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May 2, 2011

Via email
Jennifer J, Johnson Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitutions Avenue, NW
Washington DC 20551

Re: Comments: Docket No. R-1406 (RIN 7100-AD 65)

Dear Ms. Johnson:

The California Bankers Association submits these comments on behalf of its members, which are FDIC-insured depository financial institutions that do business in California. The Federal Reserve Board has issued a proposed rule ("Proposal") amending Regulation Z pursuant to the Dodd Frank Wall Street Reform and Consumer Protection Act ("Act") relating to the mandatory imposition of escrow accounts with respect to higher priced mortgage loans.

At the outset we note that the Board's "Jumbo Escrow Proposal," which it adopted on September 24, 2010 and which went into effect on April 1 this year, already created some legal uncertainties in California because of the application of conflicting thresholds under California law (California Civil Code Section 2954). In addition, the Board establishes different thresholds for what constitutes higher-priced mortgages for different purposes, making creditors' compliance burdens unnecessarily onerous. A transaction in which the relevant rate exceeds the average prime offer rate by 2.5 percentage points applies to the escrow requirements under the Proposal, but only 1.5 percentage points for purposes of ability to pay considerations and prepayment penalties. We urge that the Board strive, where possible, to establish uniform standards with regard to related regulations.

Exceptions. Some of the burden created by the Proposal may be reduced for smaller institutions and those operating in underserved and rural areas. We urge the Board to use its authority to adopt more expansive definitions of "underserved" and "rural" that include areas that have been determined to be as such by other federal agencies. Most smaller institutions do not offer escrow accounts and do not have the staff and other resources necessary to service mortgage escrow accounts.

We also ask that the Board consider exceptions from the Proposal for smaller institutions that portfolio their loans and thus engage in more conservative lending practices. These creditors have the incentive to ensure that their customers are able to make payments since they are directly exposed to any losses during the life of the loan. The Proposal would exempt creditors that make 100 or fewer mortgages a year and hold those mortgages in portfolio. We urge that the Board greatly expand the exemption to at least 250 mortgage originations a year or more. Our members inform CBA that the burdens created by the Proposal would be great enough to discourage them from extending residential mortgage credit. If a lending institution would curtail lending solely for the purpose of avoiding a regulation, this outcome is deleterious to consumers, to banks, and to the economy.

Cancellation. CBA requests that the Board clarify that the regulation would allow a creditor to cancel the escrow where it has decided to charge off the loan, when there is no further reason to maintain it. An escrow should be terminable at the creditor's discretion when the account is reported to a credit bureau as charged off.

Evasion provision. The Proposal includes a prohibition against structuring a home-secured loan as an open-end plan to evade the regulation. This language automatically makes open-end mortgage loans more risky. CBA urges that the Board provide more clarity in the regulation and in the official staff commentary with an eye toward ensuring that creditors are not discouraged from making open-end mortgage credit.

Condominiums and coops. CBA asks that the Board make clear that the Proposal retains a limited exemption for condominiums and coops that are used as principal residences. The Proposal and commentary include possibly contradictory provisions that raise some doubt.

Compliance date. As the Board well knows, this regulation comes at the heels of a series of final and proposed regulations affecting residential mortgage lending. More is on the way. CBA's members are struggling to maintain their level of lending in the face of ever escalating regulatory demands. We understand that the Proposal is mandated by the Act and that the Board is obligated to develop the rule and implement it. However, we urge that the Board exercise its discretion to adopt a delayed compliance date to allow mortgage lenders to absorb the recent (and other upcoming) changes that they are subject to.

Compliance with the Proposal would require lenders to develop programs to provide the new disclosures and forms within the required times. Regulations such as this one invariably require careful programming of systems and testing. Policies and procedures must be developed and staff trained. And because residential mortgage lending is subject to a myriad of regulations, including RESPA, compliance must be coordinated with other existing requirements.

One opportunity for the Board to minimize unnecessary regulatory burdens on mortgage lenders is to put off the compliance date of this and any further regulation of residential mortgage lending until the new Consumer Financial Protection Bureau integrates the Regulation Z and RESPA mortgage disclosures as required under the Act. Otherwise, we ask that lenders are given from 12 – 18 months after publication of the final rule to comply. Thank you for this opportunity to provide comments.

Sincerely,

Leland Chan
General Counsel