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April 8, 2008

Ms. Jennifer Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551  
Attn: Docket No. R-1305

Re: Docket No. R-1305; Proposed Revisions to Regulation Z

Dear Ms. Johnson:

JPMorgan Chase Bank, N.A. ("Chase") appreciates the opportunity to comment upon the proposal (the "Proposal") of the Board of Governors of the Federal Reserve System (the "Board") with respect to proposed revisions to Regulation Z, which implements the Truth in Lending Act ("TILA"), appearing at 73 Federal Register 1672 (January 9, 2008).

## **I. GENERAL OBSERVATIONS**

Chase strongly supports the Board's objective to address concerns regarding certain mortgage practices while preserving incentives for responsible lenders to provide mortgages to a wide array of borrowers. In particular, Chase supports the Board's general principles underlying the Proposal:

- New regulations should be applied as broadly as needed to protect consumers from actual or potential injury, but not so broadly that the costs, including the always-present risk of unintended consequences, would clearly outweigh the benefits;
- The most practical and effective way to protect borrowers is to apply protections based on loan characteristics, rather than borrower characteristics;
- The rule identifying higher-price loans should be as simple as reasonably possible, consistent with protecting consumers and minimizing costs; and

- The rule should give lenders a reasonable degree of certainty during the application process regarding whether a transaction, when completed, will be covered by a particular protection.

Chase applauds the Board's efforts and appreciates the fact that the Proposal is promulgating these changes through Regulation Z, which will apply to all mortgage lenders. Chase believes that the Proposal will help rein in abusive practices and restore stability to the mortgage market.

Although Chase generally supports the Proposal, Chase has specific concerns which are contained in this letter. Chase's primary concerns, which are described in more detail below, are the following:

- Mortgage lending requires a national comprehensive approach that provides for rational and simple disclosures, uniformity across different geographies and a level playing field among competitors; Chase believes the Proposal should go further to accomplish this objective;
- The penalties for non-compliance are so severe that many lenders may opt not to make higher-priced loans under proposed Section 226.35 of Regulation Z ("Higher-Priced Loans"), just as most lenders opted not to make high cost loans under Section 226.32 of Regulation Z ("High-Cost Loans");
- The mechanics of the Annual Percentage Rate ("APR") trigger (the index that the APR is tied to plus the spread over the index), the inconsistency with other triggers (High-Cost and Home Mortgage Disclosure Act ("HMDA")), and the operational difficulty of complying with the Higher-Priced Loan restrictions if the final APR moves over the allowable threshold shortly before closing, are major concerns, creating difficulties for lenders and borrowers;
- Lenders, including Chase, have already greatly tightened underwriting criteria both for prime, alt-a and subprime loans and, as a result, have seen a dramatic increase in declination rates. The proposed underwriting requirements will further restrict the availability and affordability of mortgage credit, particularly to minority and low- and moderate-income ("LMI") applicants;
- Use of the Board's authority under Section 129 of TILA for much of the Proposal causes the penalties for non-compliance to be much too severe for the harm that the Board is trying to prevent, further impacting the willingness of lenders to make credit available to borrowers. Whenever possible, action should be taken under other authority, recognizing that the remedies under Section 129 were intended to apply to only the most egregious actions;
- The imposition of fee restrictions that do not allow fees to be collected until after a borrower's receipt of application disclosures, regardless of adequate disclosure of fee refundability, will significantly impede the loan origination process affecting a

borrowers' ability to lock a rate and obtain a timely closing, adding time and expense to the closing process to the disadvantage of the borrower; and

- The Proposal will impact not only mortgage originators, but the secondary market, and care must be taken to fashion the Proposal to encourage development of the secondary market.

#### **A. The Need for a National Comprehensive Approach to Mortgage Lending**

The Proposal provides a unique opportunity to overhaul and streamline the myriad of disclosures and rules currently applicable to mortgage lending. The goal should be to create a system that educates the consumer with simple, easily understood information, lessens the burden on lenders in delivering their mortgage products to consumers, and puts all mortgage lenders on a level playing field. This is a formidable but necessary task and the Board has the expertise and the authority to accomplish it.

Chase generally supports the Board's desire to ensure that consumers make conscientious and informed decisions. We would prefer that the Board adopt a holistic, not piecemeal, approach to accomplish this objective.

##### **1. The Need for Rational and Simple Disclosures**

The underlying rationale for the Board's disclosure provisions<sup>1</sup> is the assumption that consumers will be more likely to shop and negotiate their loans if they better understand the product terms and pricing. Although this rationale has been used in implementing many prior disclosure requirements, there is no indication that the deluge of paperwork that consumers receive relative to their mortgage loans actually prompts them to shop for the best program. In fact, we doubt whether an additional "early disclosure" document, thrust into an already paperwork-intensive process, will have any greater effect. In our view, the Board's efforts would be better served by revising and simplifying existing disclosures to provide more meaningful information. Streamlined disclosures would not only enable borrowers to shop more efficiently for a loan but would also help prevent fraud and abuse because the consumer will be more likely to read them.

The changes Chase suggests would include, for example:

- A combined TILA/Real Estate Settlement Procedures Act ("RESPA") disclosure;
- A new Mortgage Terms and Costs disclosure instead of the early TILA disclosures; and
- The ability to provide borrowers a guaranteed closing cost early in the application process in order to offer consumers the best information about a loan. This would promote comparison shopping and would eliminate unexpected charges at closing which can take the consumer by surprise.

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<sup>1</sup> See, for example, the broker disclosure provisions.

## **2. The Need for Uniformity**

The Proposal does not preempt any state laws, unless a state law is “inconsistent” with the regulation. We support strong federal standards; such standards, however, are of limited value if they do not result in a uniform application to all market participants. The residential mortgage market is a national market and demands national standards. The broker market in particular is in need of uniform national rules. If state and local governments are permitted to continue to adopt a patchwork of standards, consistent with Regulation Z but inconsistent with one another, the result is higher compliance costs, which results indirectly in higher costs to consumers. Such a result is in complete conflict with the purposes of the Proposal. State regulations should be deemed inconsistent with the provisions of this Proposal to the extent that they have the effect of further restricting the availability or cost of credit to the consumer.

Chase commends the Board for recognizing that a net benefits test is not needed in order to eliminate abusive lending practices. Net benefit testing is subjective and the risks associated with any subjective criteria create problems for the secondary market.

Chase recommends that the Board carefully consider the impact inconsistent disclosures will have on borrowers and lenders and use its authority under TILA to remedy inconsistent disclosure requirements in order to maximize uniform disclosures for all lenders. Consistent with Chase’s recommendation for national, uniform regulation of the mortgage market, the Department of the Treasury’s “Blueprint for a Modernized Financial Regulatory Structure,” released March 31, 2009, recommends (i) the creation of Mortgage Origination Commission charged with developing uniform minimum qualification for state mortgage market participant licensing systems; (ii) that the Board continue to write regulations implementing national mortgage lending laws; and (iii) enhancement of Federal enforcement authority over these laws.

## **3. The Need for A Level Playing Field**

Although the Proposal will technically apply to all mortgage lenders, and thereby help both to reduce abusive predatory practices and inconsistent regulation of bank lenders and independent mortgage lenders, the playing field will still not be a level one. Due to a lack of federal regulation of these entities for consumer compliance, independent mortgage lenders and mortgage lending subsidiaries of financial service companies have been far more likely to violate and circumvent consumer protection laws. In 2006, 15% of HMDA reporters were independent mortgage lenders, but they accounted for 46% of HMDA-reportable over-threshold loans.<sup>2</sup> This is an enormous gap for which there is little or insufficient accountability.

In prior comment letters, Chase has urged the Board to examine mortgage lending subsidiaries of financial service companies and to support examination of independent mortgage lenders. The Proposal’s changes to Regulation Z will significantly increase the compliance burden and costs (including increased litigation costs) on those mortgage lenders that are

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<sup>2</sup> Robert B. Avery, Kenneth P. Brevoort, Glenn B. Canner, The 2006 HMDA Data, Fed. Res. Bull. (December 2007) at A89.

examined by the bank regulatory agencies. The discipline imposed by regular examinations promotes a more comprehensive knowledge of the requirements of applicable laws and regulations and more care and control in procedures to ensure compliance with those parameters. Examination by the regulatory agencies coupled with enforcement by the enforcement agencies are absolutely necessary in order to provide consistency in the examination of mortgage providers, identify practices that raise abusive lending concerns that warrant further investigation, which often results in the elimination of predatory practices. Without consistent examination and enforcement, the Proposal will disproportionately impact those mortgage lenders subject to federal examination with respect to compliance burden, cost and lawsuits compared to the independent mortgage companies and mortgage lending subsidiaries of financial service companies.

#### **4. Recommendations**

Chase strongly recommends that the Board develop a new proposal that accomplishes all of the following:

- Takes a “global” approach to the issues presented in the Proposal;
- Implements one, uniform, rational and easy to understand set of disclosures addressing all aspects of mortgage products, processes and costs, including costs imposed by mortgage brokers, making it easier for borrowers to shop and more efficient for lenders to operate;
- Acknowledges that today’s mortgage industry is a national one, which requires both a level playing field among all types of mortgage originators, wherever located, as well as a uniform national set of rules; and
- Ensures the smooth operation of a national mortgage market, by providing for preemption of state and local laws on the subjects covered in the Proposal.

In developing such a proposal, we encourage the Board to work closely with all “stakeholders” in the regulatory process, including not only industry members and consumers, but also other regulators of financial services, such as the Department of Housing and Urban Development (“HUD”), the Federal Trade Commission (“FTC”), the Office of the Comptroller of the Currency (“OCC”), the Office of Thrift Supervision (“OTS”), the National Credit Union Adm