

# VIRGINIA BANKERS ASSOCIATION

April 7, 2008

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

Re: Docket No. R – 1305; Truth in Lending Act

Dear Ms. Johnson:

I am writing on behalf of the Virginia Bankers Association (the "VBA") to comment on the Federal Reserve Board's proposed changes to its Truth in Lending Act regulation (Regulation Z) relating to mortgage lending. The VBA represents the interests of nearly all of the commercial banks and savings institutions doing business in the Commonwealth of Virginia.

The proposal would create a number of new requirements under Regulation Z that would apply to a newly designated category of mortgage loans called "high-priced mortgage loans." The proposal defines "high-priced mortgage loans" as consumer mortgage loans that have an annual percentage rate exceeding the yield on comparable Treasury securities by 3% or more in the case of first lien loans, and 5% or more in the case of subordinate lien loans.

The VBA is concerned about the impact the new "high-priced mortgage loan" requirements will have on traditional prime mortgage lending by our banks. We believe the Board should avoid creating new burdens and costs for banking institutions engaged primarily, if not exclusively, in prime lending.

In this regard, as the Board knows, market forces have caused the subprime mortgage market to all but disappear. Mortgage lenders and brokers who made the loans that this proposal undoubtedly seeks to target have gone bankrupt or are otherwise out of business. Our banks, on the other hand, are still in business and will have to bear the regulatory burden associated with this proposal, even though their lending practices did nothing to cause any problems. We therefore believe that as an overarching principle, the Board needs to carefully consider the wisdom of creating costly new burdens on an already overburdened industry when the market has clearly taken care of the worst offenders.

In order to avoid affecting prime mortgage lending, we would urge the Board to raise the thresholds proposed for high-priced mortgage loans. Based on current Treasury yields,

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a thirty-year mortgage with an APR of 7.4% would be a higher-priced mortgage loan under the proposal. A ten-year mortgage with an APR of 6.6% would be a high-priced mortgage loan. A subordinate loan of 8.6% would likewise fall in the higher-priced category. In our view, these loans are clearly not subprime loans. And yet a lender making such loans would have to ensure compliance with a host of new regulatory requirements, including those relating to a borrower's ability to repay, escrowing taxes and insurance, and prepayment penalties.

Importantly, the proposal states:

"...the Board believes that the APR threshold should satisfy two objectives. It should ensure that subprime loans are covered. Second, it should also generally exclude prime loans." (Federal Register, Vol. 73, No. 6, page 1683)

We contend that the proposed thresholds do not exclude prime loans. The loans with the rates described above are not subprime loans; they are prime loans. We would therefore urge the Board to raise the threshold.

As a point of comparison, the Virginia General Assembly just passed foreclosure protection legislation (S.B. 797) for "high-risk mortgage loans." This legislation defines such loans, in pertinent part, as first-lien mortgage loans that have an APR of 5% or greater than the yield on comparable Treasury securities. We believe the thresholds established in the Virginia legislation more accurately reflect the dividing point between prime loans and subprime loans than this proposal. Accordingly, we believe the triggers in the Board's proposal should be raised at least two percentage points to reflect market realities and accomplish what the Board has said it wants to do -- exclude prime mortgage loans from new regulatory burdens.

With respect to the specific requirements that would apply to higher-priced mortgage loans, we have the following comments:

**Ability to Repay.** While banks generally verify a borrower's ability to repay a loan, this new provision will impose documentation requirements that will be costly. Moreover, an "ability to repay" requirement will undoubtedly lead to new legal entanglements and costly litigation for innocent banks and other lenders, as aggressive lawyers use this new requirement in ways never intended by the Board.

**Prepayment Penalties.** As the Board points out in the proposal, reserving the right to impose a prepayment penalty is a way a lender can offer a lower rate loan. For a borrower who intends to stay in his home for a period of time, the lower rate available with a prepayment provision often has appeal. We believe that limiting the freedom of a lender and a borrower

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to agree to such a feature hurts both lenders and borrowers. For this reason, we recommend that the Board eliminate the requirement that a prepayment penalty must expire at least sixty days prior to the first date, if any, on which the periodic payment amount on the loan may increase.

Escrow of Taxes and Insurance. While banks and other lenders obviously generally arrange for the escrowing of taxes and insurance on first mortgage loans, imposing a mandatory requirement that they do so on all such loans is simply too inflexible. There are some loans where, because of the unique circumstances, escrowing is unnecessary and undesirable. Some small banks in Virginia report that they make many mortgage loans where they do not escrow taxes and insurance, and that they have never had any problems as a result of doing so. There is no reason to take away that freedom for traditional bank loans.

All of these provisions demonstrate why we believe raising the "high-priced mortgage loan" thresholds is so critical. It simply does not make sense to impose new regulatory burdens on traditional bank mortgage lending that has not been the cause of subprime problems.

We appreciate the Board considering our views.

Sincerely,



Bruce T. Whitehurst  
President and  
Chief Executive Officer

BTW/cb