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

Re: Docket No. R-1305 - Truth in Lending; Proposed Rule 73 Fed. Reg. 1672 (2008)

Dear Ms. Johnson:

Citigroup Inc. ("Citigroup") on behalf of itself and its subsidiaries, respectfully submits these comments in response to the Federal Reserve Board's (the "Board's") proposed amendments to Regulation Z, 12 C.F.R. Part 226, the implementing regulation of the Truth in Lending Act ("TILA") and Home Ownership and Equity Protection Act ("HOEPA"), as those proposed amendments were published in the Federal Register on January 9, 2008 (the "Proposal"). We thank the Board for this opportunity to comment. We stand ready to work with the Board on arriving at comprehensive solutions to the Board's areas of concern.

The Proposal is a significant and important rulemaking and addresses many of the practices and products that have contributed to the rising mortgage delinquency and foreclosure rates. Citigroup supports the Board's efforts to promote strong and uniform regulations in this area. Adoption of the Proposal has the potential to strengthen and make more uniform the existing regulations and guidance on mortgage lending generally and on subprime mortgage lending in particular. Significantly, it would expand to a wider set of creditors, servicers and other lending industry participants in the form of a rule, interagency guidance on subprime lending that currently applies to federally-regulated creditors, such as FDIC-insured banks and thrifts and to their respective holding companies and subsidiaries, including the 2007 Interagency Statement on Subprime Mortgage Lending Products (the "Subprime Statement").

We commend the Board for identifying and, in general, appropriately addressing the right substantive issues. We agree with the Board that, for higher-cost mortgages, the final rule should: (a) prohibit creditors from engaging in a pattern or practice of extending credit without regard to borrowers' ability to repay from sources other than the collateral itself; (b) require creditors to verify income and assets that they rely upon in making loans; (c) require consideration of principal, interest, taxes and insurance in determining ability to repay; (d) require fully-indexed and fully amortized underwriting; (e) prohibit prepayment penalties unless certain requirements are met; and (f) require escrow accounts for taxes and insurance on first-lien mortgage loans. We also agree that, for all closed-end mortgages secured by the consumer's principal dwelling, the final rule should: (i) prohibit creditors from paying a mortgage broker more than the consumer had agreed in advance that the broker would receive and (ii) prohibit any creditor or mortgage broker from coercing, influencing or otherwise encouraging an appraiser to provide a misstated appraisal in connection with a mortgage loan.

Although we commend the Board for the Proposal and support adoption of most of its content, we have concerns in several areas. In the remainder of this letter, we explain our concerns in detail and offer specific recommendations to improve the Proposal. Our suggestions are intended both individually and collectively to make the final rule more practical, balanced and effective. We begin with a summary of our most significant recommendations (Section I), followed by Sections II through VII that discuss our concerns and recommendations in detail.

I. Summary of Our Most Significant Recommendations

A. Higher-Priced Mortgage Loans.

1. Index and Spread. We believe that the proposed thresholds would capture too many prime and Alt-A loans. Instead of the proposed index and spreads, we recommend defining a higher-priced mortgage loan as a loan whose annual percentage rate ("APR") exceeds both the comparable Treasury security yield (under the "maturity approach" currently used under Home Owners Mortgage Disclosure Act ("HMDA") and HOEPA) plus 3% (5%, if a subordinate lien) and the conventional mortgage rate as published in Statistical Release H.15 by 1.75% (3.75%, if a subordinate lien). This approach is similar to that currently in use in North Carolina and to the approaches contained in the most recent versions of the bills introduced by Chairmen Dodd and Frank regarding predatory lending. The North Carolina approach has produced thresholds that have been almost uniformly regarded as reasonable and practicable by both the financial services industry and by the consumer activist community.

2. Conform Higher-Priced Mortgage Loan and HMDA Thresholds. If the final regulation uses a different methodology for determining whether a loan is a higher-priced mortgage loan than the methodology currently used to determine whether a loan has a reportable rate spread under HMDA, we recommend that the Board amend Regulation C to make conforming changes to the HMDA methodology. Ideally, the new requirements for higher-priced mortgage loans and the change in HMDA methodology would be implemented simultaneously.

3. Use Application Date as Determination Date. With a few exceptions detailed in the main body of our comment, we believe that the application date should be used to determine the index value.

4. Restrictions Applicable to Higher-Priced Mortgage Loans.

a. Ability to Repay - Pattern or Practice Requirement. We recommend that the proposed comment 34(a)(4)-4 be revised to state that a creditor may demonstrate that a pattern or practice of lending on the value of the consumers' collateral without regard to repayment ability does not exist if the creditor can show that higher-priced mortgage loans originated by the creditor to consumers who are similarly situated to the plaintiff do not have unusually high rates of default and foreclosure.

b. Use of Automated Underwriting Systems. The Board should take steps to facilitate the use of automated underwriting systems by creditors. In particular, the Board should use its authority under TILA section 129 to require that entities that supply automated underwriting systems to creditors provide reasonably detailed information about how these systems: (i) determine qualifying rates and payments; (ii) calculate and consider the debt to income ("DTI") ratio; and (iii) calculate and consider the consumer's residual income. In addition, the regulation's ability to repay requirement should be deemed satisfied if a loan application is approved using an automated underwriting system provided by a government sponsored enterprise, such as Fannie Mae or Freddie Mac.

c. Mitigating Circumstances. The Board should provide an exception to the general ability to repay requirements where the new loan is a rate/term refinance that pays off a current mortgage loan with no additional cash out and that reduces the consumer's monthly payment from the current payment or, if the current loan is an adjustable rate mortgage ("ARM") loan, from the estimated payment at reset.

d. Time Horizon. The Board sought comment on the questions of whether a seven year period, or shorter time period, such as five years, should be used as the time horizon in the ability to repay test and for determining the qualifying rate for step rate mortgages. We believe that a five year period would be more appropriate in both instances.

e. Qualifying Rate and Fully Amortizing Payment. We recommend that the Proposal be amended to better conform to the approaches in the 2006 Interagency Guidance on Non-traditional Mortgage Product Risks (the "Non-traditional Mortgage Guidance") and in the Subprime Statement. For amortizing ARMs, we recommend that the qualifying rate be the fully-indexed rate, but not more than the highest rate possible within the five or seven year time horizon chosen by the Board. We provide several significant detailed recommendations for the treatment of balloon loans.

f. Prepayment Penalty. Significantly limiting the term and the amount of a prepayment penalty is a better approach than use of a DTI ratio to ensure that a prepayment penalty would not hinder a consumer from refinancing out of an unaffordable loan. We recommend that the prepayment period end within 3 years (or at least 60 days prior to the first possible payment reset date if payments may increase) and that the penalty charged not exceed the amount that could be charged under a 3/2/1 (i.e., 3% in year 1, 2% in year 2, and 1% in year 3) penalty structure.

g. Escrow. Because many industry participants will need substantial lead time to implement escrow requirements, we recommend that the escrow provision not take effect until the later of twenty-four months after the final regulations are published or July 1, 2010. We believe that the Board should clarify that the escrow provision preemption of state law continues for the life of the loan and should also apply to loans below the higher-priced mortgage loan threshold.

B. Requirements Applicable to All Closed End Mortgages Secured by the Consumer's Principal Dwelling.

1. Mortgage Broker Fee Agreement. We agree with the Proposal's requirement that mortgage brokers must provide a fee agreement disclosing the broker's total compensation and creditors must take steps to prevent payments to the broker that would cause the agreed upon amount to be exceeded. We strongly urge the Board, the Department of Housing and Urban Development ("HUD") and the Office of the Comptroller of the Currency ("OCC") to communicate with each other and agree upon a single model form and set of rules for this disclosure. If that cannot happen soon, the Board should move forward with its own model form. We also urge the Board to use authority under TILA Section 129 to directly impose (a) on brokers a requirement to provide a written fee agreement and (b) on settlement agents a requirement not to permit payment of more than the agreed to amount. We offer several specific recommendations to improve the fee and timing requirements for the broker fee agreement. Finally, we recommend that the Board eliminate the proposed exemptions for states that have a "consumer's interest" requirement and for situations where the creditor pays compensation that is not determined by the interest rate.

2. Coercion of Appraiser. We believe that appraisers and appraisal management companies should be required to report instances of coercion to (a) the creditor, (b) the regulator of the creditor or broker and (c) the state regulator of the appraiser, so that any issues raised would be investigated immediately rather than long after the alleged violation. The proposed requirement that a creditor may not extend credit based upon the appraisal if the creditor knows "or has reason to know" of coercion is too vague and subjective. The "reason to know" language should be eliminated. We recommend that the Board clarify that the regulation does not require creditors, mortgage brokers or their affiliates to guarantee the accuracy of appraisals. Finally, we believe that a creditor should not be considered in violation of the requirements of the regulation if an employee may have attempted to coerce the appraiser, or know of attempted coercion of the appraiser, if the creditor has exercised reasonable diligence and the appraisal does not materially misstate or misrepresent the value of the dwelling.

C. Servicing Practices

Although we believe a more carefully crafted federal rule defining acceptable servicing practices could be useful to both consumers and servicers, we urge the Board, for reasons detailed in the main body of our comment, not to adopt the proposed servicing practices requirements.

D. Early Truth in Lending Disclosures and Limits on Fees Prior to Disclosures.

Because many home equity lenders will need substantial lead time to meet the proposed disclosure requirements, we recommend that these provisions not take effect until the later of twelve months after the final regulations are published or January 1, 2010. We make a number of specific recommendations to reduce undue burden and avoid unintended adverse consequences of the proposed restriction that fees (other than a credit report fee) may not be charged until the consumer receives the disclosures.

E. Advertising Rules.

1. Triggering Rules. Regarding open end credit, we recommend that a rate and minimum payment requirement in effect for the full draw period of a home equity line of credit ("HELOC") not be included in the definition of the terms "introductory rate" or "introductory payment." With regard to the proposed closed end credit triggering rules, we recommend that a creditor be permitted to disclose the range of rates, rather than all rates, that would apply over the term of the loan. We also recommend that the current triggering rules be revised so that term of a mortgage loan in years could be stated in an advertisement without triggering additional disclosures (or triggering only a disclosure of the APR).

2. Prohibited Acts. We recommend that the advertising requirements be promulgated under the Board's TILA Section 105 authority, with a further rule providing for Section 129 liability under certain conditions. We also recommend that the formatting and required language requirements of the Proposal be simplified. The prohibition on the use or the terms "counselor" or "financial advisor" should be clarified to allow the use of these terms by individuals if they provide a disclosure to consumers stating that they are not acting as a counselor or financial advisor with respect to mortgage loans.

F. Damages and Remedies.

To avoid unduly curtailing credit availability and to provide for proportionate remedies, we recommend that the Board use its Section 105 authority where possible and elevate a violation to a Section 129 violation only where the action is either unfair or deceptive as defined in the Board's prior guidance. We also have specific recommendations regarding assignee liability, the right to cancel and correction procedures.

II. Higher-Priced Mortgage Loans.

A. Index and Spread. We commend the Board for considering alternative indices and spreads. We believe that the appropriate thresholds chosen for identifying higher-cost mortgages should satisfy the following criteria: (a) to the extent possible, the thresholds should capture essentially all subprime loans while excluding essentially all prime loans and the vast majority (if not all) Alt-A loans; (b) the chosen indices and spreads should track market rates and not yield widely disparate results based on the shape of the yield curve; and (c) the chosen indices and spreads should be practical to implement.

The index and spreads proposed by the Board do not satisfy these criteria. The Proposal would capture too many prime and Alt-A loans. In particular, we believe it would capture nearly all Alt-A (and many prime) adjustable rate loans. It captures too many adjustable rate loans because it determines the comparable Treasury security by the duration of the initial fixed rate period. This is not an accurate model for the actual pricing of ARMs with shorter reset periods. It would also be very burdensome to implement because it is complicated and does not conform to the methodologies creditors are already required to follow to identify "high cost loans" under HOEPA or "above threshold loans" under HMDA.

Instead of the proposed index and spreads, we recommend defining a higher-priced mortgage loan as a loan whose APR exceeds both the comparable Treasury security yield (under the "maturity approach" currently used under HMDA and HOEPA) plus 3% (5%, if a subordinate lien) and the conventional mortgage rate as published in Statistical Release H.15 by 1.75% (3.75%, if a subordinate lien). This approach is similar to that currently in use in North Carolina and to the approaches contained in the most recent versions of the bills introduced by Chairmen Dodd and Frank regarding predatory lending. The North Carolina approach has produced thresholds that have been almost uniformly regarded as reasonable and practicable by both the financial services industry and by the consumer activist community. We believe this standard would effectively separate subprime loans from prime loans and most Alt-A loans. It was specifically designed to account for different yield curve environments and has shown in North Carolina to be practical to implement. It is also similar in methodology to the current HMDA threshold methodology.

Currently, the source of the conventional mortgage rate published in the H.15 is Freddie Mac's contract interest rate on commitments for fixed rate first mortgages. By referencing the conventional mortgage rate as published in the H.15 (instead of directly referencing Freddie Mac's contract interest rate), the Board could fine-tune the calculation of this index, either now or in the future, by, for example, conducting its own survey of mortgage lenders. By analogy, the Board currently conducts a survey of credit card lenders in setting the rate published in Statistical Release G.19.

B. Conform Higher-Priced Mortgage Loan and HMDA Thresholds. Ideally the index and spreads selected for this rulemaking and the thresholds for HMDA reporting should be the same. Accordingly, if the final regulation uses a different methodology for determining whether a loan is a higher-priced mortgage loan than the methodology currently used to determine whether a loan has a reportable rate spread under HMDA, we recommend that the Board amend Regulation C to make conforming changes to the HMDA methodology. This would lower operational burdens and reduce the chances for compliance failures. Ideally, the new requirements for higher-priced mortgage loans and the change in HMDA methodology would be implemented simultaneously.

C. Use Application Date as Determination Date. Except as noted below, we believe that the application date should be used to determine the index value. There will be fewer operational issues and a higher level of compliance if creditors know at the time of application the APR that would make the loan a higher-priced mortgage loan.

For applications received on the 15th of the month, applying the yield as of the 15th of the month would be difficult because the yield is not available at the beginning of that day. In order to update our loan origination systems each month, it would be preferable to have the yield as of the 15th of a month apply to applications received on the 16th of that month through and including the 15th of the following month.

For purchase transactions with a floating rate commitment period of 90 days or more, the creditor should be able to use the higher index value as of the application date or as of the date the rate is set. Without this exception, creditors may need to require consumers to lock the rate and pay rate lock fees at application.

D. Exclusions.

1. FHA and VA Loans. We recommend that loans insured by the Federal Housing Administration and loans guaranteed by the Veterans Administration be excluded from the definition of higher-priced mortgage loans. These programs contain strong consumer protections, and providing an exclusion for such loans would lessen the operational burdens on creditors offering these programs.

2. Construction – Permanent Loans. We request that the Board clarify that if a creditor treats the construction phase and permanent phase as more than one transaction under Regulation Z Section 226.17(c)(6)(ii) that: (a) the construction phase would not be subject to the higher-priced mortgage loan provisions and (b) the permanent phase would be subject to the higher-priced mortgage loan provisions only if the APR for that phase exceeded the threshold.

E. Restrictions Applicable to Higher-Priced Mortgage Loans.

1. Ability to Repay and Verification.

a. Pattern or Practice Requirement. As discussed more fully in Section VII of this comment, we believe that the Board should promulgate this provision of the Proposal under Section 105 authority, rather than Section 129. However, assuming arguendo that this provision of the Proposal is promulgated under the Board's Section 129 authority, violations will subject creditors to potentially crushing liability. Accordingly, and in order to avoid a severe chilling effect on the availability of credit, creditors must have confidence that they have reasonable discretion in establishing underwriting criteria. The Proposal's pattern or practice requirement and proposed comment 34(a)(4)-4 are insufficient to provide creditors with that confidence. Creditors are required by the Proposal to establish lending policies that will consider specific factors. If any of these policies are subsequently determined to be inadequate for even a handful of loans, it is quite possible that, under the proposed comment 34(a)(4)-4, a pattern or practice would be established.

To address this concern, we recommend that the proposed comment be revised to state that a creditor may demonstrate that a pattern or practice of lending on the value of the consumers' collateral without regard to repayment ability does not exist if the creditor can show that higher-priced mortgage loans originated by the creditor to consumers who are similarly situated to the plaintiff do not have unusually high rates of default and foreclosure. The comment could further state that similarly situated consumers are consumers who obtained their loans at approximately the same time as the plaintiff and who have similar creditworthiness characteristics, such as credit scores or histories, loan to value ratios, assets other than the collateral, residual income, DTI ratios and compensating factors as identified in the creditor's underwriting policies.

b. Use of Automated Underwriting Systems. As the Board's Proposal notes, the Board's authority under Section 129 is not limited to creditors or to loan terms or lending practices. The Board should use this power to facilitate the use of automated underwriting systems by creditors. Specifically, the Board should require that entities that supply automated underwriting systems to creditors provide reasonably detailed information about how these systems: (i) determine qualifying rates and payments, (ii) calculate and consider the DTI ratio and (iii) calculate and consider the consumer's residual income. In addition, the regulation's ability to repay requirement should be deemed satisfied if a loan application is approved using an automated underwriting system provided by a government sponsored enterprise, such as Fannie Mae or Freddie Mac.

c. Mitigating Circumstances. Unlike the Subprime Statement, the Proposal does not expressly provide for mitigating circumstances. We believe the Subprime Statement has the better approach. Accordingly, we recommend that an exception to the general ability to repay requirements be added where the new loan is a rate/term refinance that both: (i) pays off a current mortgage loan with no additional cash out and (ii) reduces the consumer's monthly payment from the current payment, or if the current loan is an ARM loan, from the estimated payment at reset.

d. Verification.

i. Proposed Comment. Proposed comment 35(b)(2)(ii)-1 provides an example that states if the creditor relied upon an annual income of $40,000 in approving the loan but fails to obtain verification, then the creditor will not have violated this section if the creditor later obtains evidence, such as a tax return, showing that "the consumer had an annual income of at least $40,000 at the time of consummation." We recommend that the quoted language be revised to "the consumer had an annual income that was not materially less than $40,000 ($39,000, for example) at the time of consummation." This revision would make the comment more consistent with the language of the regulation.

ii. Amount Relied Upon. In addition, the Board should clarify that the "amount relied upon" is the minimum amount of income or assets that the creditor required in order to approve the loan. Using the comment's example, if a creditor's loan file reflected a consumer's income of $60,000 and that an income of $40,000 was needed to meet the creditor's underwriting requirements, the creditor should not be considered to have violated this provision if it verified $40,000 before consummation or if the creditor verified less than $40,000 before consummation, but could have verified an amount not materially less than $40,000.

iii. Verification of Amounts Sufficient to Establish the Consumer's Ability to Repay, But Less than Creditor's Underwriting Standards. Perhaps to mitigate potential Section 129 liability or for other reasons, such as portfolio management, some creditors may voluntarily establish underwriting standards that are more conservative than would be necessary to establish that the consumer has an ability to repay the loan. In the example above, a creditor may have a reasonable basis for believing that the borrower would have the ability to repay if the consumer's annual income was not materially less than $40,000, but under the creditor's policies $50,000 would be required. Creditors should be not disadvantaged because they were conservative. Accordingly, we recommend that the Board create a new comment (or expand the proposed comment) to illustrate that a consumer with an annual income that was not materially less than $40,000 had the ability to repay under these circumstances.

iv. Consumer Misrepresentation. We believe that the regulation or the comments should also make clear that a creditor should not be considered to have violated the verification provision if the creditor can demonstrate that the consumer knowingly overstated his or her income or assets without being influenced by the creditor to do so.

e. Time Horizon.

i. Five Year Time Horizon. The Board sought comment on the questions of whether a seven year period, or shorter time period, such as five years, should be used as the time horizon in the ability to repay test and for determining the qualifying rate for step rate mortgages. We believe that a five year period would be more appropriate in both instances.

Because the regulation will specify both the qualifying rate and payment the creditor must use, the time horizon provisions relate primarily to whether the creditor should know that significant changes in the consumer's income and other debts are likely to occur during the time horizon period. As a practical matter, because the determination of ability to repay is made at the time of consummation, it is difficult to conceive of situations where the creditor should know at the time of consummation that the consumer's income and debts would deteriorate between five and seven years after consummation.

We also believe that consumers would have a realistic ability to refinance if they are qualified based on the highest rate that would be in effect within the first five years after consummation. Because a high percentage of higher-priced mortgage loans will pay off within five years, the rates charged on such loans during the first five years must be high enough to be profitable for the creditor in light of the expected duration of the loans. The regulation will require that the consumer be qualified at the fully-indexed rate or the highest rate that will be in effect during this period, rather than a deeply discounted initial rate. As a result, it is less likely that market rates will be substantially higher at the time the consumer seeks to refinance. Furthermore, because of the effect of inflation, over a five year period it is relatively unlikely that the value of the property securing the loan will decline.

ii. Changes on the Anniversary of Consummation. Whether the Board chooses to set the time within five years after consummation or within seven years after consummation, we recommend that the Board clarify that a reset to a loan's rate or payment on exactly the fifth or seventh anniversary date of the consummation of the loan need not be considered in determining the consumer's repayment ability.

iii. Effect on Older Consumers. In order to prevent the Proposal from unduly restricting the availability of credit to older consumers, proposed comment 34(a)(4)-3 should be amended to state that a creditor should not assume that an employed person will become unemployed or have his or her income decrease solely based upon the consumer's reaching retirement age within the time horizon.

f. Qualifying Rate and Fully Amortizing Payment.

i. Reconciliation with Subprime Statement and Non-traditional Mortgage Guidance. In light of the fact that the Subprime Statement and Non-traditional

Mortgage Guidance have been adopted by all the federal banking agencies and many state regulators, the final rules should strive to be consistent with this guidance and clarify ambiguities in this guidance. We believe that adoption of our recommendations discussed below will make the rules and guidance more consistent.

ii. Qualifying Rate.

(a). Step Rate. We agree with Proposal's use of the highest rate possible within the time horizon as the qualifying rate for a step rate loan.

(b). Interest Only ARMs and ARMs with the Potential for Negative Amortization. We agree that the fully-indexed rate (or initial rate if higher) should be used as the qualifying rate for an interest only ARM or an ARM with the potential for negative amortization. This is consistent with the Non-traditional Mortgage Guidance.

(c). Amortizing ARMs. For amortizing ARMs, we recommend that the qualifying rate be the fully-indexed rate, but not more than the highest rate possible within the five or seven year time horizon chosen by the Board. This approach is more consistent with the treatment of step rate loans and the concept of the time horizon under proposed Section 226.34(a)(4)(ii). The current Proposal with its seven year time horizon and step rate rules provides the strange result that a step rate loan that would increase from 8% to 14% in the 10th year would be qualified at 8%, while a 10/1 ARM with an 8% initial rate, 10% fully-indexed rate and 14% lifetime cap would be qualified at 10%. Assuming that the Board agrees that an ARM qualified under this standard would not be a payment shock ARM, this standard would be consistent with the Subprime Statement. We further recommend that the Board work with the other federal regulators to interpret the Subprime Statement in a manner consistent with the final regulation.

iii. Fully Amortizing Payment. The Proposal does not define "fully amortizing payment." We recommend adding a comment stating that the principal and interest amount included in the fully amortizing payment is the amount necessary to repay the initial loan amount plus any balance increase that may accrue from negative amortization at the qualifying rate in substantially equal payments over the term of the loan (or such longer term as permitted for balloon loans that require payments of principal).

iv. Balloon Loans. The Non-traditional Mortgage Guidance leaves unclear whether balloon loans that require the payment of principal are nontraditional mortgages and, if so, how the "fully amortizing payment" should be calculated for balloon loans. The treatment of balloon loans is important, because, for example, if a five year balloon loan must be qualified based on a payment that would fully amortize the loan in five years (rather than the amortization period used to calculate the actual payments), then only the very wealthiest consumers would qualify for such a loan. We believe than balloon loans are appropriate for a wider set of consumers provided that such consumers are qualified on a rate and payment amortization that should reasonably allow for them to refinance when the payment comes due. To remedy this ambiguity in the Non-traditional Mortgage Guidance and to permit balloon loans to be available for more than just the wealthiest consumers, we suggest that balloon loans be treated as follows:

(a). If a balloon loan is a variable rate loan under comment 17(c)(1)-11 because it has a conditional right to refinance with conditions within the consumer's control, then the loan should be treated the same as an amortizing ARM loan using the full loan term, including the renewal period and the fully indexed rate, but not more than the highest rate possible within the five or seven year time horizon.

(b). If a balloon loan does not have a conditional right to refinance, then we recommend the Board adopt the following rules which take into consideration the needs of the consumer to refinance the balloon payment:

(1). If the balloon comes due after the five or seven year time horizon chosen by the Board, the consumer should be qualified based upon the term of the amortization period (up to 30 years) used to calculate the payments. The qualifying rate should be: (i) the fixed rate or (ii) the highest step rate that would apply during the 5 or 7 year time horizon or (iii) if the loan has a variable rate, the fully-indexed rate, but not more than the highest rate possible during the 5 or 7 year time horizon.

(2). If the balloon will come due within the five or seven year time horizon chosen by the Board, the consumer should be qualified based upon the term of the amortization period used to calculate the payments (up to 30 years). The qualifying rate should be the sum of (a) the fixed rate, the highest step rate, or if the loan has a variable rate, the fully-indexed rate and (b) a specified percentage (2%, for example). Adding this specified percentage would mean that the creditor could offer short term balloon loans only to consumers with comparatively stronger ability to repay qualifications.

For example, assume a creditor offered a four year $100,000.00 balloon loan with a fixed interest rate of 7% and payments calculated on a 40-year amortization. If the consumer were qualified based upon the actual payment, the qualifying payment would be the consumer's taxes and insurance plus principal and interest of $621.43. If the consumer had to be qualified at 7% and at a 4-year term, the qualifying payment would be the consumer's taxes and insurance plus principal and interest of $2,394.62. Very few consumers could qualify under such a test. Under our proposed formula, the consumer would be qualified at a 2% higher rate than the actual rate (i.e., at 9%) based upon a 30-year amortization. The qualifying payment would be the consumer's taxes and insurance plus principal and interest of $804.62. Our result provides a cushion against payment shock when the consumer refinances his or her balloon payment.

g. <u>Debt to Income and Residual Income Requirements--No Safe Harbors</u>. We agree that the establishment of safe harbors could unnecessarily restrict credit and is therefore not desirable.

2. Prepayment Penalty. The Proposal provides that a loan may not have a prepayment penalty if the DTI exceeds 50%. In light of the fact that higher-priced mortgage loans may be made at DTIs above 50% as long as they meet the ability to repay test and the fact that DTI calculations are subjective, significantly limiting the term and the amount of the penalty would be a better way to ensure that a prepayment penalty would not hinder a consumer from refinancing out of an unaffordable loan. In addition, this approach would not make creditors subject to the severe penalties of a Section 129 violation for inadvertent errors or disputes over DTI calculations. We recommend that the prepayment period end within 3 years (or at least 60 days prior to the first possible payment reset date if payments may increase) and that the penalty charged not exceed 3% in year 1, 2% in year 2 or 1% in year 3.

3. Escrow.

a. Lead Time. Many (perhaps most) home equity creditors have never required their customers to establish escrow accounts for taxes and insurance. The origination and servicing of escrow accounts is a complex process. There are currently no reliable "off-the-shelf" escrow computer systems that can be quickly or easily integrated with creditor origination and servicing platforms for those creditors who do not have escrow capabilities. System upgrades will be costly and complex. Loan origination systems used by creditors who do not currently escrow will be required to be reprogrammed to: (i) estimate the escrow reserves for the Good Faith Estimate; (ii) calculate escrow reserves to be collected at closing; and (iii) accurately disclose these figures on the HUD-1 and initial escrow analysis. Originations personnel will have to be educated about the escrow process and trained to perform the initial escrow calculations. Implementing escrow will not only affect origination and servicing, but also compliance, training, risk, pricing, credit and systems. Accordingly, many industry participants will need substantial lead time to implement escrow requirements. We recommend that the escrow provisions not take effect until the later of twenty-four months after the final regulations are published or July 1, 2010.

b. Preemption. We agree that state laws that prohibit creditors from requiring escrow to be established or that require creditors to waive escrow must be preempted for higher-priced mortgage loans. In addition, we believe that preemption should also apply to all loans below the higher-priced mortgage loan threshold. Depending on the final closing costs, changes in the index values on ARM loans, and when and how the threshold's APR calculations are determined, creditors might not know until closing the final APR and whether a loan actually is a higher-priced mortgage loan. In addition, regardless of when and how the threshold's APR calculations are determined, consumers could claim that the APR should have been calculated differently resulting in a below threshold APR.

With respect to escrow cancellation, we agree with the Board that state laws that provide consumers a right to cancel an escrow within 12 months after closing are inconsistent with the Board's proposal and thus should be preempted. In addition, it does not make sense for the Board to require that creditors go through the costly and complex process of establishing escrow accounts if they are legally permitted to maintain the accounts for only one year. Accordingly, the rule should provide that state laws pertaining to the cancellation of escrow requirements are preempted for the life of the loan. Cancellation of the escrow account should be governed by the terms of the loan contract and the creditor's standard underwriting guidelines relating to escrow cancellation requests. Moreover, the regulation should also preempt state laws that would prohibit the servicer from requiring the reestablishment of an escrow account after cancellation due to the consumer's failure to pay taxes, insurance or other escrow items as provided for in the loan contract.

c. Insurance. As to insurance, the Board should clarify that the creditor is: (i) only required to establish escrow for the hazard and flood insurance it requires; (ii) not required to force place such insurance (subject to flood insurance regulations, if applicable) if insurance lapses; and (iii) not subject to liability if escrowed insurance is cancelled for any reason other than non-payment.

IV. Requirements Applicable to All Closed End Mortgages Secured by the Consumer's Principal Dwelling.

A. Mortgage Broker Fee Agreement. We agree with the Proposal's requirement that mortgage brokers must provide a fee agreement disclosing the broker's total compensation and creditors must take steps to prevent payments to the broker that would cause the agreed upon amount to be exceeded.

HUD has also released proposed changes to Regulation X that will require disclosure of mortgage broker compensation, but with no exemptions and in a different format with different timing requirements and with different limitations on what information a mortgage broker or creditor may obtain. Additionally, the OCC requires in Advisory Letter 2003-3 that mortgage brokers placing loans with national banks or their operating subsidiaries must provide a mortgage broker fee agreement. The agreement required by Advisory Letter 2003-3 also has no exemptions and different timing and content requirements. While we support the disclosure of mortgage broker compensation, it will not be helpful to consumers to be inundated with competing forms designed by the Board, HUD, and the OCC and it would clearly be an unnecessary burden for mortgage brokers and creditors. Accordingly, we strongly urge the Board, HUD and the OCC to fully communicate with each other and agree upon a single form and set of rules for this disclosure.

1. Impose Responsibility for Fee Agreement Directly on Brokers. As the Board's Proposal notes, the Board's authority under Section 129 is not limited to creditors or to loan terms or lending practices. The Board has the power to directly impose on brokers the requirement to provide a written fee agreement. This requirement on brokers would be in addition to the fee agreement requirements applicable to creditors. The level of broker compliance would improve if the brokers had an explicit legal requirement to

provide the agreement and the operational burdens on creditors to police brokers would be lessened if brokers had such a direct obligation.

2. Fee and Timing Requirements. The Proposal requires the fee agreement be agreed to and signed by the consumer before the consumer pays a fee to any person in connection with the transaction and before submitting a written application to the broker, whichever is earlier.

a. Fee.

i. Credit Report Fee or Nominal Fee. It would be helpful if a broker could obtain the consumer's credit report before the written agreement so that the broker and the consumer would have a better understanding of the consumer's creditworthiness and financial condition before agreeing upon the broker's compensation. The Board should permit the broker to charge the greater of the cost of the credit report or a nominal fee not to exceed $50.

ii. Appraisal Fees/Coordination with Early Disclosure Requirements. Although the broker could provide the broker fee agreement before charging the appraisal fee, the broker may reasonably believe that it is in the consumer's best interests to order an appraisal (necessitating a charge to the consumer) before deciding which creditor to submit the consumer's application to. The appraisal is necessary in order to determine the loan to value ratio of the proposed loan and the broker may need to know the loan to value ratio with a relatively high degree of certainty to evaluate whether a particular creditor would approve a loan and, if so, at what rate and price. The Proposal's early disclosure rules would appear to unnecessarily prevent that practice.

iii. Fees Triggering Disclosure Requirement. The language referring to a fee collected by "any person in connection with the mortgage transaction" should to be tightened to refer to fees imposed directly or indirectly by the creditor or mortgage broker as an incident to or a condition of the extension of credit.

b. Application to Broker versus Application to Creditor. Proposed comment 36(a)(1)-2 states that a creditor may rely upon a "written agreement that...is signed and contemporaneously dated" to show that the agreement was given on a timely basis. This is insufficient to protect creditors because creditors cannot verify when the consumer submitted the application to the broker nor can the creditor verify that no fee was charged. Furthermore, the consumer's loan request may change substantially between the time the consumer submits an application to the broker and the broker submits the application to the creditor.

As noted above in subsection IV.A.1, the Board could (and in our opinion should) make the requirement directly applicable to the broker and require the broker to have the agreement signed before the consumer pays a fee or submits the application to the broker. As to the creditor, the Board could require that creditor to obtain an agreement that (i) is signed and dated by the consumer before the consumer's application is submitted to the creditor and (ii) contains an acknowledgment by the consumer that no fee had been paid.

3. Model Form/Description of Compensation.

a. Model Form. The Board has provided in proposed comment 36(a)(1)-3 an example of the language that could be used in the broker fee agreement. Because it would be very helpful for consumers, brokers and creditors alike, we strongly recommend that the Board provide a model form.

b. Description of Total Compensation. The Proposal should indicate clearly whether the direct and indirect components of the broker's total compensation should be disclosed, or whether only the total need be disclosed. Of these choices, we believe that it would be preferable to disclose the maximum amounts of direct and indirect compensation. If the Board decides not to require disclosure of the maximum amounts of direct and indirect compensation, the Board should clarify in comment 36(a)(1)-3 that the requirement to clearly and conspicuously disclose the broker's total compensation would not be violated by including information on the maximum amounts of direct and indirect compensation. The Board should also provide a comment stating that total broker compensation includes amounts paid by the creditor after closing, such as payments based upon the quality of the broker's processing.

4. Changes/Resubmissions. The Proposal does not provide adequate guidance on how to deal with changes to a consumer's application. The application may change for a variety of reasons, including as a result of the consumer requesting changes, or from the broker submitting the application to different creditors with amended information, or as a result of the creditor making a counteroffer.

The broker should be able to provide in the agreement that it is conditioned upon the amount of the consumer's loan request at the time of the agreement, and that where compensation amounts are stated as a percentage of the loan amount the compensation amounts may change up or down with changes in the loan amount. The agreement should not have to be re-executed due to changes in percentage-based fees. Where there are other changes to the consumer's loan request, the broker should be permitted to renegotiate the amount of the broker's total compensation, and creditors should be permitted to accept a new agreement with a revised compensation amount.

5. Exemptions. As discussed below, we do not recommend that that the Board adopt either of the proposed exemptions from the mortgage broker fee agreement requirement.

a. State Exemptions. The determination of which states have a "consumer's interest" requirement is a difficult and subjective judgment. If a state may qualify for such an exemption without capping or requiring disclosure of total broker compensation, then how would such a law prevent brokers from steering consumers to higher priced products? Instead of the ambiguous "consumer's interest" standard, a state exemption, if any, should be based upon a requirement for the disclosure of total broker compensation. If the Board does adopt some form of state exception, then the Board should publish and regularly update a list of the specific states that qualify for the exemption.

b. Exemption if Compensation Not Determined by Rate. There should be no exemption for situations where the creditor pays compensation that is not determined by the interest rate. Such an exemption would increase the danger of adverse steering because nothing would prevent creditors who charge higher rates to consumers (or "push" other adverse loan terms) from paying larger fees to brokers, as long as the fees are not tied to the interest rate.

For example, assume that a broker who requires two points total compensation is choosing between two creditors (Creditor A and Creditor B). Creditor A offers loans at 6.00% with no YSP and at 6.50% and 2 points YSP. Creditor B offers similar loans at 6.50% and no YSP and at 7.00% and 2 points YSP. Currently, a rational broker would likely choose Creditor A and, whether the broker was compensated directly or indirectly, the consumer would receive the benefit of Creditor A's lower rates. However, assume that because the regulation is adopted as currently proposed by the Board, both creditors discontinue offering YSP. Creditor A now offers a loan at 6.00% with no indirect fee to the broker and Creditor B now offers a loan at 7.00% with a 2% indirect fee to the broker. If the broker requires two points total compensation and believes that it will be easier to get that compensation from a creditor than to charge the consumer directly, the broker has a strong incentive to steer the consumer to the creditor who pays a high flat fee – the higher priced Creditor B.

If the Board follows our recommendation, we would recommend as a conforming change that proposed 226.36(a)(ii) be modified to read, "That the consumer may pay the entire amount of compensation … because the creditor may recover such payments through a higher interest rate."

6. Settlement Agents. As noted above, the Board's authority under Section 129 is not limited to creditors. We recommend that the Board assert authority over settlement agents. On brokered loans, mortgage brokers often influence the selection of the settlement agent and it is the settlement agent who ultimately determines what happens at the closing table. We recommend that in circumstances where the creditor has instructed the settlement agent on the amount of direct and indirect broker compensation to be paid at closing, the Board should require that the settlement agent not close the loan if the amounts paid to the broker would exceed the amounts stated in the creditor's instruction. The Board should also provide that if, after closing, the creditor determines that the broker received excessive compensation because the settlement agent permitted excessive amounts to be paid at closing, then the creditor should be deemed to have complied with its requirements provided that the creditor (or broker) has refunded the amount in excess of the agreed upon amount within a specified time period, such as 60 days after closing.

7. Right to Cancel. We strongly recommend that the Board add a comment stating that: (a) the broker fee agreement is required under Section 129(l) of TILA, not Section 129(a); (b) the broker fee agreement is not a material disclosure under Section 103(u); and (c) accordingly, the failure to provide the broker fee agreement will not give rise to an extended right to cancel. We believe that this clarification is essential because an extended right to cancel is such a severe remedy.

8. Assignee Liability. As discussed in subsections 1and 5 above, we recommend that the Board directly require the disclosure and eliminate the exceptions. However, assuming arguendo that the Board does not adopt these recommendations, then we recommend that the Board clarify that an assignee would not have liability under the "apparent on the face of the disclosure" standard if the broker fee agreement is missing or is dated after the date shown on the broker's application or if the fees paid to the broker on the HUD-1 exceed the amount shown on the agreement. This clarification is appropriate because an assignee could not determine from the face of the disclosures whether the exceptions to the broker fee agreement requirement are applicable. For example, the assignee could not determine from the disclosures whether the broker operated in a state that satisfied the proposed state exception or whether the creditor's payment to the broker was determined by reference to the interest rate.

B. Coercion of Appraisers.

1. Reports of Coercion. Appraisers and appraisal management companies should be required to report instances of coercion to (a) the creditor, (b) the regulator of the creditor or broker and (c) the state regulator of the appraiser, so that any issues raised would be investigated immediately rather than long after the alleged violation. If the creditor has designated an officer to receive such complaints, the Board should require the notice to be provided to that officer.

2. Actual Knowledge. The Proposal currently provides that a creditor who knows or has reason to know of coercion may not extend credit based upon the appraisal. The "reason to know" standard is vague and subjective and should be eliminated.

3. Appraisal Accuracy. Although we agree that it is appropriate for the Board to prohibit coercion of appraisers, we do not believe that the Board intends for this consumer protection measure to extend to a de facto guarantee of the accuracy of the appraisal to the consumer. To avoid any confusion on this point, we recommend that the Board state in a comment that the regulation does not require creditors, mortgage brokers or their affiliates to guarantee the accuracy of appraisals.

4. Reasonable Diligence. Where a creditor knows of attempted coercion and extends credit based upon a different appraisal, the Proposal states that there will be no violation. However, many creditors use reasonable diligence to determine that an appraisal does not materially misstate or misrepresent the value of the dwelling, whether or not they know of attempted coercion. These steps include compliance with the regulations issued by the federal banking regulators implementing the appraiser

independence requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, procedures for reviewing and underwriting appraisals, and the use of automated valuation models and other tools to identify potentially inflated or flawed appraisals for further review.

A creditor should not be considered in violation of the requirements of the regulation, notwithstanding the fact that an employee may have attempted to coerce the appraiser, or know of attempted coercion of the appraiser, if the creditor has exercised such reasonable diligence and the appraisal upon which credit is extended does not materially misstate or misrepresent the value of the dwelling. A creditor should be deemed to have satisfied its due diligence requirement if the creditor (i) designates an officer who is independent from the sales side of the business to receive notices of attempted coercion, (ii) investigates in good faith such notices of attempted coercion sent to the designated officer, (iii) where attempted coercion has occurred as alleged in such notice, extends credit only based upon an appraisal that was not subject to the attempted coercion, and (iv) as to the person who attempted to coerce the appraiser as alleged in such notice, takes actions that are reasonably adapted to prevent coercion of appraisers by such person in the future.

C. Servicing Practices

The Board noted in its Proposal that it did not solicit comment on whether certain mortgage servicer practices should be prohibited, but instead decided to propose regulations governing servicing practices based upon "substantial anecdotal evidence of servicer abuse." However, we believe that the fact that the Board did not seek comment from servicers has resulted in a proposal that: (a) is impractical in many respects because it fails to take into consideration usual and customary servicing practices and (b) would unduly require servicers to: (i) make difficult and costly changes to their servicing systems, (ii) engage in extensive retraining of personnel and modification of their policies and procedures, and (iii) re-examine their servicing agreements with investors (e.g., FannieMae, Freddie Mac and private investors) to determine how these proposed regulations impact both the investor-servicer relationship and the legal obligations between the parties.

Further, we believe that the enhanced damages available for a violation of a regulation issued under the Board's Section 129 authority are particularly inappropriate for servicing practices. A violation could occur at any time during the life of the loan, and the servicer could potentially be subject to enhanced damages equal to all of the finance charges and fees paid by the borrower over the life of the loan. Given the high stakes, the class action bar will have every incentive to creatively interpret the Board's rules, and the prospect of unlimited class action liability could provide significant leverage to force settlements, even where the servicer has done nothing wrong.

Although we believe that a more carefully crafted federal rule defining acceptable servicing practices could be useful to both consumers and servicers, we urge the Board, including for the reasons further discussed below, not to adopt the proposed servicing requirements.

1. Failure to Credit Payments as of the Date of Receipt.

a. Short Payments. The Board requested comments on how partial payments should be treated under this provision. We believe that the regulation should include "full payment" and "short payment" definitions. Specifically, we recommend that the Board define a full payment to include all amounts included in the monthly payment for principal and interest, escrow, charges for forced placed property or flood insurance, charges for optional insurance products or other products or services requested by the consumer, late charges and other service charges. A short payment should be defined as a payment that is less than the full payment by more than the amount attributable to late charges or charges for optional products or services.

We believe that, on monthly accrual loans, servicers should not be required by the regulation to post short payments to the account (such payments are usually posted to an "unapplied account" and held until the missing funds are remitted). Posting short payments to an "unapplied account" does not harm the consumer because the practice does result in additional interest expense to the consumer.

On daily simple interest loans, servicers should be required to post short payments to the account because in that circumstance interest is calculated each day on the outstanding principal balance. For both monthly accrual loans and daily simple interest loans, a servicer receiving a short payment should be allowed to assess a late charge after the applicable grace period and report the late payment to consumer reporting agencies.

b. Payments Received Before the Due Date. When servicers receive large payments before a due date, consumers do not always clearly indicate whether they intend to make a prepayment or they intend to pay one or more monthly payments in advance. If the payment is treated as a prepayment, the consumer will have the benefit of a reduction in the principal balance and a reduction in the interest charges that will accrue, but will be obligated to make the next monthly payment as scheduled and will be reported as late if he or she fails to do so. If the payment is treated as one or more monthly payments made in advance, the consumer will have the benefit of not having to make another monthly payment for one or more months, but on monthly accrual loans those payments will applied as of their scheduled due dates and the consumer will not receive the benefit of an immediate reduction in the principal balance and a reduction in interest charges. Proposed Comment 36(d)(1)(i)-1 should be clarified to permit servicers to exercise reasonable judgment in determining whether a payment should be treated as a prepayment or as one or more payments in advance when the consumer makes a payment that is equal to or greater than twice the amount of the next payment due and the consumer fails to clearly indicate whether such payment should be treated as a prepayment or as payments in advance.

c. Effect of Payment Hierarchy. The Board should also clarify that if a payment is applied to the account in accordance with the payment hierarchy specified by the loan documents, any additional interest that may accrue as a result of crediting the payment to amounts due other than principal is not a "charge" that is subject to the regulation. This treatment is appropriate because to do otherwise risks forcing servicers to violate the contractual provisions of the loan documents which specify the payment hierarchy. What we recommend is also standard industry practice (including for Fannie Mae and Freddie Mac loans) and changing it would be unnecessarily burdensome and expensive.

d. Loans in Collection, Foreclosure, Bankruptcy or Litigation. The proposed rules do not (but should) recognize that payments on loans in collections, loss mitigation, bankruptcy and/or foreclosure are often handled differently than payments on performing loans. For example, payments may need to be provided to a local attorney. Similarly, the rules should recognize that payments may also be handled differently where litigation has commenced, and adversarial process exists. We recommend that loans in collections, loss mitigation, bankruptcy or foreclosure or that are involved in litigation or other adversarial proceedings be expressly excluded from the scope of the rule.

e. Payment Requirements and Implied Guidelines. The Proposal provides that servicers may specify in writing reasonable requirements for making payments. The Board should clarify that the servicer may provide these written requirements on the consumer's statement or coupon book. The Board should also clarify that if the promissory note specifies an address for payments or if a notice of assignment, sale or transfer of servicing rights has been provided under Section 3500.21 of Regulation X and specifies the new servicer's address, such documents suffice as written specification of the locations to which payments should be made.

Proposed comment 36(d)(2)-2 addresses implied guidelines for payments. The implied guidelines should include requirements that (i) the consumer provide his or her name and account number and (ii) if the servicer has provided a payment coupon in a booklet or on a statement, the consumer include that coupon with the accompanying payment. If the consumer fails to provide his name, account number, and the payment coupon, then the servicer should have at least seven business days to credit the payment.

If the servicer has not specified a location for payments, comment 36(d)(2)-2 states that the payment may be made at any location where the servicer conducts business at any time during the servicer's normal business hours. This implied guideline should be limited to locations of the servicer (and not of the servicer's affiliate or vendors) that are open to the public and to the normal business hours when that location is open to the public.

2. Late Charges. Although we agree that the pyramiding of late charges is an inappropriate practice, we do not believe that the Board should use this rulemaking to address that issue. First, as the Proposal notes, the Credit Practices Rule as promulgated

by the Federal Trade Commission ("FTC"), by the Board in Regulation AA and by the Office of Thrift Supervision ("OTS") in 12 CFR 535.4 already prohibits pyramiding of late charges by any servicer.

Second, consumers who believe that their payments have been misapplied have recourse under the qualified written request procedures of Section 6 of RESPA and may recover actual damages and, where there is a pattern or practice of violations, statutory damages of up to $1,000. The qualified written request procedures prohibit adverse credit reporting while the consumer's dispute is being investigated and they require appropriate corrections to the account, including crediting of any improper late charges. Therefore, while payments are occasionally misapplied resulting in improper late charges, the qualified written request procedures of RESPA that are already in place should be sufficient to protect the consumer in the vast majority of circumstances.

Third, although the Proposal claims that this provision would permit state attorney generals to enforce the rule uniformly, we are skeptical that the FTC, the Board, or the OTS would decline to enforce the Credit Practices Rule when credible evidence has been presented to them that a servicer is pyramiding late charges. If the desire of the Board is that the rule be enforced uniformly, uniform enforcement may more easily be achieved by coordination between the three federal agencies charged with enforcing the current rule rather than delegating enforcement to fifty state attorney generals.

Finally, promulgating this requirement under the Board's Section 129 authority results in potential liability to the servicer that is grossly disproportional to any harm likely to be suffered by the borrower. A single misapplied payment and improper late charge could result in a servicer being subject to enhanced damages equal to all of the finance charges and other charges paid by the consumer over the life of the loan.

3. Fee Schedule.

a. Fees Included on Schedule. The requirement to list every possible fee, including third party fees, is an impractical standard because it would require (i) a customized list for each borrower and (ii) projecting into the future numerous events that could occur during the life of the loan. Fees vary widely by product and state and the consumer may request a wide variety of special services that would be extremely difficult to anticipate in advance and third party fees for even customary services may change over time. In addition, the need for some services could depend on future customer behavior. For example, if the servicer has to force place insurance because the consumer has failed to maintain coverage, would the servicer have to list and estimate the premium cost? Similarly, fees charged due to the consumer's default, such as foreclosure attorney fees and property management services, are difficult to estimate in advance and it is highly unlikely that a consumer would have any reason to ask for such information prior to being in default or foreclosure.

If the Board determines that a fee schedule should be provided, the servicer should not be required to provide information on the following categories of fees: (i) fees that are specified in the loan documents, such as late charges and prepayment penalties (because such fees can be readily determined by the consumer from the loan documents and typically vary by state and product making uniform disclosures impractical), (ii) fees for optional services related to the loan, such as optional insurance or arrangements for making loan payments through payment service vendors (e.g., Western Union) by preauthorized debits (such fees are generally contracted for at the time the customer arranges for the service), (iii) fees charged due to the consumer's default or foreclosure, and (iv) fees paid to recording officers for the recordation of documents.

b. Description of Amounts/Right to Change Fees. The types and amounts of fees charged by servicers are governed by numerous requirements including the contractual provisions of the loan documents, state, federal or local law, and agency and investor requirements. To list all of possible charges and the exact amounts that would apply to a particular loan would be an extremely burdensome task. To give one example, the FHA publishes a 24 page "Post Endorsement Fee Schedule" that covers 16 different fees and itemizes the fees authorized in all fifty states. The compliance burden would be significantly reduced if: (i) the fees included in the disclosure were limited as discussed in subsection 3.a above, (ii) the regulation clarified that fees may be stated as a maximum or range (for example, Fax Fee – up to $25), and (iii) the regulation clarified that the servicer may reserve the right to change the amount of the fees.

c. Explanation of Fees. The requirement to provide "an explanation of each such fee and the circumstances under which it is imposed" could subject creditor/servicers to litigation for purportedly inadequate explanations, particularly if plaintiffs could recover enhanced damages under Section 129. We recommend that the Board clarify in a comment that the explanation should be brief and that there should be no violation based upon the inadequacy of the explanation if the servicer provides a toll-free telephone number for further information.

d. Alternatives. We appreciate that the Board indicates that as an alternative to providing the schedule of fees to the consumer in writing, it may direct the consumer to a specific website address where the schedule is located. We recommend that the Board clarify that it would be sufficient for the servicer to provide, in advance of the consumer's request, the direction to the specific website address on the monthly statement.

Servicers should also have other alternatives to providing a fee schedule on request such as: (i) disclosing the amount of a specific fee before the fee is imposed on the consumer, (ii) providing the schedule of fees on an annual basis, (iii) providing the schedule of fees with the monthly statement or coupon book or (iv) providing information on specific fees though a toll free telephone number using live operators or a voice response system

e. Reasonable Time Period. If the Board follows our recommendations in subsections a. through c. above to limit the number and types of fees that have to be disclosed and to provide the flexibility we recommend regarding disclosure of the amounts and explanation of such fees, then we believe it is reasonable to require servicers to provide the fee schedule within seven business days. The fee schedule should be considered provided as of the time the servicer mails, faxes or electronically delivers it to the consumer or posts it to its web site. If, alternatively, the Board requires that all possible fees be disclosed and that the amounts of such fees must be determined on an individual loan-by-loan basis, then the research necessary to respond to such a customized request should be the same time period as provided for under RESPA's qualified written request provisions. Under those provisions, a servicer must acknowledge receipt of the consumer's request within 20 days (excluding legal public holidays, Saturdays and Sundays) and respond to the request within 60 days.

f. Written Requests from Consumer. Particularly in light of the potential liability for violations, the regulation should require that the consumer's request must be made in writing to an address specified by the servicer, similar to the qualified written request process for RESPA.

4. Payoff Balance.

a. Form of Request. The regulation should provide that the consumer's request be made in one of the following manners as specified by the servicer: (i) in writing to an address specified by the servicer, or (ii) by facsimile transmission to a facsimile number specified by the servicer or (iii) by telephone call to a telephone number specified by the servicer.

b. Person Acting on Behalf of Consumer. In light of privacy concerns, a comment should be added that addresses the circumstances when a servicer may assume that a person other than the customer requests information on a consumer's loan is "acting on behalf of the consumer." We recommend that the comment provide that a servicer may follow its reasonable and normal procedures for verifying (i) the identity of the "person acting on behalf of the consumer" and (ii) the authority of such person in requesting a payoff statement.

c. Timing/Specified Date. The three business days time period to provide a payoff statement is unreasonably short. We suggest that 15 calendar days be the standard with additional time when the servicer is experiencing a high volume of requests. The Proposal provides that the payoff balance must be as of a "specified date," but does not indicate whether it is the consumer or the servicer who specifies that date. The general practice of servicers is to provide a payoff statement as of the next scheduled due date after the payoff request is made, or if the payoff request is made shortly before the next scheduled due date, then as of following scheduled due date. For example, if the request were received on April 1st, the servicer would quote a payoff figure as of May 1st, while if the request were received on April 30th, the servicer would quote a payoff figure as of June 1st. In both instances the servicer would provide a per diem interest rate figure that the consumer or his representative could use to calculate the payoff amount if the loan was paid off earlier than the specified date. The regulations should be consistent with industry practice and provide servicers with flexibility to provide payoff statements based upon reasonable timing standards.

d. Accuracy Requirements. The Proposal requires that that the payoff statement be an accurate statement of the total outstanding balance of the consumer's obligation that would be required to satisfy the obligation in full as of a specified date. The final regulation should provide for flexibility to account for the many parties that can be involved in the payoff process and for the numerous transactions that can occur that can affect the payoff figure. For example, between the time the servicer prepares the payoff statement and the specified payoff date, the payoff amount may change due to: (i) the consumer canceling or postponing the payoff (which may require the issuance of a new payoff statement), (ii) escrow disbursements, (iii) delay in remitting the payoff funds to the servicer (causing additional per diem interest to accrue), (iv) last minute fees, (v) the consumer failing to make the scheduled monthly payments, and/or (vi) the account going into foreclosure or bankruptcy. In addition, the servicer may receive multiple, and sometime inconsistent instructions from (1) the consumer, (2) the consumer's real estate agent, (3) the new creditor (in the case of a refinance transaction) and (4) the closing attorney or title company that is coordinating the new loan. Given these multiple factors, we recommend that the regulation state that a payoff statement should not be considered inaccurate due to these circumstances or other circumstances beyond the servicer's control.

e. Requests in the Context of Foreclosure or Bankruptcy. The Proposal does not (but should) set forth separate provisions for requesting a payoff statement on a loan that is in foreclosure or bankruptcy. In such cases, the request for a payoff statement is the exchange of information in an adversarial setting. Due to the attorney-client relationship and local Court rules, the servicer may need to deliver the final payoff amount through its local attorney.

V. Early Truth in Lending Disclosures and Limits on Fees Prior to Disclosures

A. Early Disclosures. If early TILA disclosures are expanded beyond loans to acquire or construct the dwelling, many (perhaps most) home equity lenders will need substantial lead time to meet this requirement. We recommend that these provisions not take effect until the later of twelve months after the final regulations are published or January 1, 2010.

HUD's proposed changes to Regulation X would substantially change the Good Faith Estimate ("GFE"). The proposed GFE would no longer be limited to estimates of the settlement charges that the consumer was likely to incur at closing, but it would provide information on rates, payments, prepayment penalties, and other loan terms that would overlap and be inconsistent with TILA requirements. Again, we strongly urge the Board and HUD to fully communicate with each other and agree upon a single form and set of rules for early disclosures.

B. Limit on Fees. To reduce undue burden and avoid unintended adverse consequences, the proposed restriction that fees (other than a credit report fee) may not be charged until the consumer receives the disclosures should be modified as discussed below:

1. Credit Report or Nominal Fee. There are significant operational costs to tracking the costs of credit reports. In addition, an application may have more than one applicant and for each applicant credit reports may need to be obtained from one or more repositories. We recommend that the Board permit the creditor to charge at the time of application either the actual cost of the credit reports, or a nominal amount not in excess of $50 per loan application, regardless of the number of applicants.

2. Appraisal Fees. The proposed restriction would prevent both creditors and mortgage brokers from charging appraisal fees (and therefore, as a practical matter, from ordering appraisals) before the consumer receives the disclosure. This could significantly delay the ordering of the appraisal, and the delay in ordering the appraisal may delay the processing of the application and the closing of the loan. These delays may unnecessarily increase costs to the consumer. We recommend that the collection of appraisal fees be permitted prior to receipt of disclosures.

3. Rate Lock Fees. The inability to charge rate lock fees at application may significantly affect the creditor's ability to offer rate locks as of the application date and/or unnecessarily increase costs of locked rates for consumers. We recommend that creditors be permitted to collect rate lock fees prior to receipt of disclosures provided that such fees would be refunded to the consumer if the consumer provided complete and accurate information and the loan was not approved at the locked rate.

4. Fees Charged by "Any Other Person." We recommend that this language be conformed to the language that defines a finance charge under Section 226.4 of Regulation Z so that it includes only charges "imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit."

5. Fees Collected by Mortgage Brokers or other Creditors. We believe that the Proposal lacks needed clarity concerning the common circumstance where a mortgage broker submits applications to more than one creditor. Assume a mortgage broker decides to submit an application to two creditors. In such a circumstance, the mortgage broker might submit an application to one creditor and collect a fee after that creditor provides TILA disclosures (and either retain that fee itself and/or forward the fee to the creditor). The first creditor may turn down the application, or the broker on behalf of the consumer may decide to withdraw the application from the first creditor and submit the application to a second creditor. Must the second creditor refuse to accept the application in this case because it would cause that creditor to violate the early disclosure provisions? We believe that a fee charged by the first creditor would not be a fee "imposed directly or indirectly" by the second creditor. However, to clarify the application of the regulation, we recommend that the Board determine and clarify whether, as a condition of permitting the second creditor to accept the application, the broker would be required to refund any compensation it previously collected or whether the broker would be permitted to keep

that amount as long as it counted towards the limit on total broker compensation stated in the broker fee agreement.

C. Delivery Presumption. In addition to the presumption that disclosures are received by the consumer three business days after they are mailed, we recommend the Board adopt a presumption that disclosures are received by the consumer the next day when the disclosures are sent by overnight courier and a presumption that disclosures are received by the consumer immediately when sent electronically in a manner compliant with E-Sign Act requirements.

VI. Advertising Rules

A. Open End Credit/Definition of Introductory Rate and Payments. We recommend that a rate and minimum payment requirement in effect for the full draw period of a HELOC not be included in the definition of introductory rate or payment.

B. Closed End Credit.

1. Triggering Rules.

a. Disclosing a Range of Rates, Rather than All Rates. Where the need to disclose simple annual interest rates is triggered, the Proposal requires that all such rates and the time each rate applies be disclosed. This will be extremely cumbersome for some loans and will have the effect of discouraging meaningful rate advertisements. It would be much less cumbersome if creditors could state the range of rates that would apply over the term of the loan.

b. Term in Years Should Not be a Triggering Term. Under the current advertising rules, a creditor may not state in an advertisement that its current APR for a 30-year fixed rate loan is 7% without triggering significant additional disclosures. As a result, creditors typically will avoid stating the term of the loan in such an advertisement, stating instead that they offer "longer term loans at 7% APR." In order to encourage creditors to provide more information to consumers, we recommend that the current triggering rules be revised so that the term of a mortgage loan in years could be stated in an advertisement without triggering additional disclosures (or triggering only a disclosure of the APR).

2. Prohibited Acts.

a. Section 129 Liability/Use of Section 105 Authority. We believe that providing Section 129 liability for advertising violations is unduly severe, particularly in light of the fact that the detailed formatting and required language provisions may give rise to technical, inadvertent errors. Accordingly, and consistent with our discussion in section VII below, we recommend that these requirements be promulgated instead under the Board's Section 105 authority, with a further rule providing for Section 129 liability under certain conditions (for example, that the creditor had a pattern or practice of violating the provisions, that the consumer was misled by the advertisement, and that this affected the consumer's decision regarding the loan). We believe that this would appropriately balance industry concerns about the disproportionate severity of liability under Section 129 and the Board's apparent concern that Section 105 authority alone would not impose sufficient liability for violations.

b. Fixed Rates. Particularly in light of potential Section 129 liability, the formatting and required language requirements of the Proposal are overly technical and provide a severe and undue liability trap for minor or technical violations. Accordingly, they should either be simplified or dropped altogether.

c. Fiduciary Relationship. The regulation says that the terms "counselor" or "financial advisor" are prohibited. We believe that this requirement should be clarified to allow the use of these terms by individuals if they provide a disclosure to consumers stating that that they are not acting as a counselor or financial advisor with respect to mortgage loans.

VII. Damages and Remedies

A. Chilling Effect on Credit of Potential Liability for Violations of Section 129 Regulations. The Board should be concerned that the imposition of Section 129 liability could reduce the willingness of creditors to extend mortgage credit. The United States is already experiencing the negative effects of a tightening credit environment and the Board should be careful not to unnecessarily make the problem worse through this rulemaking. As discussed below, we believe that the Board can (and should) achieve its objectives without relying primarily on Section 129.

B. Use Section 105 Authority Unless Practice is Actually Unfair or Deceptive. The proposed regulations would provide uniform national standards for subprime creditors, diminish the likelihood of unfair or deceptive practices, and promote the informed use of credit. However, violations should give rise to enhanced Section 129 liability only where they are actually unfair or deceptive. We recommend that the Board use its Section 105 authority where possible (with violations giving rise to liability under TILA Section 130(a)(1)-(3)) and elevate the violation to Section 129 violations only where the action is either unfair or deceptive as previously defined in the Board's prior guidance. The specific changes that we believe the Board should make are as follows:

1. Clarify that a practice would be "unfair" only if (a) the consumer suffers an injury of the type and due to the circumstances that the Board's regulation was meant to avoid, (b) the consumer could not reasonably have avoided the injury, and (c) the consumer did not receive countervailing benefits that outweighed the injury.

2. Clarify that a practice would be "deceptive" only if (a) the representation, omission, or practice would mislead or be likely to mislead the consumer, (b) the consumer's interpretation of the representation, omission, or practice would be

reasonable under the circumstances, and (c) the misleading representation, omission, or practice affected the consumer's decision regarding the loan.

3. Clarify that the determination of whether a practice is unfair or deceptive under the above standards depends upon the consumer's individual circumstances.

4. Clarify the facts that the creditor would need to show that a violation was not "material" under Section 130(a)(4). For example, in the case of a servicing violation, the Board could clarify that, where a violation exists, it should not be considered "material" if the servicer corrects the error pursuant to RESPA's qualified written request procedures. Similarly, in the case of a fee schedule violation, the violation would not be "material" if the consumer was not charged an undisclosed fee, or if an undisclosed fee was charged, the amount of that fee was within the normal range of fees charged by servicers for such service. In the case of a payoff statement violation, the violation would not be material if the servicer provides a monthly statement showing the current balance of the loan or the delay in providing the payoff statement did not cause the consumer to be unable to refinance as of the requested payoff date.

C. Assignee Liability. The Board should clarify that, because the Proposal does not require new "disclosures" (other than the broker fee agreement), an assignee would not be liable for any violations of the Proposal's requirements. As discussed in section IV. A, we recommend the Board directly require the broker fee agreement and eliminate the exceptions. However, assuming arguendo that the Board does not adopt these recommendations, then the Board should also clarify that the absence of the broker fee agreement from the file does not give rise to assignee liability because (i) the creditor does not have an obligation to provide the disclosure and (ii) due to the exceptions in the Proposal the assignee could not determine if the broker fee agreement is required.

D. Right to Cancel. If the Board acts under its section 129 authority, the Board should clarify that, although the inclusion of a prepayment penalty in violation of the Proposal would give rise to an extended right to cancel under Section 129(j) because it would constitute the inclusion of a provision prohibited by Section 129, other requirements of the Proposal involve practices but not "a [contractual] provision prohibited" by section 129. Accordingly a violation, other than inclusion of a prepayment penalty in violation of the Proposal, would not begin the running of the right to cancel.

E. Correction Procedure. The Board should extend the Section 130(b) correction procedures to these violations and provide guidance on how loans should be adjusted. For any higher-priced mortgage loan violation, one way that creditors should be permitted to correct the loan would be to adjust the rate and/or refund amounts so that the APR on the loan would no longer exceed the higher-priced mortgage loan threshold.

On behalf of Citigroup, I thank you again for this opportunity to comment on the Board's proposed amendments to Regulation Z. If you have questions on any aspects of this letter, please feel free to call me at (212) 559-2938, Jeffrey Watiker at (212) 559-1864 or Doug Webb at (636) 261-6490.

Sincerely,

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