IOWA BANKERS ASSOCIATION

8800 NW 62nd Avenue
PO Box 6200
Johnston, Iowa 50131-6200
515-286-4300 • 800-532-1423
515-280-4140 FAX
www.iowabankers.com

Via Electronic Delivery to:
Regs.comments@federalreserve.gov

December 27, 2010

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1390
75 FR 58538-58788

Ms. Johnson and Board:

Iowa Bankers Association (IBA) is a trade association representing over 350 banks and savings and loan associations operating in the state of Iowa. Our membership is predominantly comprised of banks and savings associations deemed to be "small" for purposes of the Community Reinvestment Act (CRA) with a handful of "intermediate small" and large banks. Our member banks offer a limited variety of in-house portfolio residential mortgage loan products including adjustable rate mortgage loans, balloon loans and fixed rate loans. Some of our members also originate long term fixed rate and ARM loans that are sold to secondary investors. The limited variety mortgage products offered by our members meet the unique needs of rural Iowa where housing prices are much lower. They are not high risk and are not abusively priced. Recent rule-making processes appear to assume all mortgage loans are a commodity and all borrowers are the same and do not take into account the unique nature of traditional community banks and the customers they serve.

Most of our member banks do not have fulltime compliance staff or in-house legal counsel to review, analyze, and implement regulatory initiatives. It is important to recognize banks nationwide have an average of 34 employees and therefore, do not have the luxury of fulltime compliance specialists. Rather, they rely heavily on staff acting in many capacities, trade associations and vendors for summaries, sample action plans and systems updates to stay in compliance.

We appreciate the opportunity to comment on the Board's proposed rule literally overhauling Regulation Z's requirement for home-secured credit as we know them today. This rulemaking effort follows 50 plus regulatory changes over the course of the last two years and is a precursor to another 260 plus regulatory changes mandated by the issuance of the Dodd-Frank Act.

The Evolving Mortgage Market & Compliance Implications

We do not deny the mortgage lending regulations have not kept up with the evolving mortgage market. Mortgage products have grown more complex; Congress' mandate to increase home ownership has spurred 'creativity' in making more mortgage products available to a larger portion of Americans; mortgage market participants have expanded far beyond the scope of traditional, federally-insured financial institutions; consumers' purchasing patterns have changed with most consumers purchasing multiple dwellings over the course of their lives rather than a home purchase being a one-time event; consumers' financing needs have changed; and finally, the manner in which information is delivered to consumers has dramatically changed.

Our concern with recent and this current rulemaking effort is the piecemeal approach taken in addressing the current mortgage crisis. When a problem is recognized within an institution, regulators instruct and expect management to identify the "root cause" of the problem and then develop procedures to address and correct these issues, train staff, implement new procedures, monitor the issue and test to ensure the solution resolves the issue. It would seem appropriate the same strategy should be used in resolving the mortgage crisis: identify the root cause(s), develop or adjust the procedures (or in this case, regulations), train, monitor, test and adjust again if necessary. Thus far, it seems as if many adjustments (rule changes) have been implemented but what is lacking in the regulatory rulemaking process is the training, monitoring and testing.

Our bankers have repeatedly reported seeking guidance from their federal regulators on new regulatory initiatives such as the RESPA revisions, MDIA redisclosure requirements for overstated APRs or the HPML presumption of compliance safe harbor as it pertains to balloon loans, only to receive a response from their regulatory point of contact that the regulator has not yet received training on the matter and cannot provide guidance. New revisions are released before the impact of recently changed revisions can be analyzed. How can those involved in the rulemaking process be sure of which changes benefit borrowers and which do not when rules are revised yet again before the effects of the changes can be analyzed?

The changing regulatory landscape has resulted in far more unintended consequences than benefits to consumers. For example, our members report:

- Many that previously did not charge "doc prep fees" or "origination fees" have begun collecting such fees in an attempt to offset system update and training costs.
- Increasing their current fee structures to offset increased costs.
- Third party settlement service providers, such as appraisers, abstract companies and attorneys, have increased their pricing due to increased costs in complying with the lender's additional requirements.
- Discontinuing certain product offerings (such as loans for the purpose of financing post-secondary educational expenses or HE LOCs) because the lender is unable to comply with the complex disclosure requirements. Often loan software providers are not able to provide compliant disclosures by the mandatory compliance dates or the bank simply cannot justify the increased cost of supporting the disclosure requirements for low-volume products.
- Exiting the home improvement loan market due to additional requirement to escrow for first lien HPMLs. Many of our rural lenders report homeowners often request short term home improvement loans on their principal dwelling which are debt-free. Lenders offering rates as low as 6% for home improvement purposes have been forced to require escrow accounts for home improvement loans in a first lien position as the current process for determining HPMLS takes into consideration lien position only, not the loan purpose.

- Lack of qualified personnel to originate mortgage loans as regulatory requirements, expanded liability and current negative public perception of mortgage lenders cause qualified staff to exit the lending profession and opt for other career choices.
- A shortage of qualified compliance personnel. More and more of our members are finding the need for qualified, full-time compliance staff but are unable to recruit persons to fill such roles.

This Proposal

In spite of our opening comments and concerns, there are many provisions within the current proposal that are supported by our members including:

- Right of Rescission
    - We support the Board's effort to simplify and improve the notice of the right to rescind notice provided to consumers at closing by redesigning the rescission form to include a detachable bottom that the consumer may detach and use to exercise the right to rescind. The revised format enables the consumer to retain the portion of the form that explains their rights and eliminates the requirement that creditors provide two copies of the notice of the right to rescind to each consumer entitled to rescind.
    - We also support the additional clarification that refinancing with a creditor other than the current note holder or paying off the obligation would terminate the consumer's unexpired right to rescind for a period of three years following consummation.
    - For rescindable transactions involving multiple obligors, the Board proposes and we encourage the Board to sustain the amendment to comment 17(d)-2 to clarify that the early and final disclosures required by § 226.19(a) need not be made to <u>each</u> consumer who has the right to rescind. Thus, creditors may provide § 226.19(a) disclosures solely to any one primary obligor in a rescindable transaction.
    - The clarification provided on the legal parties' obligations when a consumer exercises the right to rescind are also appreciated and should provide clearer direction in litigation actions. The Board's proposal to add clarifications regarding the extended right of rescissions by requiring that, in instances where consumers exercise their right to an extended rescission, the homeowner must pay the entire amount demanded by the creditor before the creditor is required to cancel the security interest in the home is consistent with court actions that have conditioned the creditor's release of the security interest on the consumer's proof of tender.

In spite of the many provisions we support and believe would benefit consumers, we have concern and objections regarding a number of provisions within the proposal:

- Right of Rescission
    - The proposal dramatically changes what items are considered "material disclosures" for rescission purposes. The changes are based on consumer testing done in 2009. The mortgage market is evolving so quickly, the validity of the consumer testing results on today's mortgage offerings becomes questionable in light of the revised RESPA disclosures and MDIA provisions already in place. Again, the cost in systems upgrades and staff training to implement changes to the material disclosures will be expansive and the benefit is sketchy at most considering testing occurred before the impact of the changed RESPA and MDIA disclosures could be assessed.

- The proposal amends the Commentaries to identify examples of circumstances where there is a "bona fide personal financial emergency" that allows a consumer to waive their rescission rights:
    - Imminent sale of the property at foreclosure, where a loan is needed to stop the foreclosure during the rescission period;
    - A need for immediate repairs to ensure that dwelling is habitable during rescission period; and
    - Imminent need for healthcare services, where loan is needed to obtain such services during the rescission period.

  While the additional clarification is appreciated, it gives rise to concern whether regulators or a court would find other scenarios outside those identified in the proposed commentary as acceptable "bona fide personal financial emergencies."

- Modification Disclosures
  - The proposed changes to section 226.20 regarding subsequent TILA disclosures would require new TILA disclosures when the same creditor and the consumer agree to modify certain "key mortgage loan terms." These key terms include changing the interest rate or monthly payment, advancing new debt, adding an adjustable rate or other risky feature such as a prepayment penalty, and imposing a fee on the consumer in connection with a modification. The additional requirements are quite broad and go beyond the current practice of providing a new final TIL disclosure; a common practice employed by many of our members agreeing to modify key loan terms. Rather, the requirements including providing a new, revised early TIL detailing the modified terms, waiting seven days to consummate the modification, and if applicable, providing rescission and waiting an additional three-day waiting period before funding any additional loan advances.

    Loan modifications benefit lenders and borrowers alike. Modifications are typically less costly to borrowers and lenders than refinancing and can be accomplished quickly. Mandating the delivery of an early TIL and seven-day waiting period between application (or the borrower's request for the modification) and execution of the modification agreement will make lenders less likely to accommodate modification requests and rather require borrowers to refinance which will drive up consumer costs. (Another unintended consequence.)

    The majority of our members indicate they do not utilize modification agreements to advance new funds, but rather use modification agreements to accommodate borrower requests to reschedule payments, lower interest rates or extend maturing balloon payments. In our opinion, it would benefit the customer to receive a new TILA disclosure at the time of modification but the value of delivering a new early TIL and imposing a seven-day waiting period seems to provide little benefit unless new funds are being advanced, thereby increasing the borrower's indebtedness. We respectfully suggest that the Board consider limiting the requirement for a new early TIL and seven-day waiting period to only those "modifications" in which new funds are advanced.

    Clearly, when new funds are advanced increasing the principal loan balance, a "new transaction" occurs. Along the same vein, it would seem appropriate to apply the HOEPA protections only when new funds are advanced on loans that meet the higher priced mortgage loan thresholds, but seems futile to add the regulatory requirements and burden on pre-existing debts. The fact of the matter is, the borrower and lender are both legally obligated at the time of the modification and applying the repayment ability tests and escrow requirement on the lender and borrower following modification will alter not the legal obligation but rather will impose additional costs on both parties.

- Coverage for "Higher-Priced Mortgage Loans"
    - Of all the proposed changes, the proposal to replace the APR as the index that a creditor compares to the average prime offer rate to determine whether the transaction is a higher-priced mortgage loan is the most troubling. Introduction of a new "transaction coverage rate," a modified version of the transaction's annual percentage rate based on a modified prepaid finance charge that would include only finance charges retained by the creditor, its affiliate, or a mortgage broker, quite frankly seems like an overt attempt to set creditors up to fail. One of the many services the IBA offers is onsite compliance review services for our member banks. It is very common during our lending reviews to still find creditor failures to properly identify higher priced mortgage loans. Creditors often compare the early TIL APR rather than the final TIL APR to the APOR, use the wrong date for purposes of selecting the proper APOR, and because so many of our banks use open-end mortgages, many select the wrong lien position when using the HPML calculator. It is important to note these mistakes are still being made after immeasurable money and resources have been put into staff training, software updates, and operating system revisions, monitoring, testing and retraining. Making the identification of HPMLs more complex is NOT the solution!

      The preamble to the final rule providing the HOEPA provision for the HPML calculation noted the APOR was selected because it best reflected "the average interest rates, points and pricing terms offered by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics." (73 FR 44535 July 30, 2008) The current proposal indicates the Board is concerned with the "over-inclusiveness effect of a more expansive APR;" that more "prime loans" would fall under the HPML threshold if the proposal to make the APR calculation more inclusive and include nearly all fees incurred in credit transaction is finalized. But if the APOR truly reflects "average interest rates, points and pricing terms offered by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics," wouldn't the APORs also increase to reflect the more expansive APR calculation?

      Or in the alternative, if the Board truly believes "over-inclusiveness effect of a more expansive APR" will improperly include more prime loans as HPMLs, would it not make more sense, and be far simpler, to simply increase the tolerance thresholds? The cost in implementing a new calculation to identify HPMLs is hard to justify when the results of the change are so uncertain. Plus, changing the index for purposes of Regulation Z will lead to further changes in other regulations, mainly Regulation C which also uses the APOR for purposes of reporting rate spreads on higher cost loans.

Our Final Plea

To say our members are drowning in regulatory burden is an understatement! The financial expenditures by our members thus far in an effort to comply with piecemeal regulatory changes implemented to date have been grossly underestimated. Institutions not only have the cost of systems upgrades, form changes, staff education but also literally hundreds of manpower hours in analyzing the rule changes and interpreting their impact on products and services. And sadly thus far, it is difficult, if not impossible, to determine if the changes truly have benefited consumers.

If the Board would finalize this rule-making process as it is proposed, it would have a devastating impact on rural, small banks. It quite simply is too much in too short a period of time. What the Board refers to as "one-time cost" or "modification" in reality is only the tip of the iceberg. Rather, such revisions result in a series of successive changes, costs and retraining efforts taking months to complete and more than likely will be the "straw" that breaks the community bank's back. Many of our smaller, rural banks have reported they will likely exit consumer mortgage lending market and are entertaining the idea of selling or consolidating with larger banks.

We recognize the proposed rule changes are designed to stop abuse that occurred in the commoditized mortgage sector that offered higher risk products such as hybrid ARMs, negative amortization loans or loans with prepayment penalties, but in doing so it ignores the need for specialized mortgage products in rural areas of this country. Sadly, we believe it forces our customers away from the mortgage products that served them so well during the mortgage crisis and into the commoditized market where abuse did occur and the products simply do not fit their needs.

Our final comment, our final plea, would be that this rule-making process be put on hold until the Consumer Financial Protection Bureau is functional and can incorporate such changes into the broader mortgage reform initiatives mandated by Congress. Finalizing changes to Regulation Z now, knowing the Dodd-Frank Act requires the integration of RESPA and TILA disclosures as a first priority, is irresponsible when it is very likely the RESPA-TILA integration process will require further regulatory changes. Recent history has evidenced the knee-jerk reaction of hasty enactment of regulatory changes purely for the sake of change, without fully analyzing the effects, results in unintended consequences for consumers and creditors alike. The Iowa Bankers Association and its membership support mortgage reform and believe mortgage disclosures could be revised to be more meaningful to consumers, but are adamant in our belief that the reform process must be done in a coordinated, comprehensive manner rather than the current piecemeal efforts.

If you have questions about these comments, please contact the undersigned at 515-286-4361 or via e-mail, rschlatter@iowabankers.com. Thank you for your time and consideration.

Sincerely,

Ronette K. Schlatter, CRCM
Senior Compliance Coordinator