October 5, 2009

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552

Dear Mr. Pollard:

The Independent Community Bankers of America[1] (ICBA) welcomes the opportunity to comment on the notice of study and recommendations regarding Federal Home Loan Bank Collateral for Advances and Interagency Guidance on Nontraditional Mortgage Products.

Section 1217 of the Housing and Economic Recovery Act of 2008 (HERA) requires the Federal Housing Finance Agency (FHFA) to conduct a study on the extent to which loans and securities used as collateral to support Federal Home Loan Bank (FHLB) advances comply with the interagency guidance on nontraditional mortgage products. The study must consider and recommend any additional regulations, guidance, advisory bulletins, or other administrative actions necessary to ensure that the FHLBs are not supporting loans with predatory characteristics. HERA also requires that the public have an opportunity to comment on any recommendations made as a result of the study.

ICBA believes that it is important for the FHLBs to understand the risks inherent in the collateral they accept and to take steps to appropriately manage the risks, particularly in the current challenging environment, including ensuring that FHLBs place limitations on the amount and types of collateral accepted and appropriately haircutting collateral based on its risk profile. We also agree that the FHLBs should ensure that eligible collateral conform to guidance issued by the regulatory agencies that addresses nontraditional and subprime loans and protect consumers from loans with predatory characteristics.

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[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 over 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.

Changes to Regulation Z

The FHFA has asked whether it should explicitly address other mortgage features such as those addressed in changes to Regulation Z (Truth in Lending) that took effect on October 1, 2009. The Regulation Z changes are having a significant negative impact on the traditional mortgage products that community banks make and hold in portfolio and thus could be used for advance collateral. ICBA has written the Federal Reserve asking it to reconsider the new lending and escrow requirements and not limit the availability of higher-priced balloon payment loans of less than 7 years as long as the consumer satisfies the bank's underwriting requirements and the loans are held in portfolio by the bank. (See attached ICBA letter to Governor Elizabeth Duke.)

By the rule's definition, "higher-priced mortgage loans" may be a first-lien mortgage that has an annual percentage rate (APR) that is 1.5 percentage points or more above an index, or 3.5 percentage points if it is a subordinate lien mortgage. Creditors are prohibited from making a loan without regard to a borrowers' ability to repay the loan from income and assets other than the home's value. A creditor complies, in part, by assessing repayment ability based on the highest scheduled payment in the first seven years of the loan.

Where a higher-priced mortgage loan has a fixed monthly payment for the first seven years concluding with a balloon payment, a mortgage lender may, for purposes of the presumption, determine the borrower's repayment ability by considering the amount of the consumer's fixed monthly payment. But where a balloon payment comes due before the end of seven years, the balloon payment must be considered in determining repayment ability. In effect, this prohibits higher-priced mortgage loans with balloon payments due in less than seven years in almost all cases. Where the borrower has the right under the mortgage contract to renew the loan beyond seven years, there is no balloon payment that needs to be considered in determining repayment ability. While this right may be conditional, satisfying the conditions must be within the borrower's control.

Many community banks offer 3- or 5-year mortgages that have balloon payments and keep these loans on their books as they are not readily sellable in the secondary market. These banks have made this type of loan for decades in a safe and sound manner. These loans would meet most of the other requirements of Regulation Z. As a standard practice, community banks verified the income and assets they rely upon to determine repayment ability. Prepayment penalties are not attached to these loans. However, Regulation Z's requirement that creditors must establish escrow accounts for property taxes and homeowner's insurance for all first-lien mortgage loans presents a significant problem to smaller lenders as they do not typically establish escrow accounts on the portfolio loans due to the significant costs involved. Community bankers do consider taxes and insurance premiums in determining ability to pay and discuss these obligations with their borrowers.

Unfortunately, it now appears that community banks will need to cease offering these traditional portfolio loans due to the Regulation Z amendments, but they hold existing loans that will not mature for several years. We urge the FHFA to continue to allow these loans be used as collateral for FHLB advances as for many smaller community banks these loans may be an important source of collateral.

Private Label MBS
The FHFB has stated that it intends to clarify one point made in Advisory Bulletin 2088-AB-02 regarding residential mortgage loans underlying private-label MBS issued before July 10, 2007 but purchased after that date. The advisory bulletin states that residential mortgage loans underlying private-label MBS issued after July 10, 2007 must conform to the interagency guidance but it is silent about MBS issued before that date and that a member may acquire after that date. The FHFA intends to clarify that MBS purchased by a member after July 10, 2007 are also subject to the guidance contained in Advisory Bulletin 2008-AB-02.

ICBA has heard concerns from some community banks holding such securities that requiring that they comply with the interagency guidance will further damage the very fragile MBS market. Bankers have told ICBA that they have purchased such securities, when they were highly rated, the securities predominately hold mortgages that would meet the interagency requirements but may also contain a very small amount of mortgages that may not. We believe that it is difficult and impractical to determine the extent to which a security issued before 2007 would comply with the guidance. It would be nearly impossible for a purchaser to reassess the underwriting practices of all loans in a securitization retrospectively and determine compliance with the guidance. ICBA members have raised concerns that if these MBS are not available to pledge at some level, they would become less desirable and their valuations could decline further, hurting the members, the FHLBs the hold similar private label MBS and further the destabilization of the for the market for them. Consequently, ICBA recommends that MBS issued prior to July 10, 2007 not be required to meet the interagency guidance, but that the ability to pledge the securities be addressed in FHLB collateral policies with appropriate limits and haircuts.

We appreciate the opportunity to comment on the study and recommendations. If you wish to discuss our comments further, please contact the undersigned at 202-659-8111 or email at ann.grochala@icba.org.

Sincerely,

/s/

Ann M. Grochala
Vice President
Lending and Accounting Policy

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)[1] 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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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