December 15, 2010

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

Re: Docket No. R-1390: Proposed Regulation Z Changes: Exemption Transactions, Guarantors' Right to Rescind and Loan Modifications

Dear Ms. Johnson:

The Kansas Bankers Association (KBA) appreciates the opportunity to comment on this most important matter. The KBA is a non-profit trade organization having 305 of the 309 Kansas banks as members. Member banks are diverse in terms of geography -covering every corner of the state, and in terms of size – from the smallest bank of $3.9 million in assets to the largest bank of $3.5 billion in assets. Most of these banks are engaged in making loans secured by the customer's principal dwelling, and so are interested in any proposed changes to the already complex disclosures required by Regulation Z and the Truth in Lending Act (TILA).

This is the second comment letter that the KBA has written with regard to this proposal. The first comment letter addressed the proposed changes to the disclosures for debt protection products. This letter will focus on three other provisions with which we have concerns.

Exempt Transactions. The proposal suggests that revocable living trusts should no longer be considered exempt from coverage of Regulation Z and TILA, so that any credit extended to a revocable living trust would be subject to all of Regulation Z. The rationale is that any credit extended to a revocable living trust is in substance, a loan to a consumer. This rationale totally ignores a basic tenant established throughout entity law: that a trust – revocable or irrevocable – is an entity and not a natural person. Revocable trusts are formally created entities – the grantor does not necessarily serve as the trustee. We fail to see the logic in providing consumer protections to a separate legal entity that is likely to have a third party managing the assets. This treatment of revocable trusts would certainly blur the legal lines that have been drawn between legal entities and natural persons.

Secondly, the danger in assuming that all loans made to a revocable living trust are consumer purpose loans, is too wide a net to cast. There are many instances where a business purpose loan is made to a revocable living trust. This is contrary to the original purpose of Regulation Z, which is to provide useful information to the unsophisticated consumer.

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Guarantors' Right to Rescind. The proposal provides that guarantors would have the right to rescind a loan secured by a consumer's principal dwelling if the consumer has the right to rescind, and the guarantor has also pledged his or her principal dwelling as additional collateral and has personally guaranteed the loan. The commentary explains that this is necessary because the guarantor is putting him or herself in a very similar situation as is the borrower. We are concerned that this proposed revision of comment 2(a)(11)-1 has the effect of allowing a third party to rescind a transaction for which he or she neither negotiated the terms, and for which it appears they can exercise without the borrower's consent or knowledge. The guarantor's obligation on the loan is contingent – secondary to that of the primary obligor. It raises many questions, again, about established law regarding the relationship of a guarantor to the borrower and to the bank.

Loan Modifications. The proposal would expand new TILA disclosures to every instance when the parties agree to change any term such as the interest rate, amount of payment or other provision in the original agreement. The current regulation provides that new disclosures are only required when such a change would not be to the benefit the customer. We believe that there is no need to require new disclosures when both parties agree to a change in terms which are in the interest of the customer. The current law sufficiently protects the customer should changes in the original agreement result in higher payments, interest rates or anything that could negatively affect the customer. We question the need to change this provision when there appears to be true benefit to the customer, and which will increase the cost and burden to the industry.

In conclusion, there are many provisions contained in this proposal about which we have not commented. The comments we did submit were based on questions about the true need for change in these areas. We expressed concern about these changes and the affect they will have on long-standing law regarding entities and relationships, and we expressed concern that change where there appeared to be no need and which would only increase the cost and burden on the banking industry was really necessary.

Again, we appreciate the opportunity to make these comments, and know they will be considered as the final rule is written.

Sincerely,

Charles A. Stones
President
Counsel

Terri D. Thomas
Director-Legal Department

Kathleen A. Olsen
SVP-General