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Nessa Feddis
Vice President and Senior Counsel
Center for Regulatory Compliance
Phone: 202-663-5433
nfeddis@aba.com

By electronic delivery to federalreserve.gov

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

February 1, 2011

**Re: Docket No. R-1399
Regulation Z
Truth in Lending Act
75 Federal Register 78636
December 16, 2010**

Dear Ms. Johnson,

The American Bankers Association (ABA)¹ appreciates the opportunity to provide our comments on the Federal Reserve Board's (Board) proposed changes to Regulation Z (Truth in Lending Act) to increase the threshold for exempt consumer credit transactions from \$25,000 to \$50,000 and to adjust that threshold annually for inflation pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Our comments relate to treatment of non-home secured open lines of credit whose credit limits or commitments are above the exemption threshold at consummation, but subsequently fall below the regulatory threshold because the customer's credit limit is lowered or the regulatory threshold is adjusted upward. Generally, we agree with the proposal, but we recommend that the rule consider a "firm commitment" of credit that is exempt at account opening to continue to be exempt if the customer requests to have a commitment amount lowered or if the Board subsequently adjusts the threshold upward.

Under the proposal, open-end accounts (unless secured by real property) are exempt from the regulation if either the initial extension of credit at account opening exceeds the threshold amount or the creditor makes a firm written commitment in excess of the threshold amount at account opening. Comment 2(i) to Section 226.3(b) provides that subsequent changes to the account or the threshold amount may result in the account no longer qualifying for the exemption:

In these circumstances, the creditor must begin to comply with all of the applicable requirements of this Part within a reasonable period of time after the account ceases to be exempt . . . For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by Section 226.6 reflecting

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$165 million in assets."

the current terms of the account and begin to provide periodic statements consistent with Section 226.7.

Different rules apply depending on whether the transaction involves an “initial extension of credit” or a “firm commitment” to extend credit. If the “initial extension of credit” exceeds the threshold at account opening, the account remains exempt even if the Board subsequently increases the threshold for exemption. Furthermore, the account remains exempt (1) even if there are no further extensions of credit, (2) subsequent extensions of credit do not exceed the threshold amount, (3) the balance is subsequently reduced below the threshold amounts, or (4) the credit limit is subsequently reduced below the threshold amount. In contrast, for a “firm commitment” to remain exempt based on the initial commitment amount, the firm commitment amount must continue to exceed the threshold currently in effect, as adjusted annually by the Board.

We found few banks that make non-home secured open-end lines of credit that do not provide current Regulation Z disclosures (even if the account exceeds the current \$25,000 threshold and is therefore exempt). However, some banks’ private banking departments and brokerage affiliates offer exempt accounts and do not provide Regulation Z disclosures for those exempt accounts. They report that these lines of credit are renewed frequently to protect against market and credit risks, so they rarely lower the limit before renewal. However, they will lower the limit upon the request of the borrower. The rule does not require the bank to comply with Regulation Z disclosure requirements if the limit is lowered after account opening to an amount under the threshold if it involves an “initial extension” of credit, but it does require compliance if it involves a “firm commitment” to extend credit. We recommend that the rule exempt firm commitments when the commitment amount exceeds the threshold at account opening, even if that commitment amount is subsequently lowered ***at the request of the borrower.***

Because these types of loans are usually exempt from Regulation Z and housed in an area of the bank that typically does not handle Regulation Z-covered loans, compliance with the proposal would be burdensome and pose a compliance trap for inadvertent violations. Banks could establish procedures to ensure they do not take the initiative to lower a commitment amount, but they would have to design, implement, and audit special procedures for the rare exception when a customer asks to have the commitment amount lowered. The infrequency of application makes inadvertent violations more likely. Moreover, arranging to provide the initial disclosures and compliant periodic statements takes time and may delay the customer’s ability to rely on the commitment. Given the compliance burden and risk and the fact that the lower commitment is at the customer’s request and for the customer’s benefit, it is unnecessary to impose the requirements in these instances.

We appreciate the opportunity to provide our comments on this proposal.

Regards,

Nessa Eileen Feddis