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

July 22, 2011

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.,
Washington, D.C. 20551

Re: Regulation Z; Docket No. R-1417, RIN No. 7100-AD75
Proposed Rule—Required Analysis of Applicants' Ability to Repay Mortgage Loans

Dear Ms. Johnson:

The Illinois Credit Union League represents over 375 Illinois-chartered and federal credit unions in Illinois. We are pleased to respond on behalf of our member credit unions to the proposed amendments to Regulation Z that would implement amendments to the Truth in Lending Act (TILA) added by the Dodd-Frank Act. The amendments prohibit creditors from making mortgage loans without regard to the consumer's repayment ability. 15 U.S.C. 1639(c).

We understand that many aspects of the proposal are statutory requirements set forth in the Dodd-Frank Act and cannot be altered by the Board. We believe, however, that the proposed rule contains some overly restrictive provisions that the Board can amend. If promulgated without amendment these provisions will reduce the ability of creditworthy consumers to obtain real estate loans and impose unnecessary regulatory burdens on credit unions.

Definition of "Qualified Mortgage"

We generally support the proposed definition of "qualified mortgage."

With respect to proposed alternatives 1 and 2—we believe that proposed alternative 1 (the safe harbor alternative) provides substantially greater protection to credit unions than the "presumption of compliance" provided by alternative 2. The safe harbor alternative is very important to credit unions given a borrower's ability under new TILA §130(k) to utilize a creditor's failure to conduct a sufficient "ability-to-repay" analysis as a defense to a foreclosure action.

A credit union complying with the proposed regulation's very substantial underwriting criteria regarding the ability to repay should be entitled to "safe harbor" protection against frivolous TILA §130(k) claims. Allowing such claims in order to delay the foreclosure process would not be in the public interest. The increased foreclosure costs and delays could result in a reduction in mortgage loans or a significant increase in the cost of consumer mortgage credit.[1]

Prepayment Penalties

Closing costs that are disclosed at the time of the loan but are waived if the borrower maintains the loan for reasonable period of time should not be included in the definition of "prepayment penalties." Both the Federal Credit Union Act and the Illinois Credit Union Act prohibit prepayment penalties but the courts and the NCUA have determined that closing costs disclosed at loan origination that are waived if the loan is not repaid in full in a relatively short period of time should not be considered "prepayment penalties." The "waived fees" procedure is typically employed in "no fee" home equity loans to counter the tendency of certain borrowers who are "chasing rates" to refinance the loan within in one or two years after closing due to a minor downward fluctuation in interest rate. The procedure allows the original lender to recoup some of fees associated with approving an originating the loan.

In addition, if there is a prepayment during a month, interest amortized during the remaining days of the month should not be considered a "prepayment penalty." The courts have held that such computation methods are not "prepayment penalties."

Different definitions of "prepayment penalty" will lead to increased confusion by credit unions and consumers, and will increase a credit union's regulatory burden.

Documentation Requirements for Self-Employed and Certain Immigrant Populations

Self-employed people and certain immigrant populations may not have documents such as W-2 forms or pay stubs. In order to ensure continued access to mortgage credit for these groups, the regulation or official staff commentary should be amended to make it clear that "qualified mortgages" can be underwritten based primarily or exclusively on financial institution records that show the ability to repay.

30 Year Mortgages

The regulation or official staff commentary should be amended to clarify that the proposed 30-year limitation on "qualified mortgages" can include mortgages that are slightly longer than 360 months (such as 361 or 362 months) if the initial payment on the mortgage does not occur immediately.

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[1] Given the unique federalism concerns that this new law presents. we urge the agency to proceed carefully with respect to all rules and policies related to the Dodd-Frank Act amendment to TILA providing a defense to foreclosure. State courts typically adjudicate foreclosure-related matters and state laws do not generally provide a defense to foreclosure similar to TILA §130(k). Credit unions are concerned that delinquent borrowers may assert frivolous TILA §130(k) claims in federal courts; thereby delaying foreclosures without sufficient legal justification.

"Balloon Payment Qualified Mortgages" for Lenders in Rural and Underserved Areas

We support the proposal to allow balloon payment mortgages to be considered "qualified mortgages" if made by lenders under $2 billion in assets that operate predominantly in "underserved" and "rural" areas. Balloon loans enable smaller institutions to control interest rate risk and are necessary for maintaining consumer access to mortgage credit in such areas.

Limitations on the number of mortgages made annually or the dollar amount of such loans should not be imposed given the $2 billion asset size limit and the other proposed limitations in the rule.

The proposal defines an "underserved" area as a county where only one creditor makes five or more mortgages a year, and defines a "rural" area as a county that are not within or adjacent to a metropolitan statistical area or a micropolitan statistical area. The proposed definitions are far too restrictive and should be expanded to include areas determined to be "underserved" or "rural" by other federal agencies such as the National Credit Union Administration (NCUA) Board and as well as areas served by financial institutions that the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund) has determined qualify for the Community Development Financial Institutions Program and similar CDFI Fund programs serving underserved communities.

The proposed definitions' restriction of "underserved" areas and "rural" areas to only the most underserved and the most rural counties is inconsistent with congressional intent will have the effect of limiting access to mortgage credit in other objectively underserved and rural areas.

The Board has also requested comments on whether some de minimis number of transfers of balloon payment mortgages may be made without losing eligibility for the exception; and has requested suggestions regarding any other situations where such transfers should be allowed without losing eligibility for the exception (e.g., entering into mergers or acquisitions, or sale of loans by troubled institutions in order to raise capital).

We believe that a limit of 10 sales per year would provide a meaningful exemption for eligible institutions. We also believe there should be an exemption for all sales occurring for safety and soundness purposes --such as when a credit union or other depository institution must reduce assets in order to maintain appropriate capital ratios under Prompt Corrective Action rules.

Third Party Charges and Points & Fees

We generally support the proposed definition of "points and fees," although we note that limiting points and fees, especially in junior mortgage situations, could result in a credit union not recovering its costs for doing the loan unless bona fide third-party charges such as appraisals and title insurance are excluded from the definition.

We support the proposed exclusion of bona fide third party charges not retained by the creditor from the definition of "points and fees"--including any mortgage insurance or other guarantee protecting the creditor against the consumer's default or other credit loss so long as the charge (1) is part of a federal or state program (e.g., a FHA guaranty), or (2) is equal or less than the amount payable for an FHA guarantee so long as the premium is refundable on a pro rata basis

and the refund is automatically issued upon notification that the underlying mortgage is paid off; or (3) the premiums or other charges are payable after closing.

We also support the proposed exclusion from points and fees of amounts escrowed for future payment of taxes and for other "real estate related fees." Such amounts should, of course, be excluded. It is appropriate to limit the exception for other "real estate related fees" only if (1) the charges are reasonable; (2) the creditor receives no direct or indirect compensation in connection with the charge; and (3) the charge is not paid to an affiliate of the creditor.

Verification by Third-Party Records

We support the proposed official staff commentary clarification that a credit union's own deposit account statements fall within the definition of "third-party records." We also support the proposed provisions that (1) allow consumers to orally verify their employment status, (2) allow use of the Department of Defense personnel database to verify the employment status of military personnel, and (3) specify that debts a consumer lists on the loan application but are not listed on the consumer's credit report need not be verified with third-party records.

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We are pleased to be afforded the opportunity to comment on the proposed amendments to Regulation Z and the Official Staff Commentary regarding appropriate analysis of ability to repay mortgage loans. Credit unions—unlike some types of mortgages lenders—have historically engaged in safe and sound mortgage underwriting that includes careful analysis of the applicant's ability to repay.

Please contact me at 800-942-7124 ext.4262 if you have any questions concerning the above comments.

Very truly yours,

ILLINOIS CREDIT UNION LEAGUE

By: Cornelius J. O'Mahoney
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