IBC
International Bancshares
Corporation

July 21, 2011

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

Re: Docket No. R-1417 – Notice of Proposed Rulemaking 7100-AD75
(76 Fed. Reg. 27390 (May 11, 2011))

Dear Ms. Johnson:

The following comments are submitted on behalf of International Bancshares Corporation ("IBC"), a multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains over 278 facilities and more than 440 ATMs, which serve 107 communities in Texas and Oklahoma. IBC is the largest Hispanic-owned financial holding company in the continental United States with over $12.2 billion in assets. IBC is a publicly-traded holding company. It offers these comments on certain aspects of the proposed revisions to Regulation Z (Reg. Z) made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) with regard to the expansion of the scope of the availability–to-repay requirements to cover any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan). In addition, the proposal would also establish standards for complying with those ability-to-repay requirements. IBC is committed to making residential mortgage loans, both for sale in the secondary market and to retain in-portfolio. These proposals will significantly affect its business.

IBC is firmly opposed to lending practices that are predatory, and we encourage Congress and the federal financial institution regulators to carefully craft laws and rules that halt unscrupulous lending practices. However, such laws and regulations should avoid inflicting irreparable damage to our legitimate lending operations. IBC does not make mortgage loans based on collateral value, and a borrower's repayment ability is always a paramount concern. IBC has no desire to originate poor loans! In our experience, banks lose money every time they foreclose on real estate. Thus, a performing loan is the goal of our lenders.

We would submit that the proposed documentation requirements add to the already heavy regulatory burden related to residential mortgage lending without significantly providing protection to consumers. In fact, these rules have the potential to constrict credit availability to worthy consumers.

In addition to our concerns relating to the overall tenor of the proposals, there are a number of specific aspects of the proposed rule making that raise issues for us.

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Ability-To-Repay and Safe Harbor

The proposed rule offers two approaches, of which one would create a safe harbor and the other would provide merely a rebuttable presumption of compliance. If the Board intends to encourage banks to make "qualified mortgages" it should state without ambiguity that a "qualified mortgage" is in fact evidence a bank complied with the ability-to-repay requirements (Alternative One). Ambiguity opens the door to potential subjective analysis. Alternative Two simply adds more documentation requirements without the comfort of a safe harbor.

Next, we would suggest that "credit history" should not be one of the factors determinative of ability to repay. Certainly credit history is a critical factor in prudent underwriting. However, there are a multiplicity of factors that are taken into consideration in reviewing credit history. For example, unpaid medical expenses may be discounted as reflecting the true capacity of a potential customer. Additionally, in South Texas where many of the IBC customers are located, many consumers pay their credit cards or store finance purchases (furniture or electronics for example) 30-45 days late. This impacts their credit score dramatically. However, their debt to income rations are good and their history on existing house and car payments are on time. By evaluating the entire file, we know many requests with low credit scores will perform.

Further, in Texas, wages cannot be garnished in order to pay a judgment (other than child support). Thus, a judgment for medical expenses for example would not necessarily decrease the funds that a borrower had available to repay on his residential mortgage. In short, "credit history" without more clarification should not be a factor in ability to repay for the purpose of this rule. Including this as a criteria for "qualified mortgages" could have the effect of softening the nascent real estate recovery.

Definition of Points & Fees

Dodd-Frank limits the points and fees paid in connection with a qualified mortgage to no more than 3% of the total loan amount. The proposed definition of "points and fees" includes all compensation paid directly or indirectly by a consumer or creditor to a loan originator. The proposed definition excludes a loan originator's base salary but includes a bonus paid to loan originators based upon the amount or number of qualified mortgages. The rule does not, on its face, exclude bonuses or payments made to a loan originator by virtue of his or her participation in a general bonus or incentive program offered generally to all staff. Clearly, this sort of program should not be considered part of the "fees" for purpose of the points and fees cap. Company-wide bonus and incentive programs are common, and loan originators should not be effectively prohibited from receiving this type of compensation.

IBC is already subject to and in compliance with several different laws and regulations relating to incentive compensation programs. This additional rule relating to bonuses or incentive compensation layers on more complexity for the bank. The benefit to the consumer is illusory. By contrast, including a direct payment from the consumer for the origination as part of the points and fees clearly relates to the underlying purpose of this definition and the rule. Including indirect compensation creates ambiguity without a clear benefit to consumers.

Next, prohibiting the exclusion of what would otherwise be "bona fide" third party fees simply because they are payable to an affiliate is overly broad. For example, fees for title insurance are set in Texas by the Texas Department of Insurance. Whether the title company is an affiliate or independent is totally irrelevant. The cost to the consumer is unaffected by the fact of affiliation. The only true issue is whether the fee is reasonable.

For other closing costs, the market place strongly affects the amount of any particular fee. If a bank collects higher fees for closing costs than its competitors, then it will lose business. Thus, appraisal costs tend to be comparable whether the bank obtains an "evaluation" internally or uses an unaffiliated appraiser.

In closing, the adoption of these proposed rules will only add to the already heavy burden placed on residential lenders. The rules should not exceed the already rigid criteria spelled out in the Dodd-Frank Act.

Thank you for the opportunity to comment and for your consideration of our comments.

Sincerely,

Dennis E. Nixon
President and CEO