



May 2, 2011

Ms. Jennifer Johnson

Secretary

Board of Governors of the Federal Reserve System

20th Street and Constitution Avenue, NW

Washington DC 20551

**RE: Docket No. R-1406—Repayment Ability Standards & Revised Escrow
Account Requirements for Certain Home Mortgage Loans**

Dear Ms. Johnson:

On behalf of Community Associations Institute (CAI)¹, I am pleased to submit the following comments on the Federal Reserve Board's proposed rule to revise Regulation Z as required by Sections 1461 and 1462 of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd Frank).

Repayment Ability Standard

Community associations have long been the housing option of choice for millions of American families with more than 60 million American households currently located

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¹ CAI is the only national organization dedicated to fostering competent, well-governed community associations that are home to approximately one in every five American households. For nearly 40 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. CAI's 30,000 members include community association volunteer leaders, professional managers, community management firms, and other professionals and companies that provide products and services to community associations.

in a community association.² These homeowners choose to live in a community association for any number of reasons, but chief among them are a desire for a strong community identity, to protect the value of their home, to enjoy amenities to which they may not otherwise have access, to mutually share some of the expense of property maintenance, and to provide a decent home and suitable living environment. While community associations have been in existence for more than 150 years, the community association model of homeownership has become more popular and widespread in the past several decades.

Membership in a community association creates a common bond between homeowners.³ Under the community association structure, associations are often responsible for waste removal expenses, maintenance of community infrastructure, utility services, and insurance premiums. Additionally, the association is responsible for preparing an appropriate operating budget that funds current association obligations and adequately reserves for anticipated future infrastructure costs. All association members pay assessments that fund these critical association services. To ensure each member of the association pays their fair share, association assessments are mandatory and lien-based.

In its June 2008 amendments to Regulation Z, the Board required that creditors verify certain borrowers have the ability to pay all mortgage-related obligations necessary to keep their mortgage current. The Dodd Frank Act expanded the ability to repay standard to most mortgage loans. Further, under the interagency proposed rule implementing Dodd Frank Section 941, the Board requires a similar ability to repay standard as a criterion for a home mortgage loan to be classified as a Qualified Residential Mortgage.

CAI strongly supports the Board's continued inclusion of association assessments in mortgage-related obligations in the proposed rule. A homeowner's community association assessments are critical to the proper functioning of the association. When a homeowner is unable to pay

² CAI's 2009 National Survey may be viewed at http://www.cairf.org/research/survey_homeowner.aspx

³ All community associations have three defining characteristics: (1) membership is mandatory and automatic for all owners; (2) certain documents bind all owners to be governed by the community association; and (3) mandatory lien-based assessments are levied on each owner in order to operate and maintain the community association. There are three basic types of community associations: condominiums, cooperatives and planned communities.

assessments all other homeowners are forced to bear the expense of the delinquency. Ensuring that borrowers are qualified on the basis of their ability to pay all mortgage-related obligations will reduce assessment delinquencies in community associations, protecting homeowners from unanticipated housing costs.

Proposed Exemptions from Escrow Requirements

The Board's proposed rule provides a general exemption from escrow requirements for loans secured by shares in a cooperative. An additional exemption from escrow requirements is also provided for insurance premiums where a governing community association maintains a master insurance policy.

The Board's June 2008 amendments to Regulation Z appropriately exempted cooperatives from escrow requirements for property tax assessments and master insurance policy premiums. As the Board noted, the unique structure of cooperatives makes this exemption imperative. Further, the Board appropriately provided an exemption from escrow requirements for insurance payments where a condominium association has an obligation to maintain a master insurance policy. Dodd Frank Section 1461 included similar exemptions from escrow requirements for cooperatives and condominiums, but expanded the condominium escrow exemption to all community associations that maintain a master insurance policy.

In general, CAI strongly supports the Board's proposed escrow requirement exemptions for community associations where the association is obligated to pay premiums to maintain a master insurance policy. Requiring lenders to escrow for each unit owner their pro rata share of the association's insurance premium is not practical or appropriate in condominiums or other community associations. However, CAI notes that in these communities individual owners may be required by lenders to maintain an HO-6 or equivalent "walls-in" policy. Such policies protect the individual unit owner from losses not covered by the association's master insurance policy and under the proposed rule lenders may still escrow these insurance premiums pursuant to applicable Federal and state statute or guidance.

CAI Recommends Use of the Term “Common Interest Community” in Section 226.45(b)(2)(ii) and Related Official Staff Interpretations

CAI is concerned the Board’s proposed exemption for community associations may not be sufficiently broad to capture a common association structure known as a master association. In communities with this legal structure, all homeowners are members of a sub-association and the master association. Owners support the operations of their sub-association as well as the operations of the master association, but do not fund or participate in the governance of other sub-associations.

Many communities belong to master associations which require a master insurance policy to be maintained. Premiums for these policies are paid via assessment that may be levied directly against an owner or against the sub-association in which the given unit is located. CAI urges the Board to consider appropriate modifications to the proposed Section 226.45(b)(2)(ii) to ensure master associations are clearly and unambiguously eligible for the insurance premium escrow exemption as appropriate.

Over the past several decades community associations have worked with state legislatures to enact a uniform legal framework for the establishment and governance of community associations. An important result of this effort is the Uniform Common Interest Ownership Act, commonly known as UCIOA⁴. Released by the National Conference of Commissioners on Uniform State Laws, UCIOA is a basic statute for creating, managing, and terminating condominium, planned community, and real estate cooperatives. Most states have adopted UCIOA with variations that state legislatures have deemed appropriate.

Among the important legal standards offered in UCIOA is the term “common interest community”, which captures all forms of community association governance in one standard legal definition. Section 1-103(9) of UCIOA (2008) defines ‘common interest community’ as follows:

⁴ The most recent version of the Uniform Common Interest Ownership Act may be viewed at: <http://www.law.upenn.edu/bll/archives/ulc/ucioa/2008final.pdf>

“Common interest community” means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration, or in the case of a cooperative, where the obligation to pay for real estate taxes, insurance premiums, maintenance or improvement of real estate is described in a proprietary lease, occupancy agreement or the bylaws of the corporation owning the real estate. “Ownership of a unit” does not include holding a leasehold interest of less than [20] years in a unit, including renewal options.

CAI believes UCIOA provides a more encompassing and precise legal definition of the communities that may qualify (including master associations) for the Board’s proposed exemption from insurance premium escrow requirements than the term ‘planned unit development’ used in the proposed Section 226.45(b)(2)(ii) and in related amendments to the Official Staff Interpretations. By using terms that are consistent with UCIOA, the Board will ensure that all forms of common interest property are defined in a recognized manner that will ensure fair application of its final regulation and accompanying guidance.

Thank you for the opportunity to share the views of CAI’s members on the Board’s proposed rule. If you require additional information or wish to discuss the contents of this letter, do not hesitate to contact me at (703) 970-9220.

Sincerely,



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Community Associations Institute