WISCONSIN BANKERS ASSOCIATION

July 22, 2011

VIA EMAIL

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington DC 20551
Docket No. R-1417 and RIN No. 7100-A75
Regs.comments@federalreserve.gov

RE: Truth in Lending Act Proposal Regarding Consumers Ability to Repay; Docket No. R-1417 and RIN No. 7100-AD75.

Dear Ms. Johnson:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System's (FRB's) proposed rule to amend Regulation Z to implement amendments to the Truth in Lending Act (TILA) made by the Dodd-Frank Act (DFA). WBA recognizes that the proposal is a direct result of Congressional mandates set forth in sections 1411, 1412 and portions of 1414 of the DFA. The final rule will be promulgated by the Consumer Financial Protection Bureau (CFPB) rather than FRB, due to other provisions in the DFA.

In general, the proposal would implement changes that expand the scope of the ability to repay requirement to cover any consumer credit transaction secured by a dwelling (excluding an open-end line of credit, reverse mortgage, or temporary loan). It would also prohibit a creditor from making a mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan, including any mortgage-related obligations (such as property taxes).

In addition, the proposal would establish standards for complying with the ability to repay requirements, including by making a "qualified mortgage" (QM), and provide a creditor who originates a QM with special protections from liability.

Finally, FRB's proposal would: limit prepayment penalties; require a three-year record retention period of evidence to demonstrate compliance with the rule; and substantially expand penalties and liabilities under TILA.

While WBA recognizes the difficult task given to FRB, and ultimately CFPB, to implement these statutory requirements, WBA believes that, no matter how such requirements are implemented, they would have an absolute, negative impact on the future availability of mortgage products to consumers. This is due to both increased compliance costs of implementation, as well as regulatorily-prescribed product terms. In addition, for those mortgage products that remain in the marketplace, costs would increase and such costs would be borne by consumers.

Although WBA generally supports Congress' intention to establish minimum consumer mortgage underwriting standards, we stress the need for careful, and balanced, promulgation of these DFA

provisions to insure a robust mortgage lending environment in the future for consumers and federally-regulated financial institutions alike.

To assist in the promulgation of the final rule, WBA offers the following specific comments:

Qualified Mortgage Alternatives

FRB's proposal contains two alternatives for protections from liability to creditors that execute a QM. Alternative one (1) would operate as a legal safe harbor if certain loan terms and underwriting criteria are met. Alternative two (2) would provide a creditor a rebuttable presumption of compliance and would define a QM to include criteria under Alternative 1 as well as additional underwriting requirements which must be considered and verified.

WBA recommends adoption of QM Alternative 1, which provides creditors with a legal safe harbor. As the proposal significantly expands TILA penalties and liabilities, (reaching as wide as to assignee liabilities) we believe the protection of a legal safe harbor is paramount for the market place to protect financial institutions from frivolous challenges at every consumer default. Such legal safe harbor will also permit financial institutions to offer QMs with confidence and without fear of investor rejection or of subjective judicial interpretations which are the results of a rebuttable presumption threshold. To protect financial institutions that offer QMs, they must be afforded the highest level of protection under the law—a legal safe harbor. A rebuttable presumption offers institutions no such protection.

Points and Fees Test

The DFA provides that for a loan to be considered a QM, the total points and fees may not exceed 3 percent of the total loan amount. The proposed points and fees tests (Alternative A: Loan Amount Tiers; and Alternative B: Loan Amount Tier or Formula) are cumbersome. Additionally, under the new TILA amendments, the term "points and fees" for a QM has the same meaning as "points and fees for high-cost mortgages, section 226.32 Regulation Z which implements the Home Ownership and Equity Protection Act (HOEPA).

An element of the proposed points and fees test includes all compensation paid directly or indirectly to loan originators. This includes compensation paid to third-party mortgage brokers, table-funding creditors, and in-house loan officers. It includes: commissions, bonuses, trips, prizes, and hourly pay for the actual number of hours worked on a particular loan.

WBA strongly believes compensation paid directly or indirectly by a consumer or creditor to an employee of a loan originator should be removed from the points and fees test. The inclusion of bank-employee loan originator compensation in the points and fees test would make it nearly *impossible* for any federally-regulated financial institution to meet the criteria of a QM or not exceed the high-cost mortgage tests.

Additionally, financial institutions are still waiting for clear guidance and interpretation of FRB's recent Regulation Z mortgage loan originator compensation rule; thus, to create a test for which a critical component is itself an unsettled and misunderstood area of law makes the proposal *impossible* to comply with, and would result in financial institutions either being unable to execute QMs or avoid tripping into high-cost mortgages. The proposed points and fees test would absolutely result in a severe restriction of available consumer mortgage products, as it is highly unlikely a financial institution would offer a product for which there is uncertainty in how to calculate a crucial test component.

Definition of "Rural" Under Balloon-Payment Qualified Mortgage

The DFA contains a provision which would allow for an exception to the definition of QM for a balloon-payment qualified mortgage (BPQM) made by a creditor that meets certain criteria, including that the

creditor operates in a predominately "rural" area. Essentially, FRB has defined "rural" as: a county that is not in a metropolitan statistical area or a micropolitan statistical area, and either (1) is not adjacent to any metropolitan statistical area or micropolitan statistical area, or (2) is adjacent to a metropolitan statistical area with fewer than one million residents or adjacent to a micropolitan statistical area, and contains no town with 2500 or more residents.

WBA is very pleased that FRB has exercised its discretion to include balloon mortgages within the general QM category because the majority of WBA members for many years have made, and continue to make without incident, portfolio short-term balloon loans to hedge against interest rate risk. However, because the balloon loan type is so very common among WBA members in all geographic areas of Wisconsin, we are very concerned that the proposed definition of "rural" is too restrictive to exempt the majority of our members who make balloon loans, and would, in effect, eliminate this important hedging mechanism. If this mechanism is eliminated, WBA believes that some of our members would have little choice but to significantly reduce the number of mortgage loans they make, or leave the mortgage market altogether. WBA does not believe this is a result intended by Congress or FRB. Therefore, given the substantial degree of discretion FRB and CFPB have in defining "rural" and the significant negative impact a more restrictive definition would have on its members, WBA respectfully requests that the definition be broadened to exclude any reference to a micropolitan statistical area. This improves the possibility of exemption for many institutions without making the exemption available to all. In addition, WBA recommends the adoption of the BPQM Alternative 2 for purposes of determining the BPQM total annual covered transactions threshold. We further recommend this threshold be set at 750.

Conclusion

We recommend adoption of QM Alternative 1 which provides financial institutions that originate a QM a legal safe harbor; remove compensation paid directly or indirectly by a consumer or creditor to an employee of a loan originator from the points and fees test; broaden the definition of "rural" under BPQM criteria; and set total annual covered BPQM transactions under BPQM Alternative 2 at 750 transactions.

The proposal, however implemented, would have an absolute, negative impact on the future availability of consumer mortgage products and a detrimental, costly impact on all federally-regulated financial institutions. These costs would significantly impact Wisconsin community banks and consumers.

To minimize this impact, WBA stresses that finalization of this proposal *must* be balanced in recognition of all interests of those in the consumer mortgage lending arena to insure a robust future mortgage lending environment for consumers and federally-regulated financial institutions alike.

Once again, WBA appreciates the opportunity to comment on the TILA proposal.

Sincerely,

Kristine Cleven
Assistant Vice President-Legal