HOUSING ASSOCIATION *founded in 1909*
OF DELAWARE VALLEY
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April 8, 2008

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

RE: Regulation Z, Docket No. R-1305

Dear Secretary Johnson:

The Housing Association of Delaware Valley believes that the Federal Reserve Board has taken an important step in proposing changes to its Regulation Z that are intended to end unfair and deceptive practices on high-cost loans. The nation faces a foreclosure crisis in large part because risky lending was not constrained due to a lack of consumer protections and safety and soundness standards.

The Housing Association sees victims of unscrupulous lending practices on a daily basis, and is working to help these families remain in their homes. In some Philadelphia zip codes, fully 30% of homes are in default and at risk for foreclosure as a consequence of predatory lending.

While we applaud the Federal Reserve's proposal it is long overdue, there is room to strengthen the major provisions dealing with unfair lending practices to avert misunderstandings and close unintended loopholes. We urge the Federal Reserve to address these areas and ensure that there are no opportunities to circumvent its major provisions.

Our comments on specific aspects of the proposal include the following:

Ability-to-Repay: We support the proposal's ability-to-repay standard. The proposed standards will curb the practice of qualifying borrowers on the initial, teaser rate – a practice that has contributed to "payment shock" and borrowers becoming delinquent after the loan's rate increases dramatically from the initial rate. While we believe that lenders should assure a borrower can repay during the entire loan term, we believe that assuring that borrowers have the ability to repay during the first seven years is a fair compromise.

Unfortunately, other aspects of the proposed ability-to-repay standard have the potential to undermine protections against unfair and deceptive lending. The ability-to-repay standard requires borrowers suing lenders to prove that the lenders exhibited a pattern and practice of making unaffordable loans. This is a very difficult standard for borrowers of limited resources to prove. The Federal Reserve should at least allow individual lawsuits under a standard that is not so difficult to prove.

Escrows Required: The proposal recognizes the importance of requiring escrows on high-cost and very-high cost loans. Yet, it permits a lender to allow a borrower to opt-out of escrow requirements after twelve months. Borrowers not familiar with the loan process can be swayed to opt-out of escrow requirements and then face unaffordable expenses. This is a safety and soundness issue as well as a consumer protection issue, considering that a tax lien is one of the only liens that can supersede a mortgage lien. The proposal should require escrows for taxes and insurance on all high-cost and very-high cost loans for the life of the loan.

Prepayment Penalties: We urge the Federal Reserve to ban pre-payment penalties on all high cost and very high cost loans. However, if the Fed seeks a compromise the appropriate time limit should be between two to three years which would reflect the current industry best practice. The prepayment penalty should also be limited to a reasonable dollar amount so that the penalty does not pose a barrier preventing a refinance into a lower cost loan once the borrower has reestablished credit worthiness. In addition, we agree with the Federal Reserve that prepayment penalties must cease before the initial rate expires on an adjustable rate mortgage (ARM) loan. We urge the Federal Reserve to require prepayment penalties to cease 90 days before the expiration of the initial rate.

Yield Spread Premiums: Yield spread premiums (YSPs) must be banned on high-cost and very-high cost loans instead of the proposed improvements in disclosures of YSPs. The subprime market is too complicated for borrowers unfamiliar with the loan process to be assisted in a meaningful way by enhanced disclosures of YSPs.

Protections for All Loans: We support the proposed protections against appraisal fraud, servicing abusive, and deceptive advertising. We also support the proposed requirement that good faith estimates (GFE) of loan costs for refinance and other non-home purchase loans be supplied to borrowers before payment of application fees.

We urge the Federal Reserve to add protections in the area of servicing. For example, the Federal Reserve must require reasonable loss mitigation efforts before foreclosure proceedings are commenced. Protections against appraisal fraud must require a new appraisal and an adjusted loan amount in cases when the original appraisal was inflated.

Non-Traditional Prime Loans not Covered: The Federal Reserve has proposed protections regarding ability-to-repay, escrows, and prepayment penalties for high-cost loans only. It has not proposed these protections for exotic prime loans such as option ARM loans that have proven to be very problematic. The Federal Reserve must cover non-traditional prime loans as well.

"Piggyback Loans" and risk not Covered: The Federal Reserve omitted a critical factor that is responsible for this current crisis: structuring loans into first and second liens with a combined loan-to-value (LTV) ratio above 80%. These loans, often called "piggyback

mortgages," have structures such as 80-20s, which means the first lien has an 80% LTV and the second has a 20% LTV. Sometimes, the second lien is even higher, resulting in a combined LTV of over 100%. This means that, even with only modest home-price depreciation, the borrower's loan amount is higher than the value of the home.

If we look at this from a safety and soundness standpoint loans with simultaneous second liens should be deemed abusive and not allowed by the Federal Reserve under any circumstances. It is not possible to create a rebuttable presumption related to ability-to-pay or other criteria because, regardless of income, piggyback borrowers are endangered when house prices decline, as evidenced in recent market turmoil. This prohibition would have no adverse impact on borrowers who lack the funds for a large downpayment, as the FHA or private mortgage insurance can and does back high-LTV loans.

Nothing in a prohibition on piggyback mortgages limits the ability of a borrower at some future point to use any home equity that has resulted from home price appreciation through subsequent extensions of credit, but an initial prohibition protects both borrowers and communities from loans that quickly exceed home value during times of price decline.

Liability for Secondary Market: Aside for violations including very high-cost loans, the secondary market's liability is quite limited. Since most subprime loans are sold to investors, the limited liability for investors provides no effective redress for borrowers. At the very least, the Federal Reserve should broaden liability and allow individual borrowers to seek redress, if not class action lawsuits.

We applaud the Federal Reserve for proposing these consumer protection rules. We strongly urge the Federal Reserve to significantly strengthen and implement its proposal. Inadequate consumer protection regulation has significantly contributed to the foreclosure crisis and the current economic uncertainty. At the same time, Congress must pass a strong anti-predatory lending bill since even a strengthened Federal Reserve amendment of Regulation Z is unlikely to be as comprehensive and strong as needed in covering all parts of the lending industry.

Thank you for this opportunity to provide comments on this important matter.

Sincerely,

Marcus Saitschenko
Housing Advocate