April 6, 2008

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

RE: Docket No. R-1305, Regulation Z Proposal for Higher Priced Mortgage Loans

Dear Board of Governors:

The goal of the proposals is to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices while preserving responsible lending and sustainable homeownership. As a prior compliance examiner for the OTS and now working at my fourth community bank in Florida, I have not come across any of the predatory-type loans that apparently have caused the mortgage crisis the market is currently experiencing. All of the banks I have worked for have made plain vanilla prime loans to qualified borrowers, and most have kept the loans on their books rather than sell into the secondary mortgage market. The terms and prices of the loans have been fair to both the bank and mortgage loan customers, with underwriting standards not relaxed as so many other irresponsible lenders have done.

It is apparent from many of the Congressional and industry speeches that I have read that the highly-regulated banking system is not to blame for this crisis but instead the mortgage companies/brokers and predatory lenders that are minimally (if, at all) regulated that should be held responsible. Why is it that every time there are predatory practices that are not caused by a highly-regulated banking industry that we end up having to comply with even more regulatory requirements?

The following are provisions of the proposal that we do **NOT** agree with and should be eliminated or revised:

1) For higher priced loans, requiring creditors to establish escrow accounts for taxes and insurance but permit creditors to allow borrowers to opt out of escrows 12 months after loan consummation.
    - Only one of the four community banks that I have worked for had a system set up to escrow taxes and insurance. This would place a huge burden on small community banks, including the $65 million bank that I currently work for. We generally make commercial loans and only offer a small number of residential mortgage loans to accommodate our customers. Small community banks do not have the financial means, staff, or systems to escrow for mortgage loans.
    - If we are required to escrow for taxes and insurance, then we also will be required to comply with various RESPA escrow requirements that would prove burdensome to our small bank. It does not make any difference that a borrower could opt out of escrows 12

months after loan consummation when the banks would have to implement a costly escrow system upfront and still have to comply with RESPA requirements.
- Does it seem consumer friendly that someone who has a higher rate is required to have an escrow account while other borrowers with lower rates can manage them on their own?
- It is suggested that the Board obtain or perform an analysis of loans that have been foreclosed upon to see what percentage resulted from NOT having an escrow account. The conclusion may result in a very small percentage so why make the banks have an escrow requirement for only a certain type of loan?
- The expense of requiring escrows for certain customers in all honesty will probably result in higher pricing of loans and fees due to the additional expenses for instituting an escrow account process.
- I propose that this requirement be eliminated for banks that are less than $250 million in assets, or make less than 100 mortgages the prior year, or if borrower is not considered a first-time homebuyer, or similar scenario. This would prove beneficial to small community banks that don't have the means to establish a sophisticated and costly escrow system for mortgage borrowers. Alternatively, banks could consider the taxes and insurance in the debt-to-income ratios without having the requirement to have an escrow account.

2) Defining higher priced loans as consumer credit transactions secured by the consumer's principal dwelling for which the APR on the loan exceeds the yield on comparable Treasury securities by at least three percentage points for first-lien loans, or five percentage points for subordinate lien loans.
   - These thresholds are much too low and would most likely *include a considerable portion of prime loans*. Many community banks, for various reasons, cannot make long-term loans and instead make 3-year, 5-year, or 7-year fixed-rate balloon loans. The current yield on comparable Treasury securities (as of March 15, 2008) for 3 years is 1.65, 5 years is 2.37, and 7 years is 2.84. By adding three (3) percentage points for a first lien loan, this would mean that any loans over 4.65%, 5.37%, and 5.84% for a 3-year, 5-year, and 7-year balloon loan, respectively, would then be considered a higher priced loan under Regulation Z. That is absurd to consider a rate below 6% as a higher priced mortgage! Even if we offered a 15-year fixed rate mortgage loan, the most recent index available is 2.84%, which would mean a higher priced loan is any APR above 5.84%. I don't know of any lender offering fixed-rate, short-term or long-term, loans for those rates. Basically every loan that a lender has would be considered a higher-rate loan under these proposed thresholds.
   - While the proposal also seeks comments as to whether four percentage points for first-lien loans and six percentage points for second lien loans are more reasonable, we believe those thresholds are also too low based on the aforementioned analysis. In our opinion, the yield on comparable Treasury securities rate is too volatile to be considered in the calculations of the higher rate loans. For example, the 3-year Treasury rate as of November 15, 2007 was 3.35% and decreased to 1.65% as of March 15, 2008. Although no suggestions come to mind, the Board should consider other indexes that are more stable than the Treasury securities rates. Alternatively, why not just utilize the same rate thresholds for HOEPA loans.

- The calculations are confusing enough without having to deal with totally different calculations for HOEPA loans and for HMDA thresholds. It needs to be simpler and possibly one calculation period for a higher-priced loan! Attached is an example of the various Treasury maturity rates that are required to be used depending on the loan maturity for higher priced mortgages, HOEPA loans, and HMDA calculations. You need a doctoral degree just to make sense of it all!!
- So to add to the confusion, the Board also is proposing yet different dates to choose the Treasury yield. The current HOEPA yield is selected as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor. HMDA states to use the yield for the previous month if a final lock date is between the 1st and the 14th and to use the current month's yield if the final rate lock is the 15th or later. The higher priced mortgage rate would be the one for the previous month if the application is received between the 1st and 14th and the yield for the current month is the application is received the 15th or later. Again, why does it have to be so complicated! Apparently, the Board understood that a rate spread calculator was needed for the complicated HMDA rate spreads and has a tool available on the FFIEC website for this. Will a similar calculator be available for the higher priced mortgage calculations due to the complexity?? We would suggest that only one date be chosen to utilize a rate such as the current method used for the HOEPA yield that appears to be the simplest method.

At the last commercial bank I worked for, a good portion of our mortgage loans were for manufactured homes. I believe Florida has the largest percentage of manufactured housing in the U.S. Due to the type of collateral, the rates on these loans are generally higher. When analyzing the proposed higher priced mortgage thresholds and the current rates being offered on manufactured home loans, every single loan would have fallen within the higher priced mortgage limits and the stricter requirements of Regulation Z. Basically, the bank would have been forced to either stop making mobile home loans (or even all higher priced mortgage loans) or face the consequences of complying with the more onerous requirements of Regulation Z. As a compliance officer, my recommendation would have been to stop offering any loans that would have met the higher priced mortgage limits in order to minimize violations in this area. If a lower-income manufactured home loan applicant cannot now obtain loans from their local community banker, where will they obtain them – from the predatory lender next door is my guess, which got the industry into the mess in the first place!

When the HOEPA revisions were last put in place, the bank I worked for at the time made the decision to not make any HOEPA loans. If any loans were over the HOEPA thresholds, the loan either was not originated or the rate or fees were lowered so that it would not exceed the maximum HOEPA threshold. **In the case of the higher priced loans that are now being proposed, the loans most likely would not be originated period by our bank and most likely by a large percentage of community banks that cannot afford to through these onerous Regulation Z requirements**. We would surmise that the mortgage brokers and predatory lenders would increase making the higher priced loans that are considered unfair and abusive since the highly-regulated lenders can ill afford to do so. Would we also be cited for fair lending violations if we are not making higher-priced loans or discouraging them and possibly get a lower CRA rating because we are not meeting the needs of the low- and moderate-income individuals. Is that the intent the Board had in mind with this proposal?

The Board needs to seriously consider the severe consequences of the aforementioned sections of the proposal that could have unintended effects like community banks and other highly-regulated financial institutions deciding not to originate any higher priced loans that in all essence are really "prime" loans. A better approach would be to start holding mortgage companies, finance companies, and brokers accountable at the same level as highly-regulated banks so that consumers are not seduced by unscrupulous lenders. Rather than complicate disclosures that mean nothing to consumers, consumer education should be enhanced, brokers should be required to be certified, and enforcement actions for brokers and predatory lenders should be strengthened.

While I would love to comment on other facets of the proposal, I unfortunately do not have the time to since I'm currently working on the weekend just to complete this comment letter and other compliance projects that are coming due. My days at the office (and lots of evenings) are meant for complying with all the other onerous regulatory burdens us highly-regulated banks face. Thank you for your consideration of these comments.

Sincerely,

Cheryl A. Nakashige, VP
Compliance Officer
Bank of Central Florida
Lakeland, FL

HPM- Variable & Fixed	Loan Maturity	Treasury Maturity
Variable w/ Fixed Rate Period Fixed only	1 year or less	1 year 1,3,6 months match
V w/ FRP & Fixed Rate Loans	>1-7 years	2,3,5,7(4&6 use above or below)
V w/ FRP & FR	8 - 19 years	7 years
V w/ FRP & FR	20 years or longer	10 years
HOEPA	**Loan Maturity**	**Treasury Maturity**
All Variable & Fixed Rate Loans	1-11Months	1,3,6 Months
Creditors must use the yield corresponding to the constant maturity that is closest to the loan's maturity.	1-4 year	1,2,3, (4 use 3)
	5-8 Years	5,7 (5,6 use 5) (7,8 use 7)
	9-15 Years	10 year
	16-24 25 up	20 Year 30 year
HMDA	**Loan maturity**	**FFIEC Table Maturity**
All Variable & Fixed Rate Loans	1-4 years	1,2,3,(4 use3)
Must use the table published on the FFIEC's web site (http://www.ffiec.gov/hmda) entitled "Treasury Securities of Comparable Maturity under Regulation C."	5-8 years	5,7 (5,6 use 5) (7,8 use 7)
	9 -15 years	Use 10
	16-24 years	Use 20
	25-40 years	Use 30