August 14, 2007

VIA ELECTRONIC MAIL

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

RE: Docket No. OP–1288

Dear Sir or Madam,

The National Association of Mortgage Brokers ("NAMB") appreciates the opportunity to submit the following written comments in response to the notice and request for comment published by the Board of Governors of the Federal Reserve System ("Board") on the home equity lending market and the adequacy of existing regulatory and legislative provisions (including the Home Ownership and Equity Protection Act ("HOEPA")) in protecting the interests of consumers. (Docket No. OP-1288). NAMB commends the Board in holding hearings to examine the need to combat predatory lending practices while maintaining a competitive and strong housing market.

NAMB is the only trade association exclusively devoted to representing the mortgage broker industry and speaks on behalf of more than 25,000 members in 50 states and the District of Columbia. Our members are independent, small business men and women that adhere to a strict code of ethics and best lending practices when taking consumers through the loan process. We typically maintain business relationships with various lenders to provide consumers with numerous financing options. These partnerships allow our members to offer consumers the most competitive mortgage products available.

Today's market is under significant stress and the effects of the dislocations in the secondary market have become all too apparent. For the first time, problems in the American mortgage market system have far reaching worldwide ramifications. That is why it is important to be cautious as we consider measures to address the problems in the mortgage marketplace.

Abusive lending practices should be prevented. But, we must also be careful not to advance measures that will unintentionally harm consumers. The American economy is based upon fair and balanced access to consumer credit. Credit should be readily available to all consumers so long as borrowers have a reasonable ability to repay and loans are granted in a responsible manner. In today's uncertain times, a full blown credit crunch is evident for all to see. Underwriting standards, once too loose, have now become unnecessarily restrictive. The pricing of risk on the secondary market has gone from unrealistically low to unreasonably high. The re-pricing of risk has almost become irrational. We urge caution in any pronouncement made by the Board that may cause further roiling of the markets. This will only serve to unnerve investors around the globe and further constrict available credit to even the most deserving borrowers.

NAMB believes we must work together to find solutions to end abusive lending practices. We reiterate our long held view that abusive practices relate to how people present loan programs and how consumers understand product features. Loan products and the pricing of risk are not inherently abusive. Each consumer is unique; as each one chooses a loan for his or her own personal reason and determines what is appropriate for them. For this reason, NAMB does not believe in prohibiting programs, products, or loan features. Instead, we support the creation of policies and disclosures that will prevent abusive practices in the market.

The recent guidance[1] issued by the Federal Banking Agencies[2] is working and industry is beginning to adopt and implement the necessary changes. In addition, we are seeing adjustments in the market, such as tightening of underwriting standards and decreased use of certain loan features. The very fact that recently issued guidance has been implemented throughout the country reinforces our belief that any further opinions issued by the Board should be limited to guidance.

I. Effective Disclosure is the Best Defense Against Abusive Lending Practices

In the past few years many new products were introduced in the mortgage market with little regulatory scrutiny. As these new products were introduced in the market disclosures remained unchanged. NAMB believes current disclosures, contained in the Truth In Lending Act ("TILA"), should be updated to be more effective and allow consumers to more easily compare products.

NAMB believes that the Board should commission a study to create an industry wide one-page payment sheet that communicates key loan features and deters the prospect of payment shock. As part of this process, we urge the Board to engage in appropriate consumer testing of the form before implementation.

NAMB eagerly awaits the implementation of the long awaited risk-based-pricing notice for sub-prime and related products. We believe that this document, when tested and finally implemented, will cure many of the ills that currently plague the market.

II. Regulate the Practices, Not the Products

The Board has requested comment on four specific issues: a) "stated income" or "low doc" loans; b) escrow accounts c) prepayment penalties; and d) consideration of a borrower's ability to repay. NAMB reiterates that we must move forward cautiously so as not to impair the competitive housing market and national credit system.

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[1] Interagency Guidance on Nontraditional Mortgage Products, 70 Fed. Reg. 77249 (Dec. 29, 2005). Interagency Statement on Subprime Mortgage Lending, 72 Fed. Reg. 37569 (July 10, 2007).

[2] The FFIEC includes the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDCI), the Office of Thrift Supervision (OTS), the Office of the comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA) (together, the "Federal Banking Agencies").

A. **"Stated Income" or "Low Doc" Loans**: Current market conditions have already severely restricted the funding of stated income or low doc loans. NAMB supports guidance in this area. Stated income or low doc loans should only be funded where the lender has a reasonable belief that a consumer has an ability to repay the loan. Reasonable belief can be provided by a consumer in a number of ways, including credit history, personal circumstances, individual borrower characteristics and a review of the specific circumstances surrounding this loan approval. However, a loan officer or originator should not participate or recommend to a consumer the over statement of income or coach a consumer how much income they need to show in order to obtain a loan approval.

B. **Escrow Accounts**: NAMB supports guidance that requires escrow accounts for first lien, subprime mortgages with a LTV exceeding 80%. Consumers with LTV less than 80% should have the option to opt-in to the escrow account, but it should not be a requirement for this segment of the market. NAMB supports a disclosure that informs the consumer that their payment does/does not include an escrow payment and the estimated taxes and insurance. In addition, NAMB believes there should be no charge for the rate or fee for escrow services.

C. **Prepayment Penalties**: Any limitations on prepayment penalties should be confined to the subprime market, which the regulator should define. With that said, NAMB believes that whenever a prepayment penalty is attached to a loan it should be clearly and adequately disclosed to the borrower in writing as soon as it is known and again at closing. A disclosure provided early in the shopping process should clearly communicate to the consumer the option of a loan with a prepayment penalty (and a decreased interest rate), and a loan without a prepayment penalty (at an increased interest rate). In addition, when a consumer is considering a loan with a prepayment penalty feature they should also be presented with a comparable loan that does not include the prepayment penalty feature. If the prepayment penalty feature is chosen by the consumer, it should relate to a savings or other benefit for the consumer. In any event, any prepayment penalty shall be clearly and conspicuously disclosed at closing to the consumer.

D. **Borrower's Ability to Repay**: Current market conditions have already severely restricted the funding of loans without regard to a borrower's ability to repay. NAMB supports further guidance in this area. Loans should only be funded where the lender has a reasonable belief that a consumer has an ability to repay the loan. Reasonable belief can be provided by a consumer in a number of ways, including credit history, personal circumstances, individual borrower characteristics and a review of the specific circumstances surrounding this loan approval.

   Issuing a formal rule requiring proof of a borrower's ability to repay will serve to restrict access to credit for many deserving consumers. We are aware of too many cases, exceptions, personal borrower stories, unique combinations of factors, and other real life experiences where no income verification loan approvals are entirely appropriate. No hard and fast rule can ever predict a borrower's ability to repay under a unique combination of factors. That being said, a lender should not engage in a pattern or practice of making loans to consumers who clearly have no ability to repay.

III. Conclusion

In the last thirty days, the American mortgage marketplace has experienced one of the greatest corrections in our history. We fear that the addition of inappropriate consumer protections or guidance that is not finely crafted, will only serve to further restrict access to credit by deserving consumers and further unsettle financial markets around the world. NAMB urges the Board to use great caution at this most delicate moment.

NAMB appreciates the opportunity to comment on the home equity lending market and the adequacy of existing regulatory and legislative provisions in protecting the interests of consumers. If you have any questions, please feel free to contact Roy DeLoach, Executive Vice President at (703) 342-5850, or Nikita Pastor, Vice President and Counsel, Government Affairs at (703) 342-5851.

Respectfully Submitted,

George Hanzimanolis, CRMS
President, NAMB