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August 15, 2006

Via Facsimile (202-452-3819) and Federal Express

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

Re: Predatory Mortgage Lending Practices and the
Home Ownership and Equity Protection Act
Docket No. OP-1253

Dear Secretary Johnson:

The Home Defense Program of the Atlanta Legal Aid Society hereby submits the following comments in response to the request by the Board of Governors of the Federal Reserve System for public comment on the home equity lending market, predatory mortgage lending practices, and the Home Ownership and Equity Protection Act ("HOEPA"), as published in the Federal Register (May 5, 2006 at Vol. 71, No. 87, pages 26513-26516).

For the past 17 years, the Home Defense Program of the Atlanta Legal Aid Society has provided referrals and legal representation to more than three thousand low- and moderate-income homeowners and home buyers who have been the targets of title conversion, home equity and home purchase scams. The Home Defense Program is funded by the Atlanta Legal Aid Society, the DeKalb County, Georgia, Department of Human and Community Development with HUD community development block grant funds, and West Tennessee Legal Services, Inc. with HUD housing counseling funds.

On a daily basis, we assist individual homeowners who have been targeted by local and national companies with abusive, predatory mortgage lending practices. We provide them with legal advice and evaluate their cases to determine whether legal claims exist. We settle some cases without litigation and litigate others. Most often, because of our limited resources, we assist homeowners in obtaining private attorneys to represent them in cases where the homeowners may have legal claims. Where appropriate, we also refer homeowners to local nonprofit housing counseling and other agencies which assist them in obtaining refinancing of their high cost mortgage loans through low-cost, conventional mortgage lenders or other special programs. Many senior citizen homeowners are referred for reverse mortgages. We also participate in a range of community education efforts aimed at warning home buyers and homeowners against home equity theft scams, including abusive mortgage lending practices.

Background

In the early 1990s, the Atlanta Legal Aid Society received numerous complaints about high interest rates, high points and fees, and shoddy home repairs from homeowners who had mortgages from Fleet Finance, Inc. We filed several lawsuits against Fleet Finance for our clients, the vast majority of whom were elderly and minority homeowners living on limited Social Security and SSI benefits. After two years of litigation and a favorable court order denying Fleet's motion to dismiss the borrowers' racketeering and fraud claims, we negotiated a settlement between Fleet and the Legal Aid clients. The terms of that settlement are confidential. During the same period, private attorneys in Georgia litigated statewide class action cases against Fleet, which they later settled. The Georgia Attorney General conducted a year long investigation of Fleet and reached an unprecedented $115 million settlement.

National and local media covered these cases and the plight of the homeowners. Segments appeared on 60 Minutes and NBC Nightly News, and numerous major stories ran in the *Atlanta Journal Constitution* and the *Boston Globe*. In response to the public outcry, the Georgia General Assembly held hearings. In 1993, the state Senate passed S.B. 105, a bill that would have placed a floating cap on interest rates for mortgage loans. Although S.B. 105 did not pass the state House, the Georgia General Assembly did enact a law that requires mortgage lenders and mortgage brokers to be licensed.

The news stories and litigation attracted the attention of Congress. The U.S. Senate Banking Committee and the U.S. House Banking Committee held several hearings on predatory mortgage lending practices, focusing to a great extent on the lending practices of Fleet Finance. Busloads of Georgia homeowners went to Washington, D.C. for the hearings. James Hogan, one of our clients who had lost his home to Fleet through foreclosure, testified at one of the committee hearings. In 1994 in an attempt to address the problems of predatory mortgage lending practices, Congress passed the Home Ownership and Equity Protection Act ("HOEPA").

In 1995, the Federal Reserve Board promulgated regulations implementing HOEPA. In 2001, the Federal Reserve Board issued amendments to the regulations, lowering the interest rate trigger for first lien mortgages and adding credit insurance premiums to the points and fees trigger. Among other changes, the Federal Reserve Board made additions to the list of prohibited acts and practices, prohibiting certain due on demand clauses and placing some restrictions on loan flipping.

In 2002, the Georgia General Assembly enacted the Georgia Fair Lending Act ("GFLA"), a law whose passage was backed by then Governor Roy Barnes and hailed by consumer advocates as the strongest anti-predatory mortgage lending law in the country. In 2003, after Governor Barnes lost his reelection campaign, the General Assembly enacted amendments which effectively rendered useless most of the critical provisions of GFLA.

The Impact of HOEPA and GFLA

In 2006, predatory mortgage lending practices continue to thrive in the metropolitan Atlanta area and throughout the state of Georgia. The impact of HOEPA and GFLA has been negligible at best, useless at worst. We continue to be inundated with requests for legal assistance from homeowners and home buyers who have been caught in the snares of equity predators. These are mortgage lenders and mortgage brokers that, in most cases, are licensed by the state Department of Banking and Finance under the Georgia licensing law enacted in 1993. In most cases, they comply with HOEPA and GFLA. Nevertheless, predators continue to strip the equity from and foreclose on our clients' homes. Neither HOEPA (including the regulations amended in 2001), GFLA, nor the Georgia licensing law has stopped the mortgage lending industry from engaging in abusive lending practices.

Predatory Mortgage Lending Practices

We continue to see the same abusive lending practices we have seen for years. Mortgage lenders have continued making mortgages with high interest rates, points and fees. These interest rates, points and fees generally fall just below the HOEPA and GFLA triggers for "high cost loans" as defined by those statutes. Nevertheless, the interest rates, points and fees remain above market rates and are unjustified because the loans are fully collateralized by the home. We also continue to see other abusive features, including prepayment penalties, loan flipping, binding, mandatory arbitration clauses, mortgage broker kickbacks, and shoddy and incomplete home repairs.

Lending Without Regard to Repayment Ability

For the past five years, above all the other lending abuses, we have seen a tremendous increase in loans made without regard to the borrower's ability to pay. For each of our clients we compare their income when they got the loan to their income now. In some cases, the homeowner has had a life event that resulted in the loss of income, such as a job lay off, divorce, disability, or death of a spouse. However, in the vast majority of our cases we learn that the client could never have afforded the loan from its inception.

A subset of the problem of lending without regard to repayment ability is the growing number of nontraditional mortgage products push marketed on our clients. In recent years, we have seen a substantial increase in adjustable rate mortgages, home equity lines of credit, and interest only loans. These loan products should never be offered or extended to people living on a fixed monthly income. The underwriting for these loans (if any) is based on the borrower's alleged ability to pay the initial monthly mortgage payments, not the monthly payments that will invariably increase after the teaser rate and/or interest only period expires.

Twenty years ago the credit card banks made an intentional, conscious corporate decision to begin lending without regard to the customer's ability to pay. They issued multiple credit cards to individuals and drastically raised credit limits to increase volume as a way to dramatically increase profits. Knowing that defaults would also increase, they chose to let that happen in service of the higher goal of increased profits. Having seen the profits generated by this reckless disregard for borrowers' repayment ability, mortgage lenders - particularly but not exclusively subprime mortgage lenders - decided to go down the same path and are making loans they know will fail.

As a direct result, the mortgage lending system isn't working. It is broken. Underwriting doesn't exist. Loan applications are falsified as to income and assets. Actual income is grossly inflated. False jobs are listed. Suitability has gone out the window.

The consequences for homebuyers and homeowners we see are tragic. Mortgage loans are made to borrowers who cannot repay them: working class people whose incomes in many cases are low, unstable, and unlikely to substantially increase as well as and senior and disabled homeowners living on a limited fixed income of Social Security and/or retirement. In the metropolitan Atlanta area, the targets for these abusive loans primarily are African Americans and Latino Americans. These homeowners struggle to make the monthly mortgage payments, often foregoing payment of other necessary living expenses. The situation worsens when the monthly payments invariably increase for homeowners with "teaser" interest rate and/or interest only loans. In many cases, they enlist relatives, employers, churches, and charities to help with the mortgage payments. Then the inevitable happens: the loans go into default and these families face the loss of their homes, their single most important asset.

Because the system is broken, foreclosures are rampant. In Fulton County (where Atlanta is located) foreclosure ads reached their highest level in history: over 1,000 for the June 2006 foreclosures. Of the 1,008 foreclosure ads for that month, 421 of the mortgages were originated in 2005, 252 in 2004, and 112 in 2003. See chart attached hereto as Exhibit A. Thus, 42% of the scheduled June 2006 foreclosures were loans which were not surviving more than one year (78% of these were loans not surviving more than three years). Of these June 2006 foreclosure ads, 68% were ARMs originated in 2005, 70% were ARMS originated in 2004, and 45% were ARMs originated in 2003. Why is this happening? Because lenders have stopped underwriting - just like the credit card banks.

Driving this trend of irresponsible mortgage lending is the system of bundling these mortgages into pools and selling to investors the securities which are collateralized by the mortgages in the loan pools. No one in the securitization process makes any money until loans are closed and transferred into the pools. Thus, securitizers solicit loan originators to get loans closed quickly so that the pools may be filled and the securities issued. When originators cannot find qualified borrowers for suitable loan products, they simply seek out those who are not financially qualified and make them inappropriate loans they cannot afford. The pools are filled, the securities issued, everyone profits, and capital flows back to the originators for new loans.

Everyone profits except for the homeowners who are saddled with these bad mortgage loans. The effect on senior homeowners who lose the home they have owned for decades is particularly devastating. The following are the facts of three senior, African American homeowners who are at risk of the loss of their homes because mortgage lenders knowingly made them mortgages without regard to their ability to repay the loans. In Ms. Manuel's case, the lender instructed the mortgage broker to conceal the amount of her income on her Social Security award letter. In Ms. Martin's case, the mortgage broker and lender attributed income to her that was obviously not in fact her income, but that of minor foster children in her care. In Ms. Carter's case, the mortgage lender ignored red flags cited by its own underwriter and relied on an obviously falsified Social Security award letter.

Elouise Manuel

Ms. Elouise Manuel is a 66-year-old African American who has lived in her home in DeKalb County, Georgia for about 32 years. Until she retired four years ago, Ms. Manuel worked primarily in food service, preparing salads and working as a line server. Other jobs included making picture frames and cleaning offices.

In 2000, Ms. Manuel paid off the original purchase money mortgage on her home. Her home was free and clear. A few years later, she decided to apply for a mortgage loan to pay her bills. When she made her application, the mortgage broker pulled her credit and found that her FICO credit score was 703. Although the mortgage broker was surprised, Ms. Manuel was not because she knew she had paid her bills on time. Ms. Manuel told them, "I need a payment I can afford." She told them she wanted a fixed interest rate. She also told them she was on Social Security and received only $516 each month. The mortgage broker told her she was getting the lowest interest rate and that her monthly payments would be $120.

What loan did she get? A HELOC, a home equity line of credit. The loan amount was $25,000. The loan proceeds paid off almost $20,000 in third party unsecured debt. Ms. Manuel received about $3,000 in cash proceeds. She was charged more than $2,200 in closing costs.

Unbeknownst to her, the interest rate was not fixed but adjustable. The loan had an initial teaser rate of 3.875% for the first month. Beginning in the second month, the interest rate was set at the prime rate plus 2 percentage points (the prime rate then was 4%). According to the terms of the note, the first ten years is the draw period and the monthly payments are interest only. The remaining ten years is the repayment period during which the mortgage payments will substantially increase. The interest rate and monthly payments have increased dramatically over the past two years (the prime rate now is 8.25%). Her initial monthly payment was about $100, but it has more than doubled to the current payment of $215.

Who was the mortgage lender? IndyMac Bank, a federally chartered savings bank.

How was this loan underwritten? Although Ms. Manuel told them she was getting only $516 per month in Social Security benefits, the loan application in the lender's file falsely states that her monthly income was $1,100 in Social Security.

IndyMac Bank issued a conditional approval notice to the mortgage broker. Among the conditions was an instruction that the mortgage broker obtain a copy of the Social Security award letter with the income blacked out. In the lender's loan file is a copy of a Social Security award letter with the income indeed blacked out. IndyMac Bank didn't just ignore the information about her actual income. It actively instructed that the information be concealed.

This loan should never have been made. No lender should make an ARM to someone on a fixed income. Given her FICO score of 703, no lender should charge her an interest rate of prime plus two. No lender should make a "no doc" or "stated income" loan to someone on a fixed income, especially when the source and amount of income can be easily documented. Finally, no lender should instruct the mortgage broker or anyone to black out or mark out the proof of the borrower's income.

Although IndyMac Bank was very careful not to document Ms. Manuel's actual income, it was very careful to document the value of her home. With the home's value at $84,000 (a loan to value ratio of less than 30%), IndyMac knew that when Ms. Manuel inevitably defaulted on the loan, it could proceed with foreclosure and profit enormously at the foreclosure sale.

Ms. Manuel is now struggling to pay her ever-increasing mortgage payments, facing possible foreclosure, the loss of her home and all the equity in it.

Agnes Martin

Ms. Agnes Martin is a 76-year old disabled African American. Her only income comes from Social Security. She is a foster mother and has custody of her 7-year-old grandson. Before Ms. Martin retired, she worked as a hotel maid. Ms. Martin has owned her home in Forest Park, Georgia for 27 years.

In November 2003, Ms. Martin took out a loan with Fremont Investment & Loan, Inc. This mortgage loan refinanced a previous mortgage. Ms. Martin took out the loan because she needed money to bury her father who had just died. Ms. Martin had cared for her ailing father for 21 years until he died in November 2003.

Ms. Martin was referred to a mortgage broker. She told the broker that her monthly income was only $904 per month from Social Security. She also told the broker that she received a total of $844.06 in foster care assistance payments for two foster children then living in her home. Ms. Martin made it clear to the broker that she wanted a fixed interest rate loan.

Fremont did not give Ms. Martin the fixed rate mortgage that she wanted. Instead, Ms. Martin received an adjustable rate loan in the amount of $85,000. Her starting interest rate was 8.3%. The loan was structured so that Ms. Martin's interest rates would only increase, possibly to as high as 15.3%, and would never go below 8.3%.

The loan proceeds paid off Ms. Martin's previous mortgage and paid off unsecured debt in the amount of $3,907. Ms. Martin received $5,336.11 in cash proceeds form the loan, which she used to pay for her father's funeral and burial.

The initial monthly payments of $641 comprised 71% of Ms. Martin's monthly Social Security income. After she paid her monthly mortgage, she had only $262.43 remaining from which to pay her utilities, property taxes, homeowner's insurance, food, medicine and other necessities of daily living. After two years, Ms. Martin's monthly payments increased to $751.00 and recently to $930. With her monthly income of only $933 per month, Ms. Martin now has $3.00 remaining each month with which to buy her food and pay other bills.

In an attempt to make it look like Ms. Martin's income was higher than it actually was, Fremont included the foster care payments, even though Fremont knew these payments were not part of Ms. Martin's income. Fremont also knew that the foster care payments for the children would terminate when the children in her case (age 12 and 15) either moved out or turned 18 years old.

This loan should have never been made to Ms. Martin. Fremont showed utter disregard for Ms. Martin's ability to repay the loan. Even under the initial interest rate, Ms. Martin's income was insufficient to keep up the monthly payments and to maintain her household. Moreover, an adjustable rate loan should never have been made to someone living on a fixed income. It was inevitable that Ms. Martin would default on her loan. Ms. Martin is now two months and $1,900 behind on the mortgage, and she worries every day about whether she will be able to keep the home that she has lived in for almost 30 years.

Christine Carter

Christine Carter is a 75-year-old African American widow who lives in her home in Decatur, Georgia which she purchased with her husband in 1967. Mr. Carter died in 1995. Ms. Carter's current income consists of Social Security retirement and rent from a roomer (for a total monthly income of $1,350).

On August 25, 2005, Ms. Carter obtained a $189,100 mortgage loan from GMFS. Countrywide Home Loans underwrote the loan, approved and funded it (we believe), and is now servicing the loan. The principal and interest portion of Ms. Carter's monthly loan payment is $1,164.32. With the escrow for real estate taxes and homeowner's insurance, the total monthly payment is $1,478.36. The term of the note is 30 years. As the mortgage payment exceeds her income, Ms. Carter relies upon financial assistance from a daughter to help pay her mortgage payments and other necessary living expenses.

After having difficulty with these monthly payments, Ms. Carter retained legal counsel for advice. The loan application with GMFS erroneously states that her monthly income is $2,544.27 from Social Security disability benefits. Counsel requested verification of this alleged income from Countrywide. Countrywide provided a purported statement from Social Security claiming that she received $2,412.15 in September 2005 and is eligible for $2,544.27 per month in SSI benefits beginning October 2005. Social Security was contacted and advised Ms. Carter's counsel that there is not any record of such a notice having been issued to Ms. Carter supporting this alleged amount of income. Further, the maximum amount of benefits an SSI recipient could receive in 2005 was $579.00 if only SSI benefits were received and no more than $599.00 per month of combined Social Security and SSI benefits. Also, Ms. Carter is only eligible for Social Security retirement benefits and Social Security does not have any record that Ms. Carter has ever received SSI benefits. Thus, the purported Social Security statement obviously was falsified.

An underwriting analysis from Countrywide dated August 25, 2005 (the same date of the loan transaction) states under Paragraph 4, "Potential Red Flags" the following:

> [T]his loan has experienced an unusually high number of submissions. Excessive submissions can indicate improper manipulation of loan application data. We recommend that you review the loan application to ensure accuracy.

Paragraph 11 of the same underwriting analysis states, "Social Security income for Christine Carter must be verified with a copy of the award letter or a copy of the most recent bank statement to confirm regular deposit of the payments." Paragraph 18 of the analysis further states that her SS disability income is $2,544.00 per month. There is no evidence that GMFS or Countrywide acted upon these warnings before the loan was closed.

Here, despite the obvious red flags noted by Countrywide's own underwriter and the obviously falsified SSI award letter, Countrywide apparently approved this loan with monthly payments that exceed Ms. Carter's monthly income. The fact that Ms. Carter's home is valued at $300,000 (a loan to value ratio of 63%) no doubt served as a significant factor in the decision to make this loan. GMFS and Countrywide knew that when Ms. Carter inevitably defaulted on the loan, foreclosure would lead to substantial profits.

In each of these three cases, the mortgage lenders knew the borrower's actual income but blatantly ignored it, actively instructed that it be concealed, or attributed income that was clearly not income of the homeowner. In two of these cases, the mortgage lenders knowingly made ARMs and/or interest only loans to seniors living on a fixed income. In short, these mortgage lenders made loans they knew would fail. As a direct result, Ms. Manuel, Ms. Martin, and Ms. Carter are at risk of losing their homes to foreclosure.

Recommendations

Here is what we recommend: legislation and/or regulation that mandates a return to legitimate underwriting and compliance with sensible suitability standards. Such legislation and/or regulation should apply to all mortgage loans, not just HOEPA loans. Lending without regard to repayment ability should be prohibited for all mortgage loans. No mortgage lender should making ARMs or interest only loans to homeowners living on fixed incomes such as Social Security.

Furthermore, we recommend a ban of all the predatory mortgage lending practices for all mortgage loans, not just for high cost loans. Slightly lowering the interest rate and points and fees triggers encourages lenders to continue the abusive practices for loans that fall just under the triggers. The easy way to address this problem is simply to make the prohibitions apply to all loans.

Finally, we recommend full assignee liability for violations of underwriting, suitability, and predatory lending abuses. Because in most cases, assignee liability is either extremely limited or nonexistent under the law, exploited and abused borrowers cannot seek judicial redress against the entities which purchase and service these mortgages, entities which are often seeking to foreclose on and evict them from their homes. Full assignee liability is a critical requirement for the enforcement of underwriting, suitability, and responsible lending standards. Otherwise, mortgage brokers, mortgage lenders, securitizers and investors would have no incentive to change their practices and people will continue to lose their homes.

On behalf of our clients, particularly Ms. Manuel, Ms. Martin, and Ms. Carter, we thank you for your consideration of these comments.

Respectfully submitted,

Wm. J. Brennan, Jr.
William J. Brennan, Jr.

Karen E. Brown

Advertised Foreclosures for Fulton County, GA for Sale Date of June 6, 2006
By Year of Loan and Type of Lo
Source: Atlanta Foreclosure Report, Volume XX,, Number 5, May 16, 2006

Year of Loan	Total Loans	Total ARMs	Percent ARMs	Total FRMs	Percent FRMs	Total Other	Percent Other	Total Conv	Percent Conv	Total FHA	Percent FHA	Total VA	Percent VA
2005	421	284	67.45%	92	21.85%	45	10.68%	416	98.81%	5	1.19%	0	0
2004	252	176	69.84%	63	25.00%	13	5.16%	246	97.62%	5	1.99%	1	0.40%
2003	112	50	44.64%	52	46.43%	10	8.93%	103	91.96%	8	7.14%	1	0.89%
2002	70	21	30.00%	44	62.86%	5	7.14%	53	75.71%	16	22.86%	1	1.43%
Prior to 2002	153	19	12.42%	117	76.47%	17	11.11%	108	70.59%	31	20.26%	14	9.15%
Totals	1008	550	54.56%	368	36.51%	90	8.93%	926	91.86%	65	6.45%	17	1.69%

Total number of advertised residential foreclosures was 1012. Excluded were 3 loans with inadequate information or with errors.
Also excluded was a 2nd mortgage originated in 2006 advertised for foreclosure.

Other Loans include 2nd mortgages, 3rd mortgages, owner financing, and ballon mortgages.
For advertised foreclosures in 2005, the largest number of other loans were balloon mortgages, many of them due in 6 months or 1 year.
For 2003 and earlier years, the larger number of other loans were 2nd and 3rd mortgages.

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EXHIBIT "A"