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October 2, 2009

Governor Elizabeth Duke  
Board of Governors of the Federal Reserve System  
20th Street & Constitution Avenue, NW  
Washington, DC 20551

Re: Implementation of the Final Rules Amending Regulation Z, which regulates the Truth in Lending Act and Home Ownership and Equity Protection Act

Dear Governor Duke:

I am writing on behalf of the Independent Community Bankers of America (ICBA)<sup>1</sup> to express our strong concerns with the Federal Reserve's final rules amending Regulation Z to implement provisions of the Truth in Lending Act and the Home Ownership and Equity Protection Act that become effective October 1, 2009. As we have approached the implementation date, the implications of the regulatory amendments have become more daunting for our bankers, especially given the current interest rate environment where a higher priced mortgage loan under the Federal Reserve's established threshold would have an annual percentage rate of less than 6.5% for a first lien mortgage. ICBA has been receiving a number of calls from community bankers who now see that they must stop offering loan products they have offered for decades, due to the severe restrictions of these Regulation Z amendments.

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<sup>1</sup>*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](http://www.icba.org).*

While ICBA concurs that the Federal Reserve should take steps to address irresponsible mortgage practices that harm consumers, including those conducted by lenders that typically sell the loans and do not have a vested interest in their long term performance, we find these amendments to Regulation Z will severely limit, and in some cases completely eliminate, the mortgage lending business of a number of community banks, many of whom serve as the primary financial institution in their community. As a result, we will see a world where there are far fewer loan options for consumers in these communities.

In particular, ICBA strongly urges the Federal Reserve to amend the restrictions for “higher-priced mortgage loans,” outlined in § 226.35 of Regulation Z, as they are too restrictive and will limit the availability of the traditional, well-underwritten mortgage loans that are made and held in portfolio by community banks that have a vested interest in their performance. Many of the mortgage loans that are covered under this “higher-priced” definition are loans that community banks have been providing to consumers in their communities for decades, with no problems. These loan products bear no resemblance to the poorly underwritten loans offered by large lenders and mortgage brokers that the Federal Reserve’s regulatory amendments intended to address. Community banks are alarmed that they must now cease offering these loans that they have offered safely and soundly to generations of borrowers because of the abusive practices of other loan originators.

For example, a loan that is provided by many community banks includes a 15 to 30 year amortization with a three or five year balloon. These particular loans are traditional community bank loan products that require a down payment but that also include higher interest rates. Community banks use this structure to match the maturity of their deposit base which provides funding for these loans. Generally, these mortgage loans are not saleable to the secondary market or the bank does not generate enough volume to justify the staff commitment to develop a secondary market relationship because of the small size of its market. Community banks provide these loans as a service to their community, as it may be the borrower’s only credit option. These loans are especially significant for consumers in rural communities where it is difficult to impossible to sell the loans into the secondary market due to the unique nature of rural properties and the associated challenges in getting comparable sales for appraisals that meet secondary market standards, such as distance to comparable properties or the number of adjustments to the value because rural properties do not all look alike. Therefore, the only way the bank can safely and soundly extend credit is to structure the transaction as a higher interest balloon loan, which is generally renewed at maturity.

While there is an exception in the Regulation Z commentary § 226.34(a)(4)(iv)-2 for balloon payment loans with a less than 7-year term if the creditor is unconditionally obligated to renew the loan at the consumer’s option or is obligated to renew subject to conditions within the consumer’s control, this exception is too limited for many community banks. These loans are generally renewable, but most of these loan programs do not satisfy the strict “automatic renewal” exception, which would greatly affect the underwriting of the loan.

In addition, under the new § 226.35(b)(3) of Regulation Z, the amendments require escrow accounts to be mandatory on first-lien higher-priced mortgage loans and permit, but not require, creditors to offer borrowers an option to cancel escrow accounts twelve months after consummation. This requirement will also add tremendous operating costs for community banks that, in many cases, do not require escrows for loans they hold in portfolio due to the cost of establishing and maintaining an escrow service. Our membership generally consists of small banking institutions with very limited staff, and many of our members have told us they will cease providing certain mortgages because the operating expenses will be too great. Again, this will only hurt their customers who will have fewer lending options available to them in their small communities. ICBA believes that escrows are not necessary if the loans are properly underwritten to ensure the borrower has the financial ability to pay the loan, insurance and property tax payments. Community bankers explain the tax and insurance payment obligations to borrowers so they do understand all their payment obligations.

In closing, ICBA urges the Federal Reserve to reconsider these lending and escrow requirements, and not limit the availability of higher-priced balloon payment loans with less than seven year terms as long as the consumer satisfies the bank's underwriting requirements and the loans are held in portfolio by the bank. The loans we describe are traditional community bank products, and the restrictions for higher-priced mortgage loans must be amended so these loans can still be provided to community bank borrowers.

Thank you for considering these comments. If you have any questions about the views expressed in our letter or wish to speak with us or our bankers in more detail about these community bank loan products, please do not hesitate to contact me or Elizabeth Eurgubian at 202-659-8111.

Sincerely,

/s/

Camden R. Fine  
President and CEO

