Bank of Central Florida
Intelligent Banking

101 S. Florida Avenue
Lakeland, Florida 33801
tel 863-682-7100
fax 863-682-7111

April 29, 2011

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

RE: Regulation Z, Docket No. R-1406
RIN No. 7100-AD 65

Dear Ms. Johnson and Comment Reviewers:

Thank you for the opportunity to once again comment on yet another onerous regulation revision. We are a 4-year-old $200 million community bank located in Lakeland, Florida. We do not currently originate many loans covered under Regulation Z for consummation of transactions secured by a consumer's principal dwelling. However, for those that we do originate, it has become very cumbersome for loan personnel to ensure they are in full compliance—especially with all the loan regulatory revisions that have been made over the past two years. Just as we are getting familiar with one rule change, another rule change comes behind to revise that previous rule change. We played no part in the financial industry crisis, yet are having to continually pay the consequences.

Due to the burdensome requirements of establishing and maintaining escrow compliance, our Bank does not currently require or have an escrow program established. Thus, we do not originate higher-priced mortgage loans (HPMLs) since we are unable to comply with the escrow provisions of Regulation Z. Our Bank's procedure is to update the mortgage rates each week to ensure they are maintained below the HPML thresholds—another burdensome requirement. We would imagine that this is a standard practice in the industry in order evade the HPML requirements. As discussed in the preamble, "the Board believes that a creditor's ability to establish escrow accounts, and thus continue offering higher-priced mortgage loans, depends mainly on whether the creditor services enough mortgage loans to make escrow accounts a cost-effective option." Since we may originate approximately 15 mortgage loans annually that are covered under these Regulation Z provisions, it is certainly not cost effective to establish (or even outsource) an escrow program where procedures need to be established, training conducted, more expensive audits and monitoring taking place, and ensuring compliance with all the escrow rules.

The following are comments regarding the TILA proposal:

1) New Disclosure - The proposal states that creditor would be required to provide the escrow account disclosure no later than three business days prior to consummation. We do not agree with this proposal and would request that the Board reconsider to revising to providing this particular disclosure no later than "consummation," especially if a bank does not require an escrow account. The customer is provided a Good Faith Estimate upfront within three business days that reveals whether they will or will not have an escrow account and the approximately amount of escrow payment amounts, if applicable. The escrow account disclosure only explains the nuances of an escrow account. To hold up a closing because a processor forgot to provide the escrow account disclosure (especially if there is no escrow account established) within three business days of closing would seem rather burdensome to the bank and customer!

   It also appears from the proposal that the escrow account disclosure would be required for a loan involving "real property" such as vacant land. This would seem to be in conflict with the RESPA rules that only require escrows for "federally related mortgage loans" involving residential real property (that may not include vacant land only loans). We request the Board review and revise where needed in order to not have conflicting provisions between regulations (escrow account disclosures only need to be provided for RESPA-related loans).

   One particular Q&A on the "Required Direct Payment of Property Taxes and Insurance" disclosure for a non-escrow account may be confusing to a consumer. The question is "What could happen if I don't pay my home-related costs?" It states, in part, "If you don't pay these costs, we could require an escrow account on your mortgage..." Even though we would state elsewhere in the disclosure that "We do not offer the option of having an escrow account," the regulation also requires us to state that we could require an escrow account...Well, that is not the case for banks who refuse to establish an escrow program. The language in this Q&A may be confusing to a consumer and they may think we can establish an escrow account. The Q&A may need to be rephrased for clarification.

2) New Pricing Benchmark - A new pricing benchmark is being proposed for a "transaction coverage rate" that will be used instead of a loan's APR to determine if a loan is considered a HPML. Instead of developing yet another burdensome step in more complicated TIL calculations, why not just ***increase*** the 1.5% and 3.5% thresholds that were set too low in the first place!! This would certainly make more common sense. The preamble states that the "Board recognized that the use of the annual percentage rate as the coverage metric for the higher-priced mortgage loan protections poses a risk of over-inclusive coverage, which was intended to be limited to the subprime market." The low thresholds have done just that in that a good percentage of the HPMLs are considered "prime" loans. As stated previously, our bank has to readjust our mortgage loan rates each week to ensure we do not originate a HPML loan. This proposal would now just complicate the process with a new and more difficult method of calculating the HPMLs.

   The Board believes it has the authority to make this particular revision to the TILA if it determines that "such rules are in the interest of consumers and in the public interest."

The preamble states that "the Board believes that it is in the interest of consumers and the public to revise the coverage metric so that the protections for higher-priced mortgage loans are not inappropriately extended to prime loans, which may result in more limited credit availability where those protections are not warranted." That is exactly what has occurred with the higher-priced mortgage provisions (and all the onerous regulatory requirements) in that mortgage credit to consumers is becoming less and less available through regulated financial institutions. We surmise that there will be another vicious cycle where consumers are going to be taken advantage of by unregulated predatory lenders, if not being done so already. While we don't have any recommendations other than increasing the HPML thresholds, adding a complicated "transaction coverage rate" TIL calculation is not the answer to this issue and we seriously request that this rule change be revisited.

It would be beneficial if the Board communicated with loan software vendors to see if this new TIL calculation is even feasible with current systems. Most systems are set up where certain fees are automatically marked as "prepaid finance charges" for TIL disclosures. Based on the proposal, only prepaid finance charges that the creditor retains (or a mortgage broker or an affiliate, neither of which we utilize) would be used in the "transaction coverage rate." This would mean that loan software developers would have to have two built-in calculation tools for TIL – one for TIL disclosures (to consumers) and one for determining if an HPML loan (internal use only). Since some prepaid charges are not retained by creditors such as certain title company fees and flood certifications, these charges would not be considered in the latter calculation but would need to be included for an accurate TIL disclosure. There may be certain fees where part is kept by the bank and part is retained by a third-party. How is the system supposed to break up this type of fee into a prepaid finance charge and non-prepaid finance charge situation? Why make it so complicated—just increase the thresholds.

3) Exemptions – The Board is authorized to exempt from the escrow requirement a creditor that (1) operates predominately in rural or underserved areas; (2) together with all affiliates has total annual mortgage loan originations that do not exceed a limit set by the Board (proposed at 100 or fewer first-lien mortgage loans serviced); (3) retains its mortgage loan originations in portfolio; **and** (4) meets any asset-size threshold and any other criteria the Board may establish (asset size not considered in proposal).

   In the proposal, the escrow requirement would not apply to a HPML if a creditor (1) makes most of its HPML loans in rural or underserved areas; (2) originates and retains the servicing rights to 100 or few loans secured by a first lien on real property or a dwelling; **and** (3) the creditor does not maintain escrow accounts. Our bank currently only originates and services a few mortgage loans and does not maintain escrow accounts (for the reasons noted above). However, we are located in a MSA. That part of the regulation just does not make practical sense in that we cannot be exempted because we are not considered rural enough (even though most of our county is farmland). So a "larger" community bank (no asset threshold in revised rule) in a non-rural area that also makes few mortgage loans and does not escrow can be exempted from the escrow provisions? How fair is that to us smaller community banks who must still comply? It is

strongly suggested that the regulation proposal be changed from an "and" to an "**or**" in the three provisions needed to be exempted. As the Board stated previously, it is not cost-effective for banks to establish escrows for only a few mortgage loans. Yet, we are being almost forced to establish such a program because there are no exemptions for financial institutions that only make a few mortgage loans and do not currently escrow. The Board seriously needs to consider expanding the exemptions for just these two circumstances.

Furthermore, the proposal states that "If a creditor already establishes or maintains escrow accounts, it has the capacity to escrow and therefore has no need for the exemption." A creditor would not be eligible if it escrows for even a single loan. We would imagine that many banks were "forced" to establish escrow programs with the TIL changes for HPML loans, even if it was not cost-effective. By just adding this provision and taking away the exemption, we certainly will seriously have to consider NEVER establishing escrow accounts.

More importantly, since we are a portfolio lender, we have a vested interest in our borrowers making their mortgage payments and paying their insurance and taxes. Our underwriting considers the borrower's capacity to pay their own insurance and taxes. The new TILA proposal for the "ability to pay" also will require banks to include the taxes and insurance in their debt-to-income ratios. If borrowers have the capacity to pay their own taxes and insurance, why should a bank force the borrower to escrow these payments if it happened to be a HPML loan? And now that requirement will be in place for not just one year but will be increased to five years that the borrower must maintain the escrow account.

In conclusion, why do the attorneys drafting these proposals and finalizing rules have to make them so complicated for banks to comply with? While the regulators want to make disclosures simpler for consumers to understand, at the same time regulators need to make the regulations simpler for bankers to understand and comply. All of these regulatory changes are putting a hardship on small community banks. Our bank has one compliance officer on staff whose duty is to ensure we are in full compliance with all the myriad of federal and state regulations. Yet, we have to maintain the same level of consumer compliance as a larger regional bank who may have hundreds of compliance staff. Unfortunately, there does not appear to be any relief in the near future with the onslaught of new rules we must comply with under the Dodd-Frankenstein Act.

Thank you for your consideration of these comments.

Sincerely,

Cheryl A. Nakashige, VP
Compliance/BSA Officer