INDEPENDENT COMMUNITY
BANKERS of AMERICA®

December 23, 2010

By electronic deliver 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-1390

Re: Proposed Rule to Implement Changes to Regulation Z (Truth in Lending Act) Regarding Home-Secured Credit [Docket No. R-1390]

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the Federal Reserve's proposed rule amending Regulation Z which implements the Truth in Lending Act (TILA). This proposed rule is the most recent of a series or rulemakings designed to require more

[1] *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.

effective disclosures and protections for consumers who purchase mortgage loans. While ICBA understands the objective of the Federal Reserve in completing its broad review of the mortgage rules under Regulation Z, we have concerns with this proposed rule and urge the Federal Reserve to give strong consideration to our comments.

Background

The Federal Reserve's proposed regulatory amendments would revise the rules for the consumer's right to rescind certain open-end and closed-end loans secured by the consumer's principal dwelling. In addition, the proposed rule contains revisions to the rules for determining when a modification of an existing closed-end mortgage loan secured by real property or a dwelling is a new transaction requiring new disclosures. The proposal also would amend the rules for determining whether a closed-end loan secured by the consumer's principal dwelling is a "higher-priced" mortgage loan subject to the requirements in Regulation Z § 226.35. Furthermore, the proposed rule contains additional requirements for reverse mortgage loans and credit insurance products.

As with other recent rulemakings, the Federal Reserve conducted consumer testing in developing some of these proposed revisions. The Federal Reserve stated its objectives in proposing the revisions are to update and clarify the rules for home-secured credit that provide protections to consumers, and to also reduce undue compliance burden and litigation risk for creditors. As authority for this proposed rule, the Federal Reserve cites its general authority to issue regulations under Section 105 of TILA, and Section 129(1)(2)(A) of TILA which allows the Federal Reserve to prohibit acts or practices regarding mortgage loans it finds to be unfair, deceptive or designed to circumvent provisions of the Home Ownership and Equity Protection Act (HOEPA).

Summary of Comments

ICBA's comments included in this letter can be summarized as follows:

- Finalization of the Regulation Z proposed rules regarding mortgage loans should be delayed until the disclosures required by the Real Estate Settlement Procedures Act (RESPA) and TILA can be coordinated, as required by the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act). These disclosures can be coordinated either by the Department of Housing and Urban Development (HUD) and the Federal Reserve, or can be reviewed by the Consumer Financial Protection Bureau (CFPB) when this new Bureau assumes rulewriting authority over consumer financial services regulations in July 2011. Finalization of the Regulation Z proposed rules should also be postponed until the Dodd Frank Act provisions on qualified mortgages and qualified residential mortgages are drafted by the appropriate federal agencies.

- If the Federal Reserve proceeds with this rulemaking, it should consider the resources of community banks when drafting additional regulatory requirements, so that the costs and burdens of further regulation will not drive community banks out of the mortgage market, thereby limiting access to credit for many consumers.

- The Federal Reserve should conduct extensive industry outreach, particularly to community banks around the country, before finalization of any proposed rules regarding mortgage lending. This industry outreach should be similar to the hearings conducted during the summer of 2010 on the Home Mortgage Disclosure Act (HMDA) and Community Reinvestment Act (CRA) requirements.

- The $100 tolerance for "material" disclosures under the proposed right of rescission rules should be changed and made consistent with the tolerance amounts under the RESPA provisions.

- The Federal Reserve should allow consumers to have the ability to waive their rescission right if they believe they have a bona fide personal financial emergency.

- ICBA urges the Federal Reserve not to require that new TILA disclosures be provided when a consumer modifies their loan. TILA disclosures should be optional for loan modifications. Loan modifications also should not be subject to additional TILA requirements such as rescission requirements and requirements for higher-priced mortgage loans.

- ICBA opposes a 60-day advance notice requirement for scheduled interest rate adjustments, and instead recommends the Federal Reserve allow notice to be provided 30 days prior to an interest rate adjustment.

- Instead of implementing an internal "coverage rate" for determining higher-priced mortgage loans, ICBA recommends that the Federal Reserve adjust the threshold for determining a higher-priced mortgage loan to 2.5 percentage points over the average prime offer rate for all first lien mortgage loans, and 5 percentage points over the average prime offer rate for loans secured by a subordinate lien on a dwelling.

- ICBA supports the Federal Reserve's changes to the Regulation Z Commentary regarding balloon payment loans with terms of less than seven years, but believes that balloon payment mortgage loans that are held in portfolio by the financial institution should be exempt from the higher-priced mortgage loan requirements.

- ICBA strongly urges the Federal Reserve to exempt community bank mortgage loans that are held in portfolio from the escrow requirements for higher-priced mortgage loans.

- ICBA urges the Federal Reserve to postpone the provisions regarding reverse mortgages until extensive industry outreach can be conducted on these products, similar to the hearings that were conducted in the summer of 2010 on HMDA and CRA requirements.

- ICBA strongly opposes the Federal Reserve's changes to the credit insurance provisions as they are overly burdensome and unnecessary given this product is already regulated by state departments of insurance in all 50 states.

The Federal Reserve Should Postpone Implementation of the Proposed Changes

ICBA understands the Federal Reserve plans to complete its review of Regulation Z before rulewriting authority transfers to the new CFPB. Nevertheless, ICBA urges the Federal Reserve to wait on implementing any further changes to Regulation Z relating to home-secured credit. As mandated by the Dodd Frank Act, the agencies have been tasked with providing a combined TILA and RESPA disclosure that will be clearer for consumers and better assist financial institutions with insuring their compliance with all of the required mortgage and settlement disclosures. In addition, the financial services agencies are tasked with writing rules to implement the Dodd Frank Act provisions on qualified mortgages and qualified residential mortgages. Given these additional mortgage laws that must be implemented, a more productive approach to rulewriting would be for the agencies to complete the required TILA and RESPA combined disclosure and the provisions regarding qualified mortgages and qualified residential mortgages before any additional home-secured credit rules are required. This order of rulewriting will better insure that the agencies, whether the Federal Reserve or the CFPB, will not have to backtrack and make further amendments to previously made regulatory changes.

This approach to rulemaking is crucial for community banks that are struggling to keep up with all of the regulatory changes that have occurred the last two years. In the last couple of years, community banks have been subject to 50 new regulatory amendments, and they will be subject to many more due to the Dodd Frank Act requirements. With each of these regulatory changes, community banks must make software and other systems adjustments and changes to their forms, rewrite banking procedures and retrain staff. These changes require extensive staff resources and compliance expense, which is more difficult for community banks to absorb than their larger financial institution competitors.

ICBA is becoming increasingly concerned that many community banks will exit the mortgage market due to the increasingly burdensome regulations, as this is what is being voiced by many of our members. A piecemeal approach to rulewriting will only exacerbate the problem for community banks that currently are having difficulty in keeping up with the plethora of regulatory changes. We urge the Federal Reserve to consider the resources of community banks and postpone this rulemaking until the RESPA and TILA disclosures are coordinated, and the rules for qualified mortgages and qualified residential mortgages are completed.

Furthermore, Elizabeth Warren, assistant to the President regarding the CFPB, has made statements that the CFPB will examine and further simply consumer disclosures such as mortgage disclosures and credit card disclosures. If the CFPB plans to revisit mortgage disclosures and make further changes to these disclosures, ICBA urges the Federal Reserve to postpone this and any other rulemakings and coordinate regulatory efforts with the new Bureau. ICBA is very concerned that if the two agencies do not coordinate rulewriting efforts during this time of transition, then any changes the Federal Reserve makes to the regulatory requirements will be revisited and further changed once they are examined by the CFPB. The effect of this piecemeal rulewriting will be that community banks will be constantly updating and revising their disclosures, policies and procedures.

This was the reality for community banks when the Federal Reserve published final regulatory amendments regarding open-end credit card disclosures in December 2008, only to have most of these regulatory amendments become outdated after Congress passed the Credit Card Accountability, Responsibility and Disclosure Act of 2009. In the last couple of years, community banks have been put in a burdensome position with the conflicting credit card laws and regulations, and it would be detrimental to their business operations to have this same compliance burden for the mortgage regulatory requirements, especially when they have not engaged in practices or abuses that led to the rule changes.

The Business Model of Community Banks

ICBA understands the Federal Reserve's motivation in changing many Regulation Z provisions to address issues presented in the recent mortgage crisis, and its eagerness to further regulate financial institutions that engaged in irresponsible lending practices that led to our current economic state. Nevertheless, ICBA wants to again remind the Federal Reserve to always consider, when drafting regulatory amendments, the fact that community banks have consistently engaged in responsible mortgage lending practices due to their vested interest in their communities and the consumers they serve.

In addition, many community bank mortgage loans are held in portfolio and not sold on the secondary market; therefore the underwriting for these loans has historically been more conservative since the banks have a vested interest in the lifetime performance of the loan. As a result of this vested interest, community banks already take great time to educate and inform their customers about the consequences of their borrowing decisions, thereby making extensive regulatory disclosures redundant.

ICBA strongly urges the Federal Reserve to consider these differences between community banks and the larger financial institutions when finalizing any regulatory requirements, and not punish community banks with harsh regulatory changes that will restrict their ability to lend. The reality is that the more regulatory changes that are forced on to community banks, the more difficult it will be for these banks to compete and serve their communities by offering mortgage loan products. This would most significantly limit the options and access to credit for consumers in rural or lower income areas who rely on their local community bank for all of their lending and banking needs.

The Federal Banking Agencies Should Conduct Comprehensive Industry Outreach in Developing Regulatory Amendments

ICBA appreciates the Federal Reserve's efforts in incorporating consumer testing in developing rules and creating model forms. Nevertheless, we have concerns that the Federal Reserve is not conducting enough industry outreach in developing rules relating to home-secured lending. In developing regulatory amendments to mortgage loans, we ask that the Federal Reserve conduct industry outreach similar to what was conducted this past summer relating to the HMDA and CRA regulations.

Given that community banks constitute 97 percent of all banks in the United States, it is crucial that the Federal Reserve conduct industry outreach throughout the country and engage as many community banks in their rulewriting process as is possible, so there can be a proper balance between the consumer benefit of regulatory changes with the compliance burden for banks.

While ICBA understands the need to provide consumers with greater protections and more transparent disclosures, we have serious concerns that dramatic regulatory changes, if finalized without a thorough knowledge of community bank business practices, will result in too much regulatory burden for community banks and will consequently force many of these banks to exit the mortgage business. ICBA would welcome the opportunity to meet with the Federal Reserve to discuss our comments in more detail, and to organize a meeting in Washington with community bankers and Federal Reserve staff so these bankers can share their specific experiences regarding mortgage lending in their communities and the potential operational and compliance costs of these proposed regulatory changes.

Right of Rescission

The proposed revisions to Regulation Z would make disclosure changes to the notice of the right to rescind provided to consumers at loan closing. The changes also revise the list of "material disclosures" that can trigger the extended right to rescind, to focus on specific disclosures. In addition, the new provisions would require that for purposes of providing the "material" disclosures, the one time costs, total settlement charges, and payment summary is considered accurate if these amounts are understated by no more than $100, or are greater than what is required to be disclosed.

The Federal Reserve is also adding three examples of circumstances in which there is a bona fide financial emergency where the right of rescission can be waived. These examples include: (1) The imminent sale of the consumer's home at foreclosure; (2) the need for loan proceeds to fund immediate repairs to ensure that a dwelling is habitable, such as structural repairs needed due to storm damage; and (3) the imminent need for health care services, such as in-home nursing care for a patient recently discharged from the hospital.

The proposed rule also provides additional examples of circumstances that are not considered a bona fide personal financial emergency which would include: (1) The consumer's desire to purchase goods or services not needed on an emergency basis, even though the price may increase if purchased after the rescission period; and (2) the consumer's desire to invest immediately in a financial product, such as purchasing securities.

ICBA Comments:

ICBA understands the reasoning of the Federal Reserve in revisiting the rescission rules so that consumers receive this protection. However, the reality for community banks is that the right of rescission is rarely, if ever, used by their customers. If there is a problem with a mortgage loan, given the nature of the community bank business, the issue is almost always something that can be discussed and mediated between the bank and the customer so that both parties achieve their objectives in the transaction. Community banks base their business model on customer service, and are not in the position of requiring a customer to be in a loan situation that is not in their best interest.

Furthermore, ICBA has concerns regarding the proposed changes to the rescission rules. First, with regard to the $100 tolerance, this amount is too low and should be substantially increased and indexed to inflation. A tolerance amount of $100 would almost always guarantee that any understatement of a fee would not be accurate and would trigger the rescission right. If the Federal Reserve decides to move forward with a tolerance amount, it should be the same as the tolerance for redisclosure required by RESPA. Consistency among both regulations would better insure compliance among financial institutions.

In addition, the proposed rule provides additional examples of when a consumer can and cannot waive their right to rescind, due to a bona fide personal financial emergency. ICBA is pleased that the Federal Reserve provided additional examples of when a consumer can waive their rescission right, but urges the Federal Reserve to allow consumers the ability to determine, independently, whether they wish to waive their rescission right because they are experiencing a personal financial emergency. Providing a list of what would or would not be considered a bona fide personal financial emergency places the bank in the position of making this factual determination when the banker may be in fear of the ramifications of non-compliance with the regulatory requirements. If the consumers themselves can affirmatively waive their right of rescission if they feel this is necessary, then financial institutions will not have the burden of determining whether the standard for a bona fide personal financial emergency has been satisfied.

Loan Modifications that Require New TILA Disclosures

Currently, the modification of a closed-end loan is not considered to be a new transaction that would require new TILA disclosures, unless the transaction qualifies as a "refinancing" under Regulation Z. A refinancing is different from a loan modification because the existing credit transaction is satisfied and replaced by a new transaction by the same consumer.

The proposed rule provides that new TILA disclosures are required when the parties to an existing closed-end loan secured by real property or a dwelling agree to modify key loan terms, without reference to state contract law. New disclosures would be required when, for example, the parties agree to change the interest rate or monthly payment, advance new money, or add an adjustable rate or other feature such as a prepayment penalty. No new disclosures would be required for modifications reached in a court proceeding, and modifications for borrowers in default or delinquency, unless the loan amount or interest rate is increased, or a fee is imposed on the consumer. Certain beneficial modifications, such as "no cost" rate and payment decreases, would also be exempt from the requirement for new TILA disclosures. When the modification does trigger new Regulation Z disclosures, all applicable rules under Regulation Z will apply, such as the rescission rules and rules for "higher-priced mortgage loans."

ICBA Comments:

ICBA strongly urges the Federal Reserve to reconsider the requirement that TILA disclosures be provided to consumers when they modify key terms of their mortgage loans. The purpose of requiring TILA disclosures is that these disclosures can be used as a cost comparison tool when consumers are getting a new loan, so that they can see the true costs and compare the interest rate and costs among creditors. Given this purpose, providing complete TILA disclosures in the case of a loan modification does not make sense, and only contributes to the pile of disclosures consumers already must absorb when conducting loan transactions.

In addition, providing these additional disclosures for loan modifications makes the transaction more costly for banks, and could make community banks reluctant to engage in loan modifications which are beneficial to consumers. This would also be the reality if loan modifications are subject to additional mortgage requirements, such as rescission requirements and requirements for higher-priced mortgage loans. The reality is, the more costly and complicated a loan transaction becomes, the more likely the transaction will not happen. Currently, loan modifications can be a relatively simple transaction, and many community banks process them on a regular basis at the request of the consumer. If community banks have to comply with additional TILA requirements for loan modifications, which would include the rescission rules, waiting periods and requirements for higher-priced mortgage loans, then they will be less likely to provide them for consumers at their request, which would provide far less flexibility to consumers in managing their debt.

Once again, this is a proposed requirement in which the burden on community banks would severely outweigh any cost to the consumer. Community bank customers already complain about the required wait during the rescission period and the overwhelming amount of documents they must review when conducting a loan transaction. A loan modification is a more simple transaction than a mortgage loan and should not be subject to the same regulatory burdens.

Notice of Rate Adjustments

Regulation Z currently provides that at least once each year in which interest rate adjustments are implemented, and 25-120 days before each payment adjustment, an adjustment notice must be provided to the consumer. In this proposed rulemaking, the Federal Reserve proposed to require that advance notice be provided to consumers at least 60, but not more than 120, days' before a payment change can occurred.

ICBA Comments:

ICBA opposes a 60-day requirement and instead recommends the Federal Reserve allow notice to be provided 30 days prior to an interest rate change. An advance notice requirement of greater than 30 days will result in consumers having interest rate changes that are less reflective of the current market interest rates. Some community banks provide notices 30 days in advance, which means the interest rate is more than one month old; when banks must send the notice at least 60 days in advance, the interest rate will be at least two months old. This is a long period of time if interest rates are moving quickly.

Coverage Test for 2008 HOEPA Final Rule and HOEPA

In the 2008 HOEPA Final Rule, the Board adopted special consumer protections for ``higher-priced mortgage loans'' aimed at addressing unfair and deceptive practices in the subprime mortgage market. The Federal Reserve defined a higher-priced mortgage loan as a transaction secured by a consumer's principal dwelling for which the annual percentage rate (APR) exceeds the ``average prime offer rate'' by 1.5 percentage points or more for a first-lien transaction, or by 3.5 percentage points or more for a subordinate-lien transaction.

In the August 2009 Closed-End Proposal, the Board proposed to amend Regulation Z to provide a simpler, more inclusive APR to assist consumers in comparison shopping and reduce compliance burden. APRs would be higher under the proposal because they would include most third party closing costs. This proposed rule would replace the APR as the metric a creditor compares to the average prime offer rate to determine whether the transaction is a higher-priced mortgage loan. Creditors instead would use a ``coverage rate'' that would not be disclosed to consumers. The coverage rate would be calculated using the loan's interest rate, the points and any other origination charges the creditor and a mortgage broker (or an affiliate of either party) retains. So, the intent is that the coverage rate would be closely comparable to the average prime offer rate. The proposal would also clarify that the more inclusive APR would have no impact on whether a loan's “points and fees'' exceed the threshold for HOEPA's statutory protections.

ICBA Comments:

ICBA appreciates the Federal Reserve’s willingness to review the regulatory provisions for “higher-priced mortgage loans,” as these fairly recent rules have limited community banks’ ability to offer mortgage products to a broad spectrum of consumers. ICBA also agrees that using an internal “coverage rate” would be more reflective of whether a loan should be categorized as a “higher-priced mortgage loan.” Nevertheless, in today’s environment of low interest rates, community banks are being faced with categorizing loans with a lower than 6 percent APR as "higher-priced," which triggers additional regulatory requirements under Regulation Z. As a result of these additional regulatory requirements, many community banks are no longer offering loans that are considered higher-priced, which is severely limiting the access to credit for many consumers. The Federal Reserve's proposed change to allow an internal "coverage rate" as the comparison to the average prime offer rate would not make a significant difference in providing relief to community banks on these requirements.

ICBA recommends that the Federal Reserve instead adjust the threshold for determining a higher-priced mortgage loan to 2.5 percentage points over the average prime offer rate for all first lien mortgage loans, and 5 percentage points over the average prime offer rate for loans secured by a subordinate lien on a dwelling. This threshold would better represent what a "higher-priced" mortgage loan would be in this current interest rate environment, and would better determine which mortgage loans should be subject to the additional regulatory requirements.

Clarifying Compliance of Short-Term Balloon Loans with the 2008 HOEPA Final Rule's Ability to Repay Requirement

Regulation Z § 226.34(a)(4)(iii) provides a presumption of compliance for the repayment ability requirements for high cost and higher-priced mortgage loans. This presumption of compliance is not available for certain loans, such as balloon mortgage loans with terms of less than seven years. The Federal Reserve is proposing an amendment to the Regulation Z Commentary that states the exclusion of short term balloon loans from the presumption of compliance does not prohibit creditors from actually making short term balloon loans that are higher-priced mortgage loans.

The proposed rule states that these short term balloon loans can still be provided to consumers if the creditor uses prudent underwriting standards and determines that the value of the collateral is not the basis for repaying the loan, including the balloon payment. The creditor would not need to verify that the consumer has assets or income at the time of consummation that would be sufficient to pay the balloon payment, but should verify that the consumer would likely be able to satisfy the balloon payment obligation by refinancing the loan or through income and assets other than the collateral. The language of this Commentary provision is consistent with a letter issued by the Federal Reserve Staff in October 2009.[2]

ICBA Comments:

ICBA supports the Federal Reserve's changes to the Regulation Z Commentary regarding balloon payment loans with terms of less than seven years that meet

[2] Short-Term Balloon Loans and Regulation Z Repayment Ability Requirement for Higher-Priced Mortgage Loans, CA 09-12 (November 9, 2009).

the triggers for higher-priced mortgage loans. We thank the Federal Reserve for incorporating the language of the Federal Reserve Letter CA 09-12 into Regulation Z to provide greater clarity. Nevertheless, while ICBA appreciates the clarification regarding banks' ability provide these balloon payment loans, we urge the Federal Reserve to amend the provisions regarding higher-priced mortgage loans to exempt balloon payment mortgage loans held in portfolio by financial institutions from these additional requirements. Because community banks have a vested interest in the performance of their mortgage loans held in portfolio, the banks will automatically engage in responsible underwriting to insure the strong performance of these loans. It is for this reason that community bank balloon mortgage loans have been an effective loan product for decades and have as low, or lower, default rates as traditional 30-year fixed rate mortgage loans.

In addition, ICBA strongly urges the Federal Reserve to revisit the provisions regarding required escrow accounts for higher-priced mortgage loans. This requirement has added tremendous operating costs for community banks that, in most cases, have not historically required escrows for loans they hold in portfolio due to the cost of establishing and maintaining an escrow service. ICBA is already witnessing community banks that are exiting the residential mortgage business due to their inability to escrow for higher-priced mortgage loans. As a result, many consumers have had an important credit source cut off at a time when it is needed most.

Furthermore, community banks have limited options for outside servicing of these escrow accounts because these banks often have a smaller mortgage loan volume making them less attractive to outside loan servicers. Many community banks are also concerned about the risk that outside loan servicers will attempt to cross sell the customer other bank or financial services, to the detriment of the community bank.

In response to a survey of 820 community bankers conducted by ICBA early this year, before the April 2010 effective date of the escrow requirements, thirty-three percent responded that the escrow requirements for higher-priced mortgage loans would cause them to stop making the types of mortgages that would trigger the requirements. Sixty-two percent of banks stated if they stopped making mortgages due to these requirements, borrowers in rural areas would be the most impacted. ICBA strongly believes that this evidence is compelling enough for these escrow requirements to be revisited by the Federal Reserve, and for mortgage loans held in portfolio to be exempt from the requirements.

Reverse Mortgages

The proposed rule would require a creditor to provide a consumer with new revised reverse mortgage disclosures. Before the consumer applies for a mortgage, the creditor must provide a new two-page notice summarizing basic information and risks regarding reverse mortgages, entitled "Key Questions to Ask about Reverse Mortgage Loans." Within three business days of application, and again before the reverse mortgage loan is consummated, creditors must disclose loan cost information specific to reverse mortgages that is integrated with information required to be disclosed for all home equity lines of credit or closed-end mortgages, as applicable, and a table expressing total costs as dollar amounts, in place of the table of reverse mortgage "total annual loan cost rates."

The proposal would also prohibit a creditor from originating a reverse mortgage before the consumer has obtained independent counseling from a counselor that meets the qualification standards established by HUD, imposing a nonrefundable fee on a consumer until three business days after the consumer has received counseling, and steering consumers to specific counselors or compensating counselors or counseling agencies.

In addition, the proposed rule would prohibit a creditor from requiring a consumer to purchase another financial or insurance product as a condition to obtaining a reverse mortgage, and would provide a safe harbor for compliance if, among other things, the reverse mortgage transaction is consummated at least ten calendar days before the consumer purchases another financial or insurance product.

ICBA Comments:

Reverse mortgage products are not a common product offered by community banks. Of the community banks that do provide these products, some have seen a decrease in the loan volume over the last couple of years as a result of the average senior's loss of equity in their home. In prior years, many community banks had found the product to be very successful, because it enabled consumers to stay in their homes when their expenses increased due to medical and other expenses that often occur later in life.

While the current housing market has made this product less attractive for many community bank customers, this is likely to change in the future when housing prices rebound. ICBA urges the Federal Reserve to reconsider the regulatory provisions drafted for reverse mortgage loans and to postpone any regulatory changes on these products until extensive industry outreach can be conducted. Extensive industry outreach, as was conducted this past summer for HMDA and CRA regulations, would better educate the Federal Reserve on these products and better enable the agency to create rules that will both benefit the consumer and enable community banks to effectively offer the product.

Furthermore, the Federal Reserve should carefully review all of the disclosure and substantive requirements already present for reverse mortgage loans. The package of information that must be given to customers for reverse mortgages is already huge and intimidating, and the process of transacting a reverse mortgage can take several hours. It should not be the intent of the Federal Reserve to regulate this product out of the marketplace, which appears to be the case with these proposed requirements.

Credit Insurance Products

Regulation Z currently requires disclosures to inform borrowers of the premium cost for credit protection and that the purchase of credit protection is not a condition of the loan. In addition, the consumer must sign or initial an affirmative written request for the insurance after receiving the aforementioned disclosures. These current disclosure requirements are clear and useful to consumers, as they provide information about the cost of the insurance and clarify that the purchase of insurance is not required in order to obtain credit. These provisions are required by statute.[3]

The proposed amendments would revise the disclosure rules related to credit insurance and debt cancellation and suspension products that would have the effect of discouraging consumers from purchasing these products. The rule would require an extensive set of new disclosures including the disclosure of the maximum premium or charge per period; the maximum benefit amount along with a statement that the borrower will be responsible for the balance above the maximum benefit amount; that the cost depends on the balance or interest rate, if applicable; and information about the Federal Reserve's website where consumers could find information about these products.

The proposed rule also includes changes with regard to the disclosure of eligibility requirements and the disclosure to the borrower that the product may not be necessary. For the eligibility requirements, this would include additional statements as to the time period and age limit for coverage and this would allow creditors to make the eligibility determinations prior to the time of enrollment. Disclosure would have to be in at least 10 point font size and consistent with the model forms and sample language. If disclosures are provided early, the creditor must redisclosure the maximum premium or charge per period if this is different at the time of loan closing.

ICBA Comments:

ICBA strongly opposes any changes to the credit insurance provisions as they are overly burdensome and could have the affect of deterring consumers from purchasing these products which can be helpful and useful to them during the life of the loan. ICBA asks that the Federal Reserve not move forward with any of the provisions regarding credit insurance, and to reexamine whether amendments on these products are even necessary since they are already

[3] 15 USC 1605.

regulated by the states. Further industry outreach among banks across the country should better educate the Federal Reserve on how these products are offered and explained to consumers.

In reality, many consumers greatly benefit from the protection provided by credit insurance. These products are provided to consumers because they give peace of mind that a benefit will be paid in the event of death, disability or unemployment. These products operate as any other insurance product in that consumers purchase it hoping that the benefits never need to be used, but that there is the additional protection should an unforeseen event occur. Credit insurance products do not require extensive health or physical examinations or rates based on personal habits as is often required for life and disability insurance. In addition, the purchase of credit insurance is not required or a condition for obtaining credit. This coverage is provided at the consumer's request and can be canceled at any time.

The Federal Reserve's proposed disclosure that highlights information about credit insurance products in a short question and answer format would be unnecessary for community banks and would only add to the already overwhelming stack of papers consumers must absorb when conducting a mortgage transaction. Because of the relationship that community banks have with their customers, products such as credit life insurance, are carefully discussed and reviewed. As stated previously in this letter, the business model of community banks depends on the banks' ability to provide good products to their consumers that are in their best interest. Community banks, unlike larger financial institutions, cannot survive on a business model based entirely on making profits. Because of the open communication community bankers have with their customers, many of these disclosures, such as this proposed Q&A document, would be superfluous and unnecessarily costly.

Furthermore, ICBA is concerned with the proposed FAQ disclosure because many of the statements would be misleading to a consumer. The Federal Reserve is mandating negative anti-marketing language with these proposed disclosure requirements, rather than providing guidance on how to make disclosures clear and meaningful to consumers. For example, the Federal Reserve is requiring disclosures that are designed to prevent consumers from considering insurance products such as the following:

"If you already have enough insurance or savings to pay off this loan if you die, you may not need this product."

"Other types of insurance can give you similar benefits and are often less expensive."

"You may not receive any benefits even if you buy this product."

These disclosures above are essentially advising consumers to not consider credit insurance products, or if they have considered them, to rethink this decision. With regard to the first disclosure, it is clearly written with the intent of guiding the consumer away from credit insurance products, which could be helpful to them in the future. Also, the disclosure is not informative, as it does not provide any specificity. What is meant by "*enough* insurance or savings"? How would "enough" be quantified, and how is it determined whether the consumer has enough insurance or savings already to make credit insurance not necessary? Also, the statement that the consumer "*may* not need this product," does not provide any insight as to when the consumer would or would not need the insurance product. In short, the statement does not actually inform the consumer of any concrete fact that can be useful to them.

With regard to the second disclosure requirement listed above, this statement also does not inform the consumer of a specific fact that can be useful to them in considering insurance, as it does not say whether credit insurance can actually be less expensive than other insurance products. This statement would be misleading if the reality is that credit insurance would be a less expensive alternative than other types of insurance for the particular consumer. While ICBA agrees that this is not the only insurance product available to consumers, their use of it should not be discouraged by federal disclosures.

For the third disclosure mentioned above, this statement is written so that it could mislead the consumer into believing that if a cash benefit is not paid that the insurance was not useful to the consumer. As with other types of insurance, such as car insurance, homeowners insurance and medical insurance, it is very common that the monetary benefit of the insurance will not be needed by the consumer. This actually should be the hope of the consumer, because if a cash benefit is paid, it is usually due to an unforeseen and unfortunate circumstance. The insurance product is designed to protect the consumer should these circumstances occur, and this protection is the benefit of the product, not whether a monetary payment is received by the consumer.

Moreover, credit insurance is already regulated by the state departments of insurance in all 50 states. Both the policies and the premium rates charged for credit insurance products are regulated by the state insurance departments. The Federal Reserve's proposed rules disregard state and federal insurance and lending laws and provide further regulation on a product that does not need it. Thus, the only result of these requirements will be more compliance burden for banks, forcing them to rethink whether it is in their best interest to offer the product to consumers.

If the Federal Reserve decides to proceed with further regulating credit insurance products, ICBA strongly urges that it conduct industry outreach and speak with numerous community banks across the country to assess the usefulness of additional disclosures. Conducting industry outreach, as was done with the

HMDA and CRA hearings this past summer, should provide the Federal Reserve with useful information and better insight as to whether there is a need to further regulate credit insurance products. Consumer testing alone does not provide enough insight on the effectiveness of further regulation.

ICBA thanks the Federal Reserve for the opportunity to comment on this proposed rule. As you are aware, community banks are common sense lenders that offer mortgage products on fair terms as a means of providing valuable services to their customers. As you review the Regulation Z provisions, please remember that community banks have not engaged in the misleading practices conducted by some of the larger financial institutions that are the impetus for this and other agency rulemakings.

If you have questions about this letter or need additional information, please do not hesitate to contact me at 202-659-8111 or Elizabeth.Eurgubian@icba.org. In addition, ICBA would be happy to meet with Federal Reserve staff to discuss these comments in further detail and provide additional insight from the community bank perspective.

Sincerely,

/s/

Elizabeth A. Eurgubian
Vice President & Regulatory Counsel