VIA E-MAIL: regs.comments@federalreserve.gov

December 23, 2010

Ms. 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 – Proposed Rule to Amend Regulation Z Mortgage Loan Rules

Dear Ms. Johnson:

This comment letter is submitted by the Consumer Bankers Association ("CBA") in response to the Proposed Rule ("Proposal") published in the *Federal Register* on September 24, 2010 by the Board of Governors of the Federal Reserve System ("Board") that would require additional consumer protections and disclosures for mortgage loans. In addition, the Proposal would impose new disclosure rules for credit insurance and debt cancellation and suspension products and would also amend the current rules that affect rights of rescission and reverse mortgage loans. CBA appreciates the opportunity to share its views on the Proposals with the Board.

As further outlined below, CBA urges the Board to suspend this and all other Regulation Z rulemakings pending transfer to the Consumer Financial Protection Bureau (Bureau). Assuming the Board proceeds to finalize the Proposal, CBA requests that the Board, at a minimum, change the proposed credit insurance and debt cancellation and suspension products so they more objectively provide the information that customers may need when purchasing these products. CBA also offers additional comments related to this Proposal.

CBA Requests Suspension of this Proposal and all other Regulation Z rulemakings

CBA urges the Board to suspend the Proposal and its current piecemeal process of amending Regulation Z, the rules that implement the Truth in Lending Act (TILA), in recognition that TILA rulemaking will be transferred to the Bureau in July of next year. This would include the current mortgage loan proposal, as well as the comprehensive

proposal issued last year that would substantially revise the TILA disclosures for both closed-end mortgage loans and home equity lines of credit.

Our primary concern with the current Regulation Z rulemaking is that the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) mandates the integration of the disclosures currently required under TILA and the Real Estate Settlement Procedures Act (RESPA). In our view, the Board's current Proposal is counterproductive and threatens the success of the efforts to combine the TILA and RESPA disclosures, which is a process that has already begun. CBA was pleased to participate in a recent meeting with the Department of the Treasury and the Board that focused on this issue.

Under these circumstances, the Board's current Regulation Z rulemaking process is inefficient and counterproductive because it would impose changes to mortgage loan disclosures that will very likely change again as part of the TILA/RESPA reform process. The far more preferable and efficient approach here would be for the Fed to suspend the current rulemaking process and coordinate these efforts with the Department of the Treasury and then the Bureau as it undertakes the efforts to integrate the TILA and RESPA disclosures.

A recent example of overlapping and problematic TILA and RESPA requirements may be found in the Board's recent interim final rules that implement provisions of the Mortgage Disclosure Improvement Act (MDIA). These interim final rules will require the disclosure of a new Interest Rate and Payment Summary form to show how an interest rate or payment amount may change. Although this disclosure may be useful to consumers, this new form repeats the information that is now required on the Good Faith Estimate (GFE) and HUD-1 form under the new RESPA rules, but in a different form. These new MDIA requirements are clear examples of disclosures that imposed compliance burdens on financial institutions without any corresponding benefits for consumers.

In addition to the TILA/RESPA reform efforts, numerous other rules will be issued to implement the consumer protection provisions of the Dodd-Frank Act. CBA is very concerned these will also be inconsistent with any final rules that the Board issues in the near future in connection with mortgage loan disclosures, which will again require financial institutions to expend significant efforts to comply with these final rules that will be unnecessary if these rules are changed again. Numerous changes to disclosure rules in a relatively short period of time not only require unnecessary efforts by financial institutions to comply with these new requirements, but are also very confusing for consumers.

Other recent changes to the TILA rules, such as the Home Ownership Equity Protection Act (HOEPA) revisions and the loan officer compensation rules, along with the recent changes to the RESPA disclosures and implementation of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) rules and registration system, among others, have imposed overwhelming compliance burdens on financial

institutions that will affect the availability of housing finance options for consumers. In the aggregate, these numerous proposals have stretched the ability of stakeholders to carefully analyze all of these proposals in an effort to provide useful comments to the Board. From this point forward, these efforts to provide input should be focused on the TILA/RESPA integration process.

A moratorium on Regulation Z rulemaking is also desirable in order to avoid a repeat of the situation which last year created unnecessary compliance burdens and confusion for consumers. In early 2009, the Board issued final rules that amended the Regulation Z open-end lending rules and these included substantial changes to the rules that apply to credit cards. Shortly afterwards, President Obama signed the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (CARD Act). This imposed similar, but not identical, changes to the credit card rules, which resulted in significant confusion and costs as financial institutions struggled to reconcile and comply with the 2009 rule changes, as well as the series of rules that were later issued under the CARD Act.

We also believe that suspension of the current Regulation Z rulemaking process would be consistent with the intent of the Dodd-Frank Act. Section 1021(b) of the Dodd Frank Act lists the objectives of the Bureau. One of these objectives is to ensure that "outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens." We recognize the Board is not covered under this provision. However, we believe the Board should act consistently with this objective, both because it applies to the rules that will transfer to the Bureau, which include Regulation Z, and because it represents the current intent of Congress that regulatory burdens should be reduced to the extent possible. Suspending the current Regulation Z rulemaking would be consistent with this objective.

Credit Insurance and Debt Cancellation and Suspension Products

CBA is very concerned with the proposed disclosures that would be required for payment protection products, including credit life, credit disability, and debt cancellation and debt suspension coverage, in order for the charges to be excluded from the annual percentage rate (APR) calculation. In our view, the proposed disclosures cast these products in an overwhelmingly negative manner, and we are concerned that consumers may not appreciate the benefits of these products. Therefore, we strongly urge the Board to revise these disclosures so that they reflect the features and benefits of the products in a clear, accurate, fair, and objective manner.

Payment protection products help consumers make their required payments in times of need. This can prove useful, especially for those who do not have, and may not qualify for, other types of insurance. These products also help protect consumers' credit ratings, which is an additional and invaluable benefit in that it ensures they have continued access to credit at reasonable rates.

CBA supports fair, accurate, and appropriate disclosures for consumers who purchase credit insurance and debt cancellation and suspension products; however, the proposed disclosures go beyond ensuring that consumers are informed about these products. We are concerned that the proposed disclosures for credit insurance and debt cancellation and suspension products may mislead consumers and that the negative tone within these disclosures will discourage them from purchasing these products. Many believe consumers in this country are not adequately insured, and the proposed disclosures may serve to discourage viable options for those who may not have the protection they need.

As for consumer credit insurance, this is an insurance product that is regulated by the departments of insurance in all 50 states, as well as the District of Columbia and Puerto Rico. Each department requires specific disclosures that must be provided to consumers at the time of purchase. As previously stated, the CBA supports clear, fair, accurate, and appropriate disclosures for consumers who purchase credit insurance and debt cancellation and suspension products. However, if this Proposal is finalized, consumers would then receive multiple disclosures for this type of insurance, which may lead to additional consumer confusion.

Specifically, we are very concerned about the following proposed disclosures, which we believe will steer consumers to other types of insurance products, or none at all:

- "STOP." – This is how the proposed disclosures begin. This appears to be a warning, as opposed to an attempt to call attention to the notice, and may cause consumers to immediately cease from considering the purchase of the product. We are also concerned that consumers may be confused as they will not know how and if to proceed after they are told to "Stop."
- "If you already have enough insurance or savings to pay off this line of credit if you die, you may not need this product." - The amount of appropriate insurance is a decision unique to each individual, based on many factors and considerations, and is very subjective. Also, purchase of credit protection products are separate and independent of other policies that the individual may have and those policies would not be reduced to pay off the debt.
- "Other types of insurance can give you similar benefits and are often less expensive." - This can be misleading as it seems to be based on the notion that other types of insurance, such as term insurance, are preferable options. However, term policies are generally available for large amounts of $100,000 or more with corresponding premiums that would be more expensive than for credit protection products that provide lower benefit amounts. Term insurance products available for less than $100,000 often impose higher premium rates than comparable credit protection products. Term insurance also often entails a lengthy and invasive application and underwriting process, including questions about age, weight, smoking status, occupation, health, and high risk activities that does not take place with credit protection products. Credit protection, on the other hand, can be purchased conveniently at the time credit is extended. For many, credit protection products are an efficient and cost effective means to insure a financial obligation, which is available and affordable for most consumers.

- "You may not receive any benefits even if you buy this product." – We are concerned that consumers will read this statement and conclude that they may not receive the benefits to which they are entitled. Also, such a statement could apply to any type of insurance, warranties, and similar products as there is never a guarantee that a claim will arise and be paid. In fact, consumers buy insurance with the hope that they will not need to collect the benefits. In our view, the similar disclosure currently required by the Office of the Comptroller of the Currency (OCC) would be a viable, unbiased alternative.
- "This product will cost up to [$XX] per month if you borrow the entire credit limit." – This would require a specific amount per month to be disclosed, which will present additional compliance burdens for financial institutions. A generic cost disclosure would be preferable to address these compliance concerns and would not disadvantage consumers since the proposed cost per month disclosure assumes use of the full credit line that would be unlikely in most circumstances.

We also believe the Board's consumer testing in developing these disclosures was not sufficient. As we understand, two rounds of tests were conducted. The first had ten participants and the second had eight. In our view, this is not a statistically representative sample and, therefore, the results of these tests are not valid for determining whether these disclosures are useful for consumers.

CBA is also concerned with the proposed disclosures that require a consumer to both check a box next to a statement that indicates he or she wants to purchase the product and then sign underneath this same statement. We believe this will create compliance issues in that consumers may check the box or provide the signature, but not both. Our view is that the signature should be sufficient for indicating acceptance, as it is with other agreements, and request the Board to either provide this clarification or delete the box next to this statement.

To reiterate, we urge the Board to revise these disclosures so they will instead provide clear, accurate, fair, and objective information about these payment protection products. The government does not promote certain types of products and services in other industries and has no reason to do so for payment protection products. As set forth above, we believe these disclosures can be improved significantly and encourage the Board to review existing disclosures, such as those required under various state laws for credit insurance products and the disclosures currently required by the OCC for debt cancellation and debt suspension products, for further guidance.

Right of Rescission

CBA supports many of the proposed provisions that would affect the borrower's right to rescind certain mortgage loans. We specifically support the provisions that would require borrowers to tender the principal loan amount before the lender relinquishes the lien as this interpretation by the Board will provide greater clarity to the rescission process. As for the provisions that would revise the list of "material" disclosures that would trigger the extended right to rescind for up to three years if they are not provided

to the borrower, we have no objections to these revisions, as long as the tolerances outlined in the Proposal are also included.

Our significant area of concern is with regard to the provisions that would require the rescission notice to be provided before the loan closing. The notice that would be required under the Proposal must include the calendar date that the three-day period will expire, based on the lender's reasonable belief if this date cannot be determined precisely at the time the notice is provided. If the lender originally provides a shorter date than what is required, then it could comply by sending a subsequent notice with a date that is three business days after the second notice is sent.

This new requirement for a second notice under these circumstances would require financial institutions to estimate the closing date, which would be difficult, and would complicate the rescission process unnecessarily. There would also be no corresponding benefit to borrowers. In fact, this would have the effect of further delaying the funding of the loan and would impose even greater uncertainty for borrowers as to when they would have access to those funds.

The preferable approach would be to allow the notice to be provided at the time of the loan closing as this would avoid the problems that may arise under these proposed provisions with regard to estimating the expiration of the three-day period. This would provide greater certainty to borrowers as to when they would have access to the funds, which should outweigh any concerns that they would not receive the notice prior to the loan closing. This would also alleviate financial institutions of the burden of having to provide these notices in separate mailings to borrowers.

As for the proposed model forms, we note that the Board provides different forms under the heading "General" and "New Advances of Money with the Same Creditor." These two forms are very similar, and it would be preferable to have only one form, as this will ease compliance for lenders. The differences in these two situations will have no impact on a borrower who elects to exercise their right to rescind the loan.

We also note that a home equity line of credit (HELOC) may be used to purchase property. Although the first advance would not be subject to the right to rescind the loan, we believe a separate model form should be provided in these circumstances so borrowers will understand that the right to rescind does not apply to the first advance but would apply to subsequent advances.

Under the proposed official staff commentary, consumer credit extended to revocable living trusts would be subject to Regulation Z as this is credit extended to a natural person who establishes and uses these trusts. We appreciate this clarification. Additional clarification would be helpful to indicate that since the settlor of the trust is the consumer, there would no longer be a need to deliver separate rescission notices to both the settlor and the consumer.

Interest Rate Coverage Test for HOEPA Rules

The Proposal would change how to determine whether a loan is a "higher-priced mortgage loan" for purposes of the recent Home Ownership Equity Protection Act (HOEPA) rules that were issued in 2008 and how points and fees are calculated for purposes of determining whether the loan is a HOEPA loan under other provisions of Regulation Z for "high cost" mortgage loans. Specifically, the Proposal would replace the APR as the rate that is compared to the average prime offer rate (APOR) for purposes of determining whether the loan is a "higher-priced mortgage loan." Instead, the lender would calculate a different, internal rate that would then be compared to the APOR for purposes of making this determination. This internal rate would not be disclosed to the borrower.

The reason for this change is because under the proposal issued last year, the APR calculation would include most third-party closing costs, which means more loans would be considered "higher-priced." The internal rate calculation under this Proposal is intended to reduce this increase in "higher-priced" loans as it would only incorporate the rate, points, and origination fees that the lender or broker charges, while excluding third-party costs.

We support these provisions, and believe the Board should consider this approach with regard to the other provisions of the Dodd-Frank Act that require a comparison of the loan rate to a benchmark rate. Otherwise, we are concerned that there would be considerable operational burdens in making the calculations as required under this Proposal, while making different calculations for these other Dodd-Frank threshold requirements.

Another possibility for the Board to consider would be to review the method in which the APOR is calculated so it is more consistent with the APR calculation method that was outlined in the proposal issued last year. We believe this approach would not only reduce burdens for lenders, but would allow borrowers to compare the disclosed APR to the APOR in a more consistent manner.

Borrower's Right to a Refund of Fees

For mortgage loans, fees may not be charged until the borrower receives the early disclosures and under the proposal, this would prohibit charging fees even if they are refundable at a later time. The Proposal would also require the lender to refund fees paid by the borrower, other than the credit report fee, if the borrower decides not to proceed with the loan and requests the refund within three business days after receiving the early disclosures. Under the Proposal, a fee would be imposed if the lender initiates or places a hold on a debit or credit card account.

These provisions regarding the collection of fees will not necessarily be in the borrower's best interest since the result will be a delay in the ordering of appraisals, and further delay in processing and closing of the loan. This will also affect the ability of borrowers to lock in a rate or, at a minimum, result in borrowers having to pay more in fees to lock in the rate for the longer period of time that it will take to close the loan.

This additional requirement of a three-day period in which fees are refundable would also add another conflict between the TILA and RESPA rules in that the recent RESPA rules allow nonrefundable fees to be assessed at the time the loan applicant receives the early disclosures and agrees to proceed with the transaction. This is another clear example of a proposed Regulation Z change that should instead be addressed as part of the Dodd-Frank Act requirement to integrate the TILA and RESPA disclosures. The Board must not make unilateral changes with regard to provisions that are also addressed under RESPA, such as these fee collection procedures, but should instead defer this to the upcoming TILA/RESPA reform process.

In addition, we believe the proposed interpretation that a fee would be imposed if the lender initiates or places a hold on a debit or credit card account is too broad and urge the Board to formally recognize that it would be acceptable for the lender to place a $1 authorization in order to confirm the existence of a credit or debit card account, without it being considered an imposition of a "fee" under these provisions. This request for authorization of the $1 "transaction" is only intended to confirm that the account is open and existing and although it reduces the available balance on the account, it is not "charged" to that account. This transaction results in an authorization code that is passed to downstream systems, rather than the card information, which is preferable from a data security standpoint. This also helps avoid delays in processing additional payments in connection with the loan charges that may arise due to incorrect information that was obtained earlier in the process.

We certainly understand the Board's concerns that the assessment of fees may have a chilling effect on the applicant's ability or desire to shop for a loan, including a credit or debit card hold that may be placed on the account for the entire amount of the loan charges. However, this $1 authorization is de minimis and would not have such an effect on consumers and, therefore, should not be considered the imposition of a fee that would violate these provisions.

Variable Rate HELOCs and "Floor" Rates

Currently, interest rates for variable-rate home equity lines of credit (HELOCs) may not be changed unless they are based on an index or rate that is publicly available and not under control of the lender. The official staff commentary under the new CARD Act rules indicates that the creditor exercises control over the index if there is a minimum rate or "floor" below which the rate may not fall. Although not included in this Proposal, the Board has requested comment as to whether these CARD Act commentary provisions should also apply to HELOCs and requests specific reasons as to whether or not they should apply.

CBA opposes the application of this concept to HELOCs. The issue here for HELOCs is that the rate and "floor" information is indicated in the mortgage note. If this CARD Act commentary were to apply to HELOCs, lenders would need to remove the "floor" but would then need to seek an increase in the margin in order to maintain the current rate, along with the ability to increase it to the extent that the underlying index rises in the

future. This means the note agreement would have to be changed, unlike credit cards in which the rate information may be changed by way of a 45-day advance notice. This would be very problematic and would also require the borrower's agreement to these changes.

Although borrowers would certainly agree to the removal of the "floor," it would be unlikely that borrowers would agree to an increase in the margin. The cost of the credit for HELOCs, including the index, margin, and any "floor," is an agreement made by the respective parties and removing the "floor," without other changes, would lower that cost. If lenders were to maintain the "floor" without other changes, then the application of the CARD Act commentary would require that the rate be maintained at current levels and not be permitted to increase to the extent that the underlying index rises in the future, which would also be an unappealing option and not contemplated under the HELOC agreement. This, in our view, would be an impermissible impairment of these contracts by the government.

We recognize that the Board could move forward with this concept by applying it prospectively and not to current HELOCs. However, this would limit a lender's ability to offer attractive rate options on a variable rate HELOC if a floor could not be used.

Reverse Mortgages

CBA understands that reverse mortgages are complex products and supports the goal of providing informative and meaningful disclosures for senior citizens who are considering reverse mortgage loans. We believe the proposed disclosures help to meet this goal.

However, we believe there is no longer a need to require separate disclosures for open-end and closed-end reverse mortgages, especially the proposed early and account-opening disclosures. The proposed model forms for the early and account opening disclosures are very similar, with only modest differences in the APR and transaction fees. Combining these model forms will, therefore, require few changes and will ease compliance burdens for financial institutions while furthering the goal of providing useful information for consumers. This distinction in disclosures for open-end and closed-end reverse mortgages is even more problematic with regard to the early disclosures because financial institutions may not know at that time whether the consumer will elect an open-end or closed-end reverse mortgage.

The Proposal with regard to reverse mortgages would prohibit financial institutions from requiring a borrower to purchase another financial product as a condition of obtaining the reverse mortgage loan. The official staff commentary provides numerous examples of prohibited products and services. This prohibition would include loans and certificates of deposit (CDs), but would not include savings and checking accounts that are established for purposes of disbursing the reverse mortgage proceeds. There would be no violation of these provisions if the financial product is sold at least ten days after the loan closing.

CBA urges the Board to exclude CDs from this list of prohibited products and services. Borrowers may want other options for depositing the loan proceeds, other than their checking and savings accounts, and CDs are one such viable option, especially since they typically offer yields that exceed savings and checking accounts. Allowing borrowers the option to earn a higher yield with a CD will not only be appealing, but would provide senior citizens in these situations with one of only a few safe options to achieve a higher yield, which is critically important to many seniors in the current very low interest rate environment. Allowing this option immediately would also spare these borrowers with the inconvenience of waiting ten days and then undertaking a separate transaction to purchase the CD.

CBA also urges the Board to clarify that the use of the proposed reverse mortgage disclosures are sufficient for these types of loans and that the additional disclosures required under other provisions of Regulation Z for HELOCs or closed-end credit do not need to be provided, unless otherwise specifically indicated. This appears to be the Board's intend but additional clarification would be appreciated.

Conclusion

Thank you for the opportunity to comment on the Proposal. If you have any questions or wish to discuss these issues further, please feel free to contact me at (703) 276-3862 or at jbloch@cbanet.org.

Sincerely,