NATIONAL ASSOCIATION OF HOME BUILDERS

REGULATORY & HOUSING POLICY

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April 8, 2008

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551

**Re: Docket No. R-1305, Proposed Rule, Truth in Lending
12 CFR Part 226**

Dear Ms. Johnson:

On behalf of the 235,000 member firms of the National Association of Home Builders (NAHB), I welcome the opportunity to respond to the request for comment, issued by the Board of Governors of the Federal Reserve System (Board) regarding the proposed amendment (Proposal) to Regulation Z implementing the Truth in Lending Act (TILA) and the Home Ownership and Equity Protection Act (HOEPA). The changes are intended to better protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices while preserving responsible lending and sustainable homeownership.

Background

As the problems in the subprime mortgage market have evolved over the past few years and spilled into other market segments, the Board and other federal banking agencies have responded by issuing supervisory guidance to address these concerns. Specifically, the final Interagency Guidance on Nontraditional Mortgage Products, issued in September 2006, responded to concerns about the rapid growth of these products and the layering of risks in such loans to subprime borrowers. In June 2007, the final Statement on Subprime Lending was issued by the Board and other federal banking regulators to address the heightened risks associated with deeply discounted adjustable-rate mortgages (ARMs) and to set out standards banks should follow to ensure that borrowers in the subprime market obtain loans they can afford to repay. The Conference of State Bank Supervisors issued parallel guidance for state-supervised entities.

While the federal and state guidance has helped promote safety and soundness and protect consumers in the subprime market it has not been implemented uniformly. Originators who are not subject to routine examination and supervision may not adhere to the guidance as

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closely as regulated institutions. In addition, supervisory guidance does not provide individual consumers who have suffered harm because of abusive lending practices an opportunity for redress. The Board staff commentary which accompanies the Proposal notes that structural factors in the subprime market, including limited transparency, securitization and fragmentation of the origination market, make it difficult for regulators and investors to monitor originator activities. To prevent a recurrence of recent problems in the subprime market and to provide clear rules for subprime lending, the proposed amendments to Regulation Z would, in effect, impose a new national legal standard on subprime lenders to help ensure that consumers receive mortgage loans they can afford to repay and to help prevent the equity-stripping abuses that unaffordable loans facilitate.

The new and expanded consumer protections that the Board is proposing would apply uniformly to all creditors and will be enforceable by federal and state supervisory and enforcement agencies and, in many cases, the borrower. As stated in the preamble to the proposal: "Adopting this standard under authority of HOEPA would ensure that is applied uniformly to all originators and provide consumers an opportunity to redress wrongs through civil actions to the extent authorized by TILA."

Summary of Proposed Changes

The proposal would expand the range of loans covered by establishing a threshold for "higher-priced mortgage loans" (HPML) at 3 percentage points or more above the yield on comparable Treasury securities (5 percentage points for subordinate liens).

The Board proposes four consumer protections for HPMLs, including:

- Lenders would be prohibited from engaging in a pattern or practice of extending credit without considering borrowers' ability to repay.
- Lenders would be required to verify borrower income and assets.
- The use of prepayment penalties would be restricted (no penalty could apply for at least 60 days before any possible payment increase).
- Lenders would have to establish escrow accounts for property taxes and insurance.

In addition, for all mortgages:

- Lenders would be prohibited from compensating brokers through yield-spread premiums unless there is a written agreement with the borrower that discloses such an arrangement.
- Lenders and brokers would be prohibited from pressuring appraisers for higher valuations.
- Servicers would have to abide by new restrictions on when to credit loan payments and how to respond to consumer information requests.

Finally, the proposed rule also would revise the Truth in Lending Act's advertising rules and require lenders to increase mortgage loan disclosures.

NAHB Position

NAHB supports the Board's efforts to bolster mortgage lending standards and consumer protections in the increasingly complex mortgage marketplace. The market excesses that have occurred over the last several years merit regulatory changes aimed at more rational lending practices, greater lender accountability, and improved borrower safeguards. NAHB believes that loans should be prudently underwritten and adequately disclosed. Stronger requirements related to income and asset verification, borrowers ability to repay, and collection of escrows are needed to diminish the rate of borrower defaults. Such changes will also help reduce the probability of damaging economic consequences associated with widespread foreclosures that we have witnessed over the last two years due previous breakdowns in the mortgage process. Finally, NAHB believes it is extremely important that mortgage lending reforms are imposed in a manner that causes minimum disruptions to the mortgage markets and that great care is taken to avoid further adverse changes in liquidity and affordability.

Definition of High Priced Mortgage Loans

While NAHB generally supports the Proposal, we do have some concerns and suggestions that we would like to communicate to the Board. In particular, we are concerned that the proposed definition of HPML will capture too broad a range of loans. The proposed definition is intended to capture all of the subprime market and a significant portion of the Alt-A market. However, NAHB is concerned that, at various times, it could also capture a significant portion of the prime market which was clearly not the Board's intent.

As we have witnessed thus far in 2008, the nominal 30-year mortgage-backed security spread to 10-year Treasuries has widened to levels not seen since the mid-1980's and has approached 300 basis points, the proposed trigger for a HPML. When considering guaranty and servicing fees, in addition to the current wider spread for non-conforming loans as well as the new risk-based delivery fees being implemented by Fannie Mae and Freddie Mac, it would appear that a significant number of prime first-lien mortgages could routinely be subject to the proposed regulations. NAHB is concerned that many lenders will be reluctant to originate even prime loans that fall under the HPML definition to avoid increased regulatory oversight, administrative penalties and/or civil liability they could be exposed to under the Proposal. This could serve to reduce credit for consumers who are more than capable of repaying mortgage debt, especially the self-employed that may be unable to provide the types of income and asset verification that the proposed rule requires.

NAHB suggests that the Board consider a trigger that would exclude most prime loans from being covered under the regulation. NAHB believes that a methodology based on a spread to a prime mortgage benchmark would be superior to the proposed Treasury benchmark. A mortgage benchmark would eliminate problems associated with market based spread anomalies between Treasuries and mortgages and it would more precisely identify HPMLs relative to prime loans. In the process, most prime and high quality jumbo mortgages (assuming that the trigger for a HPML is calculated at a spread over the mortgage benchmark of 2.0% or more) would be excluded from the TILA/HOEPA regulation as the Board intended.

One index the Board may want to consider is the Freddie Mac Primary Mortgage Market Survey (PMMS). The PMMS surveys lenders each week on the rates and points for 30-year fixed-rate, 15-year fixed-rate, 5/1 hybrid amortizing ARM, and 1-year amortizing ARM products. The survey is based on first-lien prime conventional conforming mortgages with a loan-to-value of 80 percent. In addition, ARM products are indexed to constant-maturity Treasury rates. The PMMS results are published extensively in the media, used in several government agency reports, and many other industry-related publications. We note that the weekly Federal Reserve H.15 Statistical Release currently includes contract interest rates on commitments for fixed-rate first mortgages from the Freddie Mac PMMS.

The published PMMS rates do not include data on ARMs with 3, 7 and 10 year rate resets. If this alternative methodology were to be considered by the Board, an interpolation process could be utilized to calculate the benchmark rates for the ARM products that are not currently part of the PMMS. The Board could expand the H.15 to include the full range of the weekly PMMS data (including interpolations for ARM products not currently listed). Alternatively, the Board could construct its own mortgage benchmark or conduct its own survey to attain the necessary data points.

Further, NAHB believes that any such mortgage-based index should be released weekly. Likewise, the determination of whether a loan is subject to the HPML requirements should be tied to a weekly index. In contrast, the Board's Proposal requires creditors to use the yield on a Treasury security as of the 15th day of the preceding month if an application is received between the 1st and the 14th day of the month and as of the 15th day of the current month if an application is received on or after the 15th day. Given the wide fluctuation in yields and/or mortgage rates that could occur over a 15-day period, we urge the Board to consider a weekly index. The use of a weekly index such as PMMS would allow originators to use more current market information as they determine whether a loan is subject to TILA/HOEPA rules.

Uniform and Consistent Mortgage Lending Requirements

Again, NAHB is supportive of the Board's effort to protect consumers and to bring higher standards and greater transparency to the origination process. However, NAHB recognizes that mortgage-related consumer protection legislation is currently pending that would require even higher standards and impose greater and wider liability on mortgage players. In addition, HUD has issued its Real Estate Settlement Procedures Act (RESPA) reform proposal with comments due on May 13, 2008. The proposed regulations related to TILA/HOEPA and RESPA will not preempt state law, and states, therefore, could require even more stringent practices and impose more severe liability associated with the origination process. NAHB urges the Board to work with lawmakers and other regulatory agencies, particularly HUD, to maintain consistency and uniformity in the development of rules and regulations that impact the mortgage market so that confusion, unintended consequences and unnecessary credit contraction are avoided.

Post Implementation Public Comments

NAHB encourages the Board to revisit the Proposal following its implementation and issue a request for comments so that participants in the mortgage market have an opportunity to express their views on the consequences of the final rule. This is very much in line with Governor Kroszner's statement of December 18, 2007 when he commented on the Proposal, stating:

> "When the proposed rules are published, we will seek further comment to ensure that they strike the right balance and offer solutions that are sustainable. When the rules are set, we will work with our fellow regulatory agencies which will play a critical role in implementation and enforcement."

Conclusion

Thank you again for the opportunity to comment on the Board's proposed amendments to Regulation Z. NAHB supports the Board's efforts to strengthen mortgage lending standards and consumer protections. However, we urge the Board to carefully consider the impact of the Proposal, particularly the definition of high-priced mortgage loans, on the mortgage marketplace to ensure that the Proposed rule does not unnecessarily disrupt the mortgage lending process, limit consumer financing options or increase the cost or reduce the availability of mortgage credit. NAHB is available to answer any questions you may have concerning this statement.

Respectfully,

David Crowe

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