Opening Statement

Of

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before the

Federal Reserve Board

HOEPA Public Hearing - June 14, 2007

Good morning. My name is Ira Rheingold, and I'm the Executive Director and General Counsel of the National Association of Consumer Advocates (NACA). NACA is a non-profit organization comprised of public, private and legal service attorneys and other advocates dedicated to serving as the voice for consumers in the ongoing struggle to curb unfair and abusive business practices, especially in the areas of finance and credit. Our members are the consumer advocates across this country who, on a daily basis, speak with and represent the consumers victimized by bad lending practices and see the very real-life consequences of an out of control sub-prime mortgage lending marketplace. I hope that at today's hearing, you will hear their voices through me, and that after this hearing you will begin to take the necessary action to assist in the development of a rational sub-prime mortgage market that actually serves the needs and demands of consumers and communities across our great land.

As my testimony is based on my personal experience (and the collective experience of consumer advocates like me), I'd like to start by sharing a little bit about my background. Since graduating from Georgetown Law School in 1986, I have spent my legal career working in some of the poorest rural and urban communities across our nation. I have seen what it's like to live in a homeless shelter, or in a rural shack without indoor plumbing, or in one of the toxic public housing projects that are testimony to our nation's failure to provide clean, affordable and safe housing to all our citizens. I understand the dream and promise of homeownership, of living in a safe and decent community where the essential human need of successfully raising a family can be met. And unfortunately, I have seen and now understand how those dreams and that great promise can be turned into a nightmare, when the needs and aspirations of homeowners are abused by all of the players in the sub-prime mortgage marketplace.

In the mid-1990's, after previously working on health, welfare, and public rental housing issues, I began running a Foreclosure Prevention Project at the Legal Assistance Foundation of Chicago. As I began meeting with homeowners, I was initially shocked at the mortgage loan documents they would show me. Astronomical broker and lender fees, incredibly high APRs (I'll never forget the first FAMCO loan I saw), ridiculous junk fees that included credit life and credit disability insurance, and absurd payments to unknown creditors and home repair companies that never did any work. I remember as if it was yesterday, my first conversation with a mortgage lender who explained to me (in my ignorance and naivety) that all these fees and charges (especially the credit insurance) were absolutely necessary, were in the consumer's best interest, and that any regulation that would limit these fees or restrict interest rates would needlessly "cut off access to credit" and the "dream of homeownership" to my clients and the communities I cared about. I knew that argument was absurd then (as it is even more so today) and this has unquestionably been proven over the past decade. We thankfully don't see credit insurance anymore (the Fed deserves some credit for that), and we rarely see loans that exceed the HOEPA or state legislative fee and/or interest limits, yet no one can argue that the availability of credit has done anything but explode, while these "necessary" mortgage loan features have been mandated away. Unfortunately, while these equity destroying products have mostly left the mortgage market, the subprime lending industry continued to adapt and morph, creating more and better ways to exploit the limited wealth of our nation's most vulnerable homeowners and borrowers. Left all but unregulated over the past dozen years (as Congress and all the federal regulators unthinkingly accepted the false mantra that regulation would "cut off access to credit"), the sub-prime industry has created a completely irrational marketplace - at least for consumers. In place of an efficient market that provides real consumer choice and rewards consumers for smart credit decisions and rational aspirations, we have a sub-prime mortgage market that has recklessly created and sold ridiculously risky mortgage products that have excessively benefited all of the market players at the expense of middle-class and low income homeowners and their communities.

While I fear that for many American homeowners, any regulatory action is too late, I am glad to see that the Federal Reserve is beginning to ask the right questions and I hope that this will serve as the first step in taking corrective action to protect future homeowners. While I hope during the course of this hearing to expand on these thoughts and recommendations (and to submit much more detailed testimony at a later date), here are my initial thoughts on what the Federal Reserve can and must do under the authority granted to it by Congress under HOEPA:

- **Require Common-Sense underwriting**

One of the greatest absurdities of the current out-of-control sub-prime mortgage marketplace is that a consumer's true "ability to repay" the mortgage is often not considered. It is absolutely essential that the Federal Reserve create regulations that force all mortgage lenders and underwriters to make certain that a borrower's repayment ability truly reflects a loan's long-term affordability. The Fed must also prohibit sub-prime mortgage lenders from offering "no-document" or "stated income" loans. These loans are not only a license for a mortgage originator to lie about a borrower's ability to repay, but also allows them to charge a higher interest rate than the borrower would otherwise have to pay.

- **Prohibit Deceptive Practices that Disguise the Real Cost of a Loan**

In all of my experience representing mortgage borrowers, I have never heard a rational reason (that benefits the consumer) for sub-prime refinance loans to not include taxes and insurance in the borrower's mortgage payment. I have, on the other hand, spoken with countless borrowers who were lead to believe that their new mortgage payment would be lower than their existing mortgage only to discover (often too late) that the only reason the payment was lower was because taxes and insurance were not included. The Fed must require taxes and insurance to be included (and disclosed as part of their future monthly payment) in all sub-prime loans documents.

Additionally, as I have been told countless times, the purpose of a sub-prime loan is to provide access to credit to borrowers and to help them establish a loan repayment history that would allow them to refinance the loan into a prime loan. This rationale is even more true when we talk about the exotic ARM products that have littered the mortgage marketplace over the past few years. Doesn't it then seem "irrational" to penalize borrowers who diligently pay their loans and then attempt to refinance themselves into a loan with better terms? The Fed must ban prepayment penalties in all sub-prime mortgage loans.

- **Establish Effective Consumer Remedies for Unfair Practices**

The fundamental failure of the sub-prime marketplace to act rationally towards consumers is caused by the complete lack of accountability between the myriad of actors in today's mortgage industry. The industry would like us to believe that a mortgage broker is an "independent agent" not responsible to the borrower or the lenders who fund the loans they arrange. They'd like us to believe that the lender may "rely" on the documentation (or lack thereof) provided by the mortgage broker, but are not responsible for any lies that actual due diligence might discover. Finally (well maybe not finally, but you get the point), they'd like us to believe that the banks and other entities that often set underwriting criteria and frequently demand the high risk loans that satiate the unquenchable desire of Wall Street investors for high yield investments, bear no responsibility when so many of those loans fail (and millions of homeowners and their communities are devastated).

For the sub-prime mortgage industry to work properly, all the actors in this ever-widening universe must police each other. This has not occurred and will not occur unless there are real consequences for the industry when they don't police themselves. Lenders must be held liable for the acts and omissions of mortgage brokers and all holders of the loan must be held responsible for the acts and omissions of the lender. This responsibility must be real and to accomplish this, the Federal Reserve should make all HOEPA liability and remedies available against all participants in the sub-prime mortgage lending marketplace.

As I stated earlier, these are just some of my initial thoughts. I look forward to your questions and our discussion about the Federal Reserve's necessary regulatory role in helping to create the parameters that will make the sub-prime mortgage market rationally serve the needs and demands of America's current and future homeowners.