningful volume level that will not ensure that banks lose money when providing escrow services.

Requirement of no previous escrow accounts makes exemption meaningless:
Section 226.45(b)(2)(iii)(C) requires that in order to qualify for the exemption from offering escrow accounts, "[n]either the creditor nor its affiliate maintains an escrow account of the type described in paragraph (b)(1)...". The initial escrow requirements took effect in April 2010. Since that time banks have attempted to comply with the new requirement. The cost of compliance has been significant for community banks with added costs of personnel, training, software, and office equipment. The cost of compliance for many banks has caused banks to lose money since many banks do not originate enough residential mortgage loans to generate enough volume to break even with providing the escrow service. As a practical matter the cost of providing the service is shared by fewer loan customers. The proposed exemption requirement now penalizes those financial institutions that have struggled to comply, while rewarding those who have not complied. Congress, in Dodd Frank, provided broad authority to set reasonable limits. However, this requirement is arbitrary and has no rational basis and ignores the time sequence of a preexisting regulation which took effect in 2010 requiring escrow accounts.

It is urged that the requirement in the exception of a lender having, "no previous escrow accounts," needs to be clarified. There should be a cutoff date of April 1, 2010 when the initial requirement for lenders to escrow for higher priced mortgage loans went into effect. There are many community banks who were not offering escrow accounts until the Federal Reserve imposed an escrow requirement in

2010. Those institutions have tried to comply in good faith and should be eligible for the exception from this costly escrow requirement.

The escrow requirement, while intended to "protect" borrowers, is not always wanted by borrowers. The Federal Reserve's proposal does not give the borrower the ability to voluntarily opt-out of the escrow requirement. There are many knowledgeable borrowers who have expressed extreme displeasure with having to escrow. Borrowers should be given the ability to choose not to escrow if it is their preference.

In conclusion, the LBA asks the Federal Reserve to make changes to its exceptions to the requirement of escrowing for hazard insurance and taxes. The current language in the Proposed Rule does not reflect the "rural" areas in which many community banks operate in Louisiana. Further, community banks should not be forced to provide escrow services with such low volumes of loans that they incur financial losses. Finally, restricting banks from being eligible for the exception because they have complied with the escrow requirements imposed by the Federal Reserve in 2010 is patently unfair and causes one to question the meaningfulness of the exceptions contained in the Proposed Rule.

The LBA thanks you for the opportunity to comment on this proposal. If you have questions about this letter or need additional information, please do not hesitate to contact me at 225-214-4836 or boneno@lba.org.

Sincerely,

David Boneno

David Boneno
General Counsel