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November 4, 2009

The Honorable Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th and Constitution Avenue, NW
Washington, DC 20551

Dear Chairman Bernanke:

I am writing on behalf of the members of the American Bankers Association with regard to the recent changes to Regulation Z (Truth in Lending), most of which took effect on October 1 of this year. As ABA predicted in comment letters filed on April 8, 2008 and August 29, 2008, these new rules are already having a detrimental impact on consumers' access to credit. Anecdotal comments received from a wide range of our members in the days since the rules took effect suggest that many lenders are likely to abandon the segment of the market covered by the new rules, and those who remain will inevitably face higher compliance and liability costs – which will ultimately be passed along to consumers.

The ABA commented on April 8, 2008 on the then-pending changes proposed to Reg Z (TILA/HOEPA) and on August 29, 2008 on then-pending changes to reporting data under HMDA for higher priced loans (as defined under TILA/HOEPA). Both prior letters are attached.

We strongly urge the Board of Governors to reconsider some of our earlier comments and reexamine the applicability of the new rules in light of responses now occurring in the marketplace. We intend to further survey our members, and to present ongoing data to quantify the effects of the new rules on a portion of the market segment newly deemed as “higher-cost”. We believe that the goal of the rules – to provide greater consumer protection to borrowers in a specific market segment – can be achieved without some of the market disruptions that the current rules are causing. We reiterate our key arguments below.

Definitions and Benchmarks

In our April 8, 2008 letter we raised concerns about the proposed definition of higher-priced loans. While the final rule did amend the definition, it nevertheless still brings far too many “prime” loans into the definition of higher-priced loans – which carry far greater restrictions, liabilities and reputational risk for lenders. In a recent survey of ABA's Mortgage Markets Committee, fully fifty percent of respondents indicated that they would not make loans in the new “higher-priced” category. Under prevailing interest rates the “higher-priced” category is triggered at a rate of

approximately 6.5 percent for 30-year loans. As we noted in our earlier letter, “We are concerned, however, that the proposed regulations for higher-priced loans would unintentionally and unnecessarily apply to a substantial portion of the prime market and thereby impose additional costs for a large portion of the mortgage market with little or no offsetting benefit.” In fact, the outcome may be even worse. If a significant number of lenders cannot lend at rates beyond this level, the impact on credit availability could be dramatically negative, particularly as the nation struggles to regain its economic footing.

Similarly, in our comment letter of August 29, 2008 (filed jointly with AFSA, CBA, CMC and MBA) we specifically recommended adjusting the benchmark triggers for specific market segments, including jumbo loans, loans with mortgage insurance and FHA loans. We reiterate this recommendation now. Without such adjustments, many of these loans are being pushed into the “higher-priced” category, resulting in higher compliance and liability costs or less credit availability.

Furthermore, we are hearing from our member banks that application of the new rules is having the effect of a de facto ban on certain loan products. Some small banks who for years have made balloon loans in their communities are finding it impossible to continue to make such loans absent guidance from the Federal Reserve (and their primary regulators) on how to document compliance of these loans with the new rules. This effect appears primarily in rural communities where homes are frequently situated on non-conforming properties that in part have agricultural uses, so that the loan structures parallel that commonly found for farm land. The Board has long avoided the practice of prohibiting specific loan types, and has wisely focused on loan characteristics. However, the practice being put in place under the new “higher priced” rules appears to be having the effect of eliminating these balloon loans entirely. While this type of loan is not widely used in today’s mortgage market, it does serve a purpose that is useful to both lender and borrower alike in some communities. Rather than prohibit this type of loan (either directly or indirectly) we believe regulations should set forth a clear compliance regime to ensure that borrowers’ interests are protected and lender compliance is possible.

Escrow Requirements

Beginning on April 1, 2010 lenders making loans in the “higher-priced” category will also be required to establish escrow accounts for those loans. Many of our members are indicating that the increased costs and compliance burdens associated with escrow accounts will likely drive them from the market – another way in which the “higher-priced” categorization will limit credit availability. ABA made detailed recommendations that borrowers in a higher risk or higher cost category should receive more detailed disclosures regarding taxes, insurance and other obligations of which the consumer must be aware, and necessary to ensuring the ability to repay a loan. However, we noted that the increased costs and compliance requirements associated with escrow requirements would likely drive some smaller banks from the marketplace. Comments received from many of our smaller members in recent weeks furthers our belief that such a result is occurring--reducing credit options for many borrowers, particularly in small and rural communities. To avoid this effect, we suggest that the Board consider establishing a *de minimis* exemption from mandatory escrow for those institutions originating fewer mortgages than a *de minimis* threshold.

The Honorable Ben Bernanke
Board of Governors of the Federal Reserve System
October 30, 2009
Page 3

Conclusion

We will soon receive additional quantifiable data from our members which we will share with your staff regarding the immediate and on-going impact on the marketplace for loans now categorized as “higher-priced”. We urge the Board to reconsider the impact of the new rules on the mortgage markets, particularly in light of the precarious state of the economy. If there is specific data, or other information which may be helpful to you in examining the effects of the new rules, please do not hesitate to have your staff contact me.

Sincerely,

A handwritten signature in black ink that reads "Robert R. Davis". The signature is written in a cursive style with a large, prominent 'R' at the beginning.

Robert R. Davis

cc: The Honorable Sheila Bair, FDIC
The Honorable John C. Dugan, OCC
Mr. John E. Bowman, OTS