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February 9, 2009

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

Re: Regulation Z; Docket No. R-1340; Proposed revisions to Regulation Z to implement the provisions of the Mortgage Disclosure Improvement Act of 2008 (MDIA)

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)[1] welcomes the opportunity to offer comments in connection with the Federal Reserve Board's proposed rule to implement the provisions of the Mortgage Disclosure Improvement Act of 2008 (MDIA). We strongly value the importance of providing consumers with clear and timely disclosures so they can make informed decisions regarding their loan transactions.

The MDIA requires early disclosures for mortgage loans secured by dwellings other than a consumer's principal dwelling, and waiting periods between the time when disclosures are given to the consumer and consummation of the transaction. The rules proposed by the Federal Reserve Board (Board) to implement the MDIA would require creditors to deliver or mail good faith estimates of the required mortgage disclosures no later than three business days after they receive a consumer's application for a closed end loan secured by a dwelling, and the delivery or mailing of these disclosures would have to occur at least seven business days before consummation of the loan transaction. If the

[1] *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

annual percentage rate (APR) provided in the good faith estimate changes beyond a stated tolerance, then creditors would need to provide corrected disclosures to the consumer at least three business days before consummation of the loan transaction. For both the seven business day and three business day waiting periods, consumers could expedite consummation to meet a "bona fide personal financial emergency."

The Board requested comment on several specific questions relating to the implementation of the MDIA. ICBA has reviewed the proposed rule and the Board's questions and has received feedback from our membership. Our comments on the proposed rule are listed below.

Definition of "Business Day"— § 226.2(a)(6)

The MDIA requires creditors to wait seven business days after they provide the early disclosures before closing the loan transaction. The Board asked whether, for purposes of this seven business day waiting period, a "business day" should be defined under the Board's general definition, which is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions, or defined under the Board's more precise definition of "business day," which is all calendar days except Sundays and specified federal legal public holidays.

ICBA agrees the general definition of business day should be used to determine the timing for providing the early TILA disclosures three business days after receiving a consumer's application for dwelling-secured credit, because this definition would be consistent with the requirement to provide good faith estimates of settlement costs under the Real Estate Settlement Procedures Act of 1974 (RESPA). It is important that the timing requirements for the initial disclosures under RESPA and TILA be consistent, since this enables banks to more easily comply with both rules, and also allows the consumer to receive both sets of disclosure around the same time.

For purposes of the seven business day waiting period requirement, ICBA favors the more precise definition of business day. This seven day waiting period does not overlap with any RESPA requirements, so there is not the same need that it be consistent with RESPA's definition of business day. In addition, the precise definition of business day would make the waiting period the exact same for all creditors so there would be uniformity with how the rule would be applied throughout the industry. Application of the general definition of business day would lead to differences in the way the rule would be applied throughout the industry, since some creditors' offices may be open to the public on days when other creditors' offices are not open to the public. Furthermore, the rule would be easier to comply with if the definition of business day for purposes of this seven business day waiting period was consistent with the right of rescission rules which do apply the Board's precise definition.

ICBA also believes the precise definition of business day should apply to the three business day waiting period for a consumer to receive revised disclosures, since both waiting periods have the same purpose, in that they are designed to ensure the consumer

is able to read and fully understand their disclosures before consummation of their loan transaction. Therefore, for purposes of both the seven business day waiting period and the three business day waiting period for revised disclosures, ICBA prefers the Board apply the precise definition of business day, which would be all calendar days except Sundays and specified federal legal public holidays.

Consumer's Waiver of Waiting Period Before Consummation — § 226.19(a)(3)

The MDIA permits the consumer to waive the seven business day waiting period after they receive their early disclosures before loan consummation and the three business day waiting period after they receive any corrected disclosures, in cases of a "bona-fide personal financial emergency." Currently, the proposed amendments to the Official Staff Commentary to Regulation Z explain that "Whether a bona fide personal financial emergency must be met before the end of the waiting period is determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure during the waiting period is one example of a bona fide personal financial emergency." This rule regarding the waiver of the waiting period is similar to the waiver requirements for rescission rights and the waiting period under the Home Ownership and Equity Protection Act (HOEPA) for high-cost mortgages.

The Board solicits comment on the proposed modification or waiver procedures, especially whether such procedures should be more or less flexible than existing procedures for modifying or waiving the rescission right or the waiting period before consummating mortgage transactions covered by § 226.32(a) of the HOEPA rules. The Board also requests comment on whether there are circumstances, other than pending foreclosure, where the consumer may want to consummate the transaction before the end of the seven business day waiting period after early disclosures are made, the three business day waiting period if the creditor is required to make corrected disclosures, or either period.

ICBA believes the modification or waiver procedures should be more flexible than the waiver requirements for the rescission right and HOEPA loans, and at the very least, should not be any less flexible than the waiver requirements for rescission rights and the waiting period under HOEPA. The rules implementing HOEPA apply to high cost mortgage loans that were targeted particularly because of their high risk and the fact that consumers receiving these loans appeared to be more vulnerable to abusive practices. However, the MDIA encompasses a broader spectrum of loans and would cover all loans secured by a dwelling, not just high cost loans secured by the consumer's primary residence. The two statutes have completely different purposes, and HOEPA should not be used as a model for implementation of the MDIA. Furthermore, given the length of time that is required between the time early disclosures are provided and when a loan can be closed, greater flexibility for these modification or waiver procedures makes more practical sense for the loans covered by the MDIA.

In addition, while the Board specifically mentions "the imminent sale of the consumer's home at foreclosure" as an example in which the consumer may want to consummate the

loan transaction earlier, there are other circumstances where the consumer may want to consummate the transaction earlier that are worth noting, such as to avoid foreclosure on a property the consumer is not currently living in. ICBA would like to see this example broadened to include any foreclosure, and not just foreclosure on the consumer's primary residence.

There are also other reasons besides foreclosure in which a consumer may wish to speed up the consummation process. For example, a consumer may have a medical or financial emergency unrelated to foreclosure, in which they would need to access funds immediately such as medical emergencies requiring prepayment for services before a procedure may be accomplished, uninsured or underinsured accidents or weather related occurrences, or deadlines imposed by insurance companies, legal proceedings, and natural disaster emergencies which require more rapid access to loan funds. Financial emergencies may be even more prevalent in the current financial climate where many consumers face more economic hardships than in prior years.

Because of the various reasons for a potential emergency, the Board should not strictly define what is or is not a bona fide financial emergency, but should provide several examples of what could be included under this definition. The Board should also make it clear that any list is for illustrative purposes and is not intended to be an exhaustive list, and that what constitutes a bona fide personal financial emergency should be left up to the judgment of the creditor providing the loan funds.

Notice— § 226.19(a)(4)

The MDIA requires that early disclosures contain a clear and conspicuous notice which states: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application." Under proposed § 226.19(a)(4), creditors would have to include this statement in the early disclosures and in any corrected disclosures required by § 226.19(a)(2). The Board requests comment on the proposed § 226.19(a)(4), including any benefits to consumers or burdens to creditors that may result from the proposed requirement, and whether the statement should be provided in substantially similar form using terms that are easier for consumers to understand.

ICBA generally does not believe there is much burden to including this notice in the disclosures for consumers. If there is safe harbor language to fulfill this requirement, then the language can be added to the forms for consumers moving forward without a great expense to banks. There could be some burdens placed on banks to ensure that all required disclosures contain the notice if their loan disclosure system is not flexible enough to adequately include the notice on the disclosures. However, most vendors will likely work with their banks to ensure that the notice is accurately included.

Furthermore, the ICBA is in favor of clarity and transparency for the consumer, and there may be some benefits to the consumer having written confirmation that they do not have to consummate the loan simply because they have been provided early disclosures or any needed corrected disclosures. Nevertheless, ICBA believes that while these notices can

be helpful, the more required consumer notices that are added to loan disclosures, the greater risk there is of information overload and the unwillingness of consumers to read all of the information and disclaimers in their disclosures, regardless of how long their waiting period is before consummation of the loan transaction.

Regarding the precise language of the notice, ICBA believes the word "agreement" may be confusing to consumers because it is unclear what it is actually referring to, therefore we recommend using the words "loan transaction" or something similar instead. Otherwise, we have no further comment on the specific language of this notice. The requirement should be for a uniform statement rather than leaving it up to the lender to develop language that would satisfy the requirement, because this would allow too much interpretation and inconsistency among the industry.

ICBA would prefer the Board provide the precise language that would act as a safe harbor, so that banks can clearly comply with the requirement. Furthermore, ICBA would like the Board to make it clear that creditors may have flexibility regarding where this statement is located on the loan documents, as long as the notice meets the MDIA's "conspicuous type size and format" requirements.

Timeshare Plans— § 226.19(a)(5)

The Board solicits comment on the costs and benefits of basing the timing requirements for corrected disclosures solely on the time of consummation for purposes of non-timeshare transactions, but on the time of consummation or settlement for purposes of timeshare transactions.

The ICBA believes the requirements for timeshare transactions should be the same as the requirements for other closed end mortgage transactions. Keeping the requirements the same would lead to greater consistency in the regulation and less burdensome compliance. If the regulation is dealing with closed end loans secured by a dwelling, then all such loans should have similar requirements relating to disclosures, notice and timing.

Timing of Disclosures for Home Equity Lines of Credit

The Board seeks comment on whether it is necessary or appropriate to change the timing of HELOC disclosures, which are open end loans and are not covered under the current proposal dealing with closed end loan transactions secured by a dwelling. The Board specifically asked whether a requirement to disclose final HELOC terms three business days before account opening would substantially benefit consumers who plan to draw immediately on the plan.

ICBA supports efforts to provide consumers with meaningful disclosures so they can make informed decisions regarding their loan transactions. While there may be some benefit in providing final HELOC terms before account opening, there is a greater chance

for unintended consequences if this is made a requirement. Consumers planning to draw on their funds may need the funds prior to the end of this waiting period, or HELOCs closed in connection with a newly originated loan may be ready to close before three business days from application. Having to wait the extra time may be more costly to the consumer then the benefit received from getting the final HELOC terms early.

Furthermore, an additional waiting period would likely not benefit the consumer very much since presently they are already given three business days to rescind their loan transaction. This period should allow the consumer sufficient time to review their documentation and determine if they want to continue with the loan transaction or rescind it. Also, ICBA has not heard of any substantial consequences suffered on behalf of consumers due to the timing of their HELOC disclosures. In this time of vast regulatory changes, we would not support further regulatory change unless there were a proven need for it. We urge the Board to fully research how HELOC loans are currently provided to consumers and to consult with community banks as well as everyday consumers who have recently completed these loan transactions to determine what the specific good and bad practices may be before considering any changes to the current regulations.

Overall, ICBA values the use of consumer disclosures because they allow consumers to compare the terms and cost of their loan transactions. These disclosures should be provided in a timely manner to allow consumers to make educated comparisons and fully understand the nature of their financial transaction. However, not all consumers will or want to delay the consummation of their mortgage transaction. Creating additional artificial time delays between providing the early disclosures and consummation of a transaction beyond what is now contained in the various regulations may simply prove to be an added burden to consumers and lenders alike. Therefore, ICBA strongly urges that the regulation not be further modified to provide further waiting periods and disclosures unless there is a substantial documented and verifiable value for implementing these changes.

ICBA appreciates the opportunity to offer comments in connection with the Federal Reserve's proposed rule to implement the new provisions of the MDIA. If you have any questions about our letter or need additional information, please do not hesitate to contact me at 202-659-8111 or by email at Elizabeth.Eurgubian@icba.org.

Sincerely,

/s/

Elizabeth A. Eurgubian

Regulatory Counsel