Via Email and U.S. Mail

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Regs.comments@federalreserve.gov

RE: Docket No. OP-1288

Dear Ms. Johnson:

We write to urge the Federal Reserve Board (FRB) to use its authority under the Home Ownership and Equity Protection Act to prevent abuses in the mortgage market that have led to the current crisis of lost homes, lost equity, and destabilized neighborhoods. How much more evidence does the FRB need to see that current loan practices and products are unsafe and in desperate need of substantial reform? Any changes will be too late for thousands of consumers who have lost their homes to foreclosure, deeds in lieu, short sales, and foreclosure rescue scams. Yet decisive and immediate action by the FRB can save borrowers in the future.

The undersigned nonprofit groups, private firms and public agencies write in response to the FRB's request for comments on the Home Equity Lending Market. Collectively, we are counseling agencies, community development corporations, legal service providers, advocacy organizations, housing providers, local government, private firms, research establishments, neighborhood community development initiatives and policy think tanks, all of whom are witnessing the devastating impacts of abusive lending practices on families, seniors, people of color, immigrants, low and moderate income households, and the communities in which they live.

California registered the nation's second highest state foreclosure rate in June of 2007, one foreclosure filing for every 315 households—2.2 times the national average, according to Realtytrac. The state reported 38,801 foreclosure filings during the month, the most of any state for the sixth month in a row and more than three times the number reported in June 2006.[1] Another foreclosure data source, DataQuick, found that statewide, the number of trustee deeds rose almost 800% compared to the same period a year ago.[2] In response to the growing crisis, over one hundred community groups in California have called for a foreclosure moratorium in order to allow time for counseling, loan modifications and refinances to help keep people in their homes.[3]

California cities reported six of the nation's top 10 metropolitan foreclosure rates in June, and the top four spots were occupied by California cities: Stockton, Merced, Modesto and Riverside-San Bernardino. All of the top four cities registered foreclosure rates that were more than five times

[1] Realtytrac, "Foreclosure Activity Decreases 7 Percent in June," press release, July 12, 2007.
[2] Carolyn Said, "Foreclosures go through the roof," San Francisco Chronicle, July 25, 2007.
[3] Associated Press, "Groups Seek Foreclosure Delay," Los Angeles Times, May 15, 2007.

the national average. Other California cities in the top 10 were Vallejo-Fairfield at No. 7 and Sacramento at No. 8.[4]

This comment letter tracks the FRB's request for comment as published in the Federal Register:

A. Prepayment penalties.

- *Should prepayment penalties be restricted? For example, should prepayment penalties that extend beyond the first adjustment period on an ARM be prohibited?*

Prohibit prepays as unfair and deceptive. The FRB should prohibit prepayment penalties on subprime loans as inherently unfair and deceptive. Prepayment penalties trap borrowers into higher priced and unsuitable loan products.

Most consumers do not understand these penalties, which are counterintuitive and harmful for subprime borrowers who hope to graduate to prime products and for distressed homeowners who need to escape from unsuitable loans. Borrowers are not bargaining for lower rates in accepting prepayment penalties, as industry groups assert time and time again. Consumer choice cannot explain the large difference in the prevalence of prepayment penalties in the subprime and prime home loan markets. Prepayment penalties are in most subprime loans because investors want them there. The reality is that prepayment penalties provide no benefit to consumers,[5] yet increase the likelihood of foreclosure.[6]

If the FRB won't prohibit prepayment penalties, don't permit prepays after rate reset. Especially onerous are loans where the rates will rise or reset before the expiration of the prepayment penalty period. Borrowers are left with the harrowing choice of paying higher rates with their existing loan, or refinancing to a better loan and losing valuable equity in their home, typically thousands of dollars in California.[7] If the FRB is unwilling to prohibit prepayment penalties, it must, as a minimum, ban such penalties that extend beyond the loan's initial interest rate period and find this practice unfair and deceptive. Much of the industry has already moved to this position and is limiting the prepayment penalty period to that of the initial interest rate of the loan.

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[4] Realtytrac, "Foreclosure Activity Decreases 7 Percent in June," press release, July 12, 2007.

[5] Keith S. Ernst, *Borrowers Gain No Interest Rate Benefits From Prepayment Penalties on Subprime Mortgages*, Center for Responsible Lending, January 2005.

[6] Michael A. Stegman, Roberto Quercia, Walter R. Davis, *The Impact of Predatory Loan Terms on Subprime Foreclosures: The Special Case of Prepayment Penalties and Balloon Payments*, Center for Community Capitalism, University of North Carolina at Chapel Hill (UNC), January 25, 2005. The study found that loans with prepayment penalties with terms of three years or longer were 20% more likely to enter foreclosure than loans without these terms.

[7] Kevin Stein, Margaret Libby, *Stolen Wealth: Inequities in California's HomeLoan Market*, California Reinvestment Coalition, 2001. In this study of over 100 subprime borrowers and their loan documents, several loans contained prepayment penalty provisions that extended beyond the initial interest rate of the loan. This dynamic was never explained to, and never understood by, the borrowers.

If the FRB won't prohibit prepayment penalties, create a 90-day window for refinances. Beyond merely tying the prepayment penalty period to the initial interest rate of the loan, the FRB should allow for a 90-day period prior to the first interest rate adjustment during which time the consumer is able to refinance without penalty. This is consistent with the recently released interagency Statement on Subprime Lending which includes limits on prepayment penalties that allow for a reasonable period of time, typically at least 60 days, for customers to refinance prior to the expiration of the initial fixed interest rate period without penalty.

If the FRB won't prohibit prepayment penalties, add prepays to HOEPA calculation. In the alternative to banning prepayment penalties, and in addition to restricting their duration, the FRB should include prepayment penalties in the points and fees calculation under HOEPA. This would extend HOEPA's protections to more consumers.

- *Would enhanced disclosure of prepayment penalties help address concerns about abuses?*

Disclosures are not enough. In isolation, enhanced disclosures would be unlikely to address our concerns about abuses. Adding one more disclosure to the large pile of documents given to borrowers will not significantly enhance their understanding of their mortgages. To the extent borrowers are misled about their loan terms, they are doubly victimized by prepayment penalties which effectively prevent them from refinancing out of bad loans. A common practice of loan sellers is to tell apprehensive borrowers not to worry because they can always refinance if there are problems, thereby guaranteeing that a few thousand dollars in prepayment penalties will be incurred. Most borrowers do not understand this dynamic at all. However, coupling added disclosure with home loan counseling would probably result in borrowers better understanding their prepayment penalty provisions and more informed decision making.

- *How would a prohibition or restriction on prepayment penalties affect consumers and the type and terms of credit offered?*

Regulation would serve consumers' interests. Prohibiting, or in the alternative, restricting, prepayment penalty provisions would likely have little affect on the availability of credit, but will greatly increase consumer flexibility and ability to preserve and utilize, not lose, home equity. Prime borrowers are generally not forced to accept prepayment penalties in their loans, yet have reasonable access to credit. So, too, in those states that have prohibited or severely restricted prepayment penalties, there has been no drying up of credit.[8]

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[8] Roberto Quercia, Michael Stegman, *The Impact of North Carolina's Anti Predatory Lending Law*, UNC Center for Community Capitalism, June 25, 2003. The authors noted, "Overall, we conclude that after the North Carolina predatory lending law was fully implemented, the subprime market behaved essentially as the law intended: There was a reduction in predatory loans but no change in the cost of subprime credit or reduction in access to credit for high-risk borrowers."

B. Escrow for taxes and insurance on subprime loans.

- *Should escrows for taxes and insurance be required for subprime mortgage loans?*

Yes. Many borrowers' decisions about whether or not they are able to afford a particular loan are based on their understanding of the monthly obligations under that loan. By failing to include the prorated monthly costs of taxes and insurance in that calculation, borrowers overestimate their own ability to repay the loan. Additionally, we have repeatedly seen the lack of escrows used as a tool of deceit by unscrupulous mortgage brokers. Consumers are often exposed to "bait and switch" tactics by brokers who tell them that taxes and insurance will be included in their monthly payments but who ultimately arrange for a loan lacking escrows. In other instances, consumers are denied basic information and advice on the potential ramifications of forgoing an escrow. Consumers who are already carrying a debt load that stretches their financial resources can be pushed over the edge by the unexpected addition of thousands of dollars in additional annual costs for property taxes and insurance.

- *If escrows were required, should consumers be permitted to "opt out" of escrows?*

Opt out in limited circumstances. Consumers should be permitted to opt out either at loan closing or during the term of the loan only with written proof of participation in a publicly subsidized property tax and/or insurance program. The State of California, for example, provides a property tax postponement program to qualifying senior citizens and to disabled citizens.[9] If consumers could "opt out" of tax and insurance escrows without providing proof of their participation in an alternative program, there would be a substantial risk that they would either "opt out" of escrow unknowingly—by initialing yet another form among dozens received at closing, without explanation or comprehension—or would be induced to do so by their broker or lender.

- *Should lenders be required to disclose the absence of escrows to consumers and if so, at what point during a transaction? Should lenders be required to disclose an estimate of the consumer's tax and insurance obligations?*

Disclosure reform is inadequate. Since we assert that escrow should be required in all subprime loans except those where the consumer provides proof of participation in an alternative tax and/or insurance payment program, additional disclosure requirements related to escrow accounts under this regulatory regime would not be necessary.

Disclosure requirements are better than nothing, but often fail in their primary purpose—which is to guarantee that the consumer knows of potential risks and can therefore make an informed decision about whether or not to accept those risks. From our experience in counseling consumers in mortgage loan transactions, it has become apparent that the many disclosures

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[9] Information on California's Property Tax Postponement program, an example of a publicly subsidized property tax program, can be found on the website of the California State Controller's Office at http://www.sco.ca.gov/col/taxinfo/ptp/faq/index.shtml

required in these transactions are often misunderstood by subprime borrowers with limited financial literacy, and obfuscated by brokers and lenders who have either failed to explain key loan terms and disclosures to borrowers or have actively misrepresented or concealed these terms.

- *How would escrow requirements affect consumers and the type of and terms of credit offered?*

Escrow serves consumers' interest. Escrow requirements such as the ones suggested above would have no deleterious effect on consumers or on the type of and terms of credit offered. Tax and insurance escrows are common practice for many subprime lenders, and are the industry norm for prime lenders. A lack of regulation in this particular area primarily benefits those brokers who would attempt to secure loans unsuited to the borrowers' income.

C. "Stated-income" or "low doc" loans.

- *Should stated-income or low doc loans be prohibited for certain loans?*

Yes, prohibit stated income or low doc for certain loans. Stated-income applications should be prohibited in conjunction with any "exotic" loan products, including but not limited to: Interest-only loans, Piggy-back loans, Option ARMs, and Hybrid ARMs. It is clear to us that the marginal utility of extending credit to consumers with widely fluctuating and/or speculative income is outweighed by the enormous and well-documented risks involved with literally betting the house on the representations written in small print on the last few pages of a loan application—often completed by mortgage brokers with a vested financial interest in insuring that the borrower qualifies for the loan, regardless of their actual ability to repay.

The widespread availability of "stated income" loans in conjunction with high-risk products from subprime lenders over the last several years is one of the driving forces behind the recent and well-documented foreclosure spike in our communities. Despite reported market corrections, stated-income loans are still sold aggressively. According to the Inside Mortgage Finance MBS Database, 32.2% of the mortgages pooled in subprime MBS during the first half of 2007 were underwritten based on stated-income or similarly defined "no ratio" documentation.[10]

The stated-income feature has allowed brokers to inflate borrowers' incomes in a manner designed to increase broker fees and to make a deal work, even if the borrower's actual income is woefully inadequate to support a loan of the given size. Meanwhile, the artificially low initial payments conceal the true cost of the loan from the consumer. It is not until the payments reset and begin to adjust upwards that many consumers realize that their financial position is untenable. At that point, consumers have few options. They cannot legitimately refinance, since to do so would require an even larger loan than the one they should not have been qualified for in the first place. They cannot afford to stay, and, increasingly, in a homeowner market that has flat

[10] "Subprime Lenders Drop 2/28 ARMs, Former Product of Choice," Inside B&C Lending, July 27, 2007.

lined or declined (particularly in higher-cost areas), consumers are unable even to sell their homes, since the home is indebted for more than its value.

Make stated income loans subject to HOEPA. We strongly recommend that, where stated-income loans are permitted, they automatically be subject to HOEPA, independent of the fee and APR triggers that traditionally bring loans within HOEPA's protections. This would help to insure that these loans, which were ostensibly designed to be marketed to a limited and highly particularized customer base, are no longer widely used by predatory lenders and brokers.

Stated-income loans have afforded predatory lenders and brokers the ability to gouge consumers for massive closing costs and fees without triggering HOEPA's protections. Since HOEPA's points and fees trigger is set as a percentage, brokers and lenders can simply inflate the total loan value to collect the same undeserved fees at a lower overall percentage. This loophole creates a perverse incentive for brokers and lenders to inflate total loan amounts; it can be easily closed by extending HOEPA protections to all stated-income loans. Wherever the FRB ultimately comes down on stated-income loans, strong oversight of brokers is necessary to prevent further abuses.

- *Should stated-income or low doc loans be prohibited for higher-risk loans, for example, for loans with high loan-to-value ratios?*

Yes, prohibit stated-income and low doc loans for higher-risk loans. As discussed above, stated-income loans should be prohibited in conjunction with other high-risk loan products such as interest-only and piggy-back loans, option ARMs, and hybrid ARMs. To the extent that stated-income loans remain available, they should be governed by HOEPA. Suitability standards applied to lenders in all loan transactions would offer further protections.

- *How would a restriction on stated-income or low doc loans affect consumers and the type and terms of credit offered?*

Restrictions on stated-income and low doc loans would serve consumers' interests. Above all, restricting stated-income loans would have the effect of preventing brokers and lenders from putting consumers into loans that are much larger than they can afford. Because stated-income loan products have been so heavily marketed by subprime lenders in the recent past, and because a shockingly large amount of these unsuitable loans have been given to borrowers whose incomes were deliberately misstated by brokers or lenders (or, less often, by the borrower his- or herself), restrictions on stated-income loans will impact the ability of these affected borrowers to get another loan. In effect, abuse of the stated-income loans has unfortunately created a class of borrowers for whom no legitimate loan is obtainable. However, the alternative—to continue to allow predatory lenders to misuse this product as a means to create even more untenable debt and to strip out even more of our communities' equity—is worse.

- *Should lenders be required to disclose to a consumer that a stated-income loan is being offered and allow the consumer the option to document income?*

Disclosures are of limited value. The effectiveness of written disclosures is one of diminishing returns. The more disclosures there are, the less useful any particular one of them is. While adding the disclosure discussed above may be better than taking no action, the FRB would do much better to meaningfully restrict stated-income and low doc loans than to add yet another disclosure.

D. Unaffordable loans

- *Should lenders be required to underwrite all loans based on the fully-indexed rate and fully amortizing payments?*

Yes, underwrite to the fully indexed rate, taking into account borrowers' obligations to pay taxes and insurance. By so doing, regulators will help ensure that lenders issue mortgage loans appropriately, based on a fuller picture of the true cost of the loan to the consumer. Such a practice would benefit the lender, the borrower, and the mortgage industry as a whole, including investors.

The types of loans to which this should apply are interest only, 2/28s, 3/27s, and any other type of loan for which there is currently no requirement that underwriting be based on the fully-indexed rate (including 2/38s, the new frontier of loans conducive to payment shock and disaster). In the current environment, without this requirement, we have seen the highest-priced loans marketed to people with low to moderate incomes who have few if any assets to fall back on. The theory behind these loans is that these borrowers—who cannot qualify for a traditional fixed-rate loan because of their low credit scores at the time of their initial application—will be able to: (1) use the introductory fixed-rate period of the loan to improve their credit score, and (2) refinance out of this hybrid loan into a completely fixed-rate loan before the hybrid loan adjusts upward.

The industry's selling of ARM products has increased dramatically in recent years. The percentage of prime loans that are ARMs, jumped from 10.6% in December 2001 to 18.2% in December 2006, while the fraction of subprime ARMs rose from 27.6% in December 1998 to about 50% in December 2006.[11]

The obvious danger of these types of loans is that the borrower may not, in fact, be able to refinance into a better loan before the rate adjusts upward (because of credit problems, or changes in the mortgage market) and then may not be able to keep up with the new, rising payments associated with the loan they are now trapped in. The Federal Home Loan Mortgage Corporation (Freddie Mac) has already declared that, beginning September 1, 2007, it will no longer purchase such hybrids unless underwritten at the fully-indexed, fully-amortizing rate.[12]

[11] Sumit Agarwal, Calvin T. Ho, "Comparing the prime and subprime mortgage markets," Chicago Fed Letter, August 2007.

[12] *See, FREDDIE MAC Announces Tougher Subprime Lending Standards To Help Reduce The Risk Of Future Borrower Default*, Freddie Mac Press Release, February 27, 2007, *available at* http://www.freddiemac.com/news/archives/corporate/2007/20070227_subprimelending.html.

Underwriting all loans at a fully-indexed rate, showing fully amortizing payments, would also limit one of the ways in which brokers and lenders lure borrowers into loans that they cannot afford. For example, a lender or broker would less likely be able to lawfully send offer letters to homeowners to refinance into a "fixed" rate loan, advertising a monthly payment amount that actually only reflects a short-term introductory rate. Ads would have to reveal the fully indexed payment level instead.

In the current market, most borrowers who have taken out hybrid ARMs do not fully understand the terms of these loans, including the true cost of the loan at the time of issuance or as it adjusts upward. Our experience is reflective of the findings of several recent studies. The FRB found in a 2006 study that 35% of ARM borrowers did not know the value of the reset interest rate cap and more than 44% did not know how to calculate the lifetime interest rate cap.[13]

It does not benefit the borrower for hybrid loans, such as 2/28s and 3/27s, to be underwritten at anything less than the fully-indexed rate with fully amortizing payments. Much of the demand for such exotic and higher-cost home loan products has come from investors, not borrowers.[14] A recent New York Times article quoted William Dallas, the owner of the now defunct Ownit Mortgage Solutions, as placing the blame for Ownit's demise on investors and Wall Street, saying they encouraged Ownit and other subprime lenders to make riskier loans. "The market is paying me to do a no-income verification loan more than it is paying me to do the full documentation loans. What would you do?"[15] The agencies must impose an obligation on Wall Street firms not to fund or securitize predatory loans so as to turn off the spigot of predatory finance. Recent indications that Wall Street's enthusiasm for unaffordable loans is souring—at least for now—is no substitute for appropriate regulation to prevent these abuses from springing up again once the market shifts.

Lenders who engage in a pattern or practice of making unaffordable loans should be held accountable and put out of business so that they can do no further damage to borrowers and communities.

- *Should there be a rebuttable presumption that a loan is unaffordable if the borrower's debt-to-income ratio exceeds 50% (at loan origination)?*

Yes, implement an ability to pay standard. The suggested standard is in line with the standards set by the Department of Housing and Urban Development, which regards, a household paying 50 percent or more of its income towards housing costs as in danger of becoming homeless. And there is state-law precedent in this area as well; for instance, California's Covered Loan Law includes a rebuttable presumption that a consumer is unable to

[13] Bucks, Brian and Karen Pence, Federal Reserve Board of Governors, "Do Homeowners Know Their House Values and Mortgage Terms?" January 2006 at 19.
[14] *Inside B&C Lending*, "Diversification, Branding, Key to Ameriquest Strategy," remarks of Ketan Parekh, Vice President for Capital Markets, Volume 9, Issue 22, p. 6)
[15] Bajaj, Vikas and Haughney, Christine, "Tremors at the Door," New York Times, January 26, 2007.

pay the monthly mortgage if the consumer's total monthly debts, including amounts owed under the loan, exceed 55 percent of the consumer's gross monthly income. Despite this law, California homebuyers are still stretching themselves to the limit and beyond to afford housing: "Over half (52%) of state residents who purchased a home within the last two years spend more than 30 percent of their total income on housing—a percentage that exceeds the top threshold recommended by the U.S. Department of Housing and Urban Development. Even more startling, 20 percent of these recent homebuyers spend more than half their income on housing."[16] A federal standard in this area should help to reduce the number of consumers who get into loans that they simply cannot afford, a situation which helps no-one (except the predatory brokers and lenders who reap exorbitant fees from these loans).

An exception to these and other presumptions should be crafted for specially developed rescue loan products, administered by a non-profit or government agency, and designed to assist homeowners in distress. Such rescue programs should be available to borrowers who have an ability to repay a new loan, but perhaps owe more than their homes are worth or are in default of an existing loan in light of poor industry underwriting practices.

- *Are there specific consumer disclosures that would help address concerns about unaffordable loans?*

Disclosures must be accessible. Consumers need disclosures that show the true cost of their mortgage loan over the life of that loan. Such disclosures need to be in a consumer-friendly language and format; in large print, with little to no technical language, and/or with clear explanations of technical language such that all borrowers—even those with limited reading skills—can understand them. Disclosures also need to be multilingual, to meet the needs of the diverse group of homebuyers that has been fueling the housing boom with its hard-earned dollars.

In California, in recognition of our state's diversity, the legislature enacted a law in 1976 that requires translation into Spanish of contracts and/or other key documents in consumer transactions when those transactions are primarily negotiated in Spanish (Civil Code, Section 1632). A couple of years ago, the legislature expanded the required languages to include Korean, Tagalog, Vietnamese, and Chinese. The law covers brokered mortgage loans, and there is an effort afoot in the legislature to extend its coverage to a broader range of mortgage loans. California's contract translation law is a model that the FRB should look to when it considers disclosure reform.

Disclosures can be effective as a tool in preventing certain types of practices. For instance, the Homeownership and Equity Protection Act (HOEPA) has helped consumers to some degree by reducing the prevalence of certain higher-cost loans. However, regardless of the quality of the disclosures, there is no substitute for high-quality counseling through a qualified fair housing

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[16] Hans P. Johnson and Amanda Bailey, "California's Newest Homeowners Pushing the Envelope–Affording the Unaffordable," Public Policy Institute of California publication *California Counts: Population Trends and Profiles – Vol. 7, No. 1, Aug. 2005, pp. 11 – 13;* see website at: http://www.ppic.org/content/pubs/cacounts/CC_805HJCC.pdf

organization, a HUD-certified housing counseling agency, or similar group, to make sure the consumer truly understands the cost and terms of the loan.

- *How would such provisions affect consumers and the type of terms of credit offered?*

Given the prevalence of hybrid ARMS, the positive impact of meaningful reforms to enhance consumer protection could be substantial in scope. "The share of adjustable rate and hybrid loans among all loans and buyers increased dramatically from 11 percent in 2003 to 43 percent in 2005, while the share of fixed rate loans plummeted from 89 percent in 2003 to 57 percent in 2005. The share of adjustable rate loans last exceeded 40 percent in 1994."[17] "Adjustable Rate Mortgage (ARM) loans (including Interest Only ARM Loans) comprised 75 percent of subprime originations in the second half of 2006, versus an ARM share of 67 percent of subprime originations in the first half of 2006..."[18] Meaningful reforms should reduce, if not eliminate, the inappropriate origination of "exotic" subprime loans and would at least make such loans less risky for borrowers.

But to achieve this goal and seriously address the systemic deficiencies in today's home loan market, the FRB will need to go beyond the recommendations outlined above. We urge the FRB to take the following further steps:

E. Expand the Homeownership and Equity Protection Act (HOEPA)

The FRB should expand HOEPA so that it covers more loans, in the following ways:

- Extend coverage of HOEPA to home purchase loans;
- Lower the points and fees threshold to 5% of the total loan amount (2% in high-cost areas of the country, such as California, New York and Florida);
- Lower the rate threshold to 6% above comparable Treasuries (3% in high-cost areas of the country, such as California, New York and Florida); and
- Expand the definition of points and fees to include Yield Spread Premiums and prepayment penalty provisions. Regardless, YSPs and prepayment penalties must be clearly disclosed to all borrowers on all loans.

If HOEPA's protections are expanded and updated to reflect current realities and needs, we expect the updated HOEPA to be as effective in today's market environment as the original version was in addressing the abuses known at the time it was promulgated. Despite its limitations, HOEPA has proven to be effective in reducing the number of certain types of risky loans. Unfortunately, many higher-cost loans that are susceptible to abuse are not subject to HOEPA's protections. The FRB has estimated that HOEPA loans accounted for only 0.0003

[17] *State of the Housing Market 2005 – 2006 Real Estate Research Report: 2006-1*, California Association of Realtors, February 23, 2006, p. 4 *available at* http://www.car.org/library/media/papers/pdf/StateofMarket2005-2006SurveyParticipant.pdf

[18] Subprime Mortgage Originations Survey, *Percentage of Subprime Loans Used by First-Time Home Buyers Up During the Second Half of 2006*, Mortgage Bankers Association of America, *available at* http://www.mortgagebankers.org/NewsandMedia/PressCenter/55453.htm

percent of all of the originations of home-secured refinance or home improvement loans reported for 2004.[19] The limitations in the HOEPA regulations are a reflection of how today's market and today's abuses have outpaced the current regulatory scheme. If its limitations are addressed, HOEPA will be an effective tool for stemming further abuses in the mortgage market related to affordability.

F. Improve underwriting consistent with suitability. The FRB should develop meaningful suitability standards that protect all borrowers from being pushed into loans that are not suitable for them. The FRB should seek Congressional authorization to accomplish this goal if that is deemed necessary. Such protections for borrowers are critical, since consumers often have little practical recourse against the actors who land them in these unsuitable loans; the mortgage brokers who, while ostensibly acting in the borrower's interest in their capacity as a fiduciary, too often are only looking out for their own fees; and subprime lenders, over whom little direct regulatory oversight is exercised.

The FRB should require improved underwriting standards and due diligence requirements for lenders who fund interest-only, stated-income, piggy-back loans and option ARMs to ensure that such loans are not issued to borrowers for whom they are not beneficial.

The improved underwriting standards should include such safeguards as: (1) not providing these types of loan products to borrowers with FICO scores below a certain level; (2) requiring a minimum level of downpayment by borrowers who are seeking to purchase a home using these kind of loans; (3) prohibiting prepayment penalties on these high-risk loans so that borrowers in distress can reasonably refinance; (4) capping interest rates on the second loan in a piggy-back and/or requiring that it be a fixed-rate loan; and (5) requiring housing counseling before the closing of the loan.

G. Require home loan counseling for all HOEPA (after HOEPA's reach is extended, as discussed above), subprime, and nontraditional loan products.

Qualified home loan counseling may represent the consumer's best hope of foiling predatory lenders and brokers. Any effort to tie high-risk lending to home loan counseling can only work to the consumer's benefit. To ensure high-quality mortgage counseling capacity at the grassroots level, consistent funding streams need to be identified or created to support this important work.

We write with a sense of urgency. Homeowners in California are suffering at the hands of unscrupulous industry actors and have no more time to wait. The FRB must act to stem the tide of abusive practices that have led to the current tidal wave of foreclosures impacting our families, communities, and economy.

Thank you for your consideration of these views.

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[19] Robert B. Avery and Glenn B. Canner, "New Information Reported under HMDA and Its Application in Fair Lending Enforcement," *Federal Reserve Bulletin*, Summer 2005, p. 372.

Signed,
Advocates for Consumer Equity
Affordable Housing Services
Bay Area Legal Aid
California Alliance for Retired Americans
California Reinvestment Coalition
California Resources and Training
California Rural Legal Assistance
CHARO CDC
City of Madera
Community Housing Council of Fresno
Community Housing Development Corporation of North Richmond
Community HousingWorks
Community Legal Services in East Palo Alto
Community Services & Employment Training, Community Action Agency of Tulare County
Consumer Action
Consumer Federation of California
Council on Aging Silicon Valley
East Bay Asian Local Development Corporation
East Oakland CDC
East Palo Alto Council of Tenants (EPACT) Education Fund
EPA CAN DO
Fair Housing Council of San Diego
Fair Housing of Marin
Fresno Housing Resource Center
Home Ownership Utilizing Supportive Education
Housing and Economic Rights Advocates
Housing Rights Center
Legal Aid Foundation of Los Angeles
Mid Peninsula Housing Coalition
Mission Community Financial Assistance
Mission Economic Development Agency
Multi Cultural Real Estate Alliance for Urban Change
Neighborhood Housing Services Silicon Valley
NeighborWorks HomeOwnership Center - Sacramento Region
NID-HCA
Public Interest Law Firm
Renaissance Entrepreneurship Center
Rural Community Assistance Corporation
Sacramento Mutual Housing Association
San Antonio CDC
San Francisco Community Land Trust
Southern California Association of Non-Profit Housing
Urban Strategies Council
Vermont Slauson Economic Development Corporation