NATIONAL COMMUNITY REINVESTMENT COALITION NCRC

December 22, 2009

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

RE: Docket No. R-1367

Dear Secretary Johnson:

The National Community Reinvestment Coalition (NCRC) appreciates the Federal Reserve's efforts to improve disclosures for home equity lines of credit (HELOCs). NCRC is an association of more than 600 community-based organizations that promote access to basic banking services including credit and savings, to create and sustain affordable housing, job development and vibrant communities for America's working families. As such, NCRC and our members have witnessed first-hand the rampant abuses in the lending marketplace during the last several years. A lack of strong consumer protection and regulation contributed to reckless and ill-advised lending practices resulting in record levels of foreclosure and profound economic and social damage to American families and communities.

The Federal Reserve's proposal for HELOCs contain some positive features, but the Federal Reserve must adjust its HELOC proposal regarding Annual Percentage Rates (APRs) and certain other features in order to provide sufficient consumer protections and attain consistency with the Federal Reserve's closed end proposal. Because the APR in the HELOC proposal includes fewer fees and costs than the proposal for closed-end loans, HELOC APRs will understate the true costs of loans and will entice unscrupulous lenders to structure loans as HELOCs. In addition, HELOCs will not have the protections against steering and varying lender compensation on loan terms and conditions that the Federal Reserve proposes for closed-end loans. This lack of uniformity is an added inducement for abusive lenders to offer loans as HELOCs.

Disclosures at Application

NCRC appreciates the Federal Reserve's proposal to provide more specific disclosures of the terms and conditions of home equity lines of credit (HELOCs) at application. Currently, a borrower receives a 20 page brochure which the Federal Reserve's consumer testing reveals is not used by consumers. This brochure is to be replaced by a one page form that includes key questions to ask about HELOCs. In addition, a consumer currently does not receive any transaction-specific information at the application state. The proposal would require a disclosure of the Annual Percentage Rate (APR), the credit limit, and two examples of repayment based on initial underwriting. This transaction specific information is much more useful for consumers and would facilitate their shopping for the best loan. The disclosures must be provided within three days of application. NCRC does not agree with the Federal Reserve's proposal that the disclosures can be provided no later than account opening. That timing would frustrate the entire purpose of application disclosures since it does not facilitate shopping and informed choice.

Disclosures at Account Opening

The proposal contains positive features. Disclosures, for example, would be substantially similar to those at application, enabling the consumer to compare terms and conditions at account opening with those at application. The disclosure would also display the payment plan chosen by the consumer and display transaction and penalty fees.

The Federal Reserve's proposal would also strive to clarify the fees and charges that must be disclosed, which would eliminate the current confusion and lack of specificity regarding required disclosures. The proposal, however, would not adopt the same methodology for considering fees and interest charges in calculating the APR as the Federal Reserve's proposal for closed-end mortgages. As a result of excluding certain fees from the APR calculation for HELOCs that are included in the APR calculation for closed-end mortgages, the proposal will depress the APRs for HELOCs relative to closed-end mortgages. Financial institutions will then have incentives to structure loans as HELOCs even though the loans are basically closed-end loans in order to depress the APR and conceal the true cost of the loans. In addition, lenders will opt for structuring loans as HELOCs because the lower APRs associated with HELOCs will be less likely to exceed certain federal and state APR thresholds that trigger additional consumer protections. In order to avoid financial institutions taking advantage of regulatory loopholes, NCRC suggests that the method for calculating APRs in the closed-end proposal be adopted for the HELOC proposal.

Periodic Statements

NCRC urges the Federal Reserve to reconsider the proposed elimination of the effective APR. While industry trade associations assert the effective APR may overstate the cost of credit, NCRC believes that the effective APR serves as a warning to consumers in the case of high-cost loans that they may be able to receive a lower cost loan elsewhere. The other proposals associated with periodic statements would improve clarity for consumers such as disclosing costs as interest or fees instead of finance charges. Eliminating the categorization of costs as finance charges would improve consumers' ability to understand costs and achieves consistency with the Federal Reserve's proposal for closed-end mortgages.

Change in Terms Notices

NCRC believes that the Federal Reserve's proposal regarding "change in terms" notices will benefit consumers. Currently, a notice about change in terms such as the imposition of a penalty fee is not required to be disclosed in advance if the original agreement with the consumer discussed when penalty fees would be imposed. The current procedure, however, is not sufficient because consumers may not recall reading the information about penalty fees and other changes in loan terms, particularly if they took out the loan several years prior. Therefore, requiring advance notice of an impending fee will alert consumers and provide them with an opportunity to take corrective action before the fee is charged. The proposal to provide change in terms notices 45 days in advance instead of the current 15 days is also beneficial in that it will provide more time for consumers to take corrective action.

Account Terminations

NCRC urges the Federal Reserve to bolster its proposal to prevent lenders from terminating a HELOC until a borrower is at least 30 days late with a payment. The Federal Reserve ought to consider extending this time period to 90 days. NCRC member organizations report that recent foreclosure prevention and loan modification efforts have been thwarted by an institution holding a delinquent HELOC and initiating foreclosure proceedings while negotiations were occurring with the financial institution holding the first mortgage. In order to provide sufficient time for loan modification efforts, a 90 day time period is needed before an institution terminates a HELOC. Ninety days is also the time period for the temporary loan modifications in the federal Home Affordable Modification Program (HAMP) program so it makes sense to synchronize the Federal Reserve HELOC regulation with the HAMP program.

Suspensions Due to Property Declines

The Federal Reserve should revise its proposal for loans with Combined-Loan-to-Values (CLTVs) of 90 percent and higher. For these CLTVs, the proposal would allow a lender to suspend a HELOC if the property value declines by 5 percent or more. The proposal, however, does not provide borrowers with protection against sudden suspensions, especially during recessions and periods of significant property value declines. The Federal Reserve, therefore, should revise its proposal to allow supsensions if a property value declines by 10 percent or more.

Suspensions and Reductions in Credit Limit Due to Changes in Borrower Financial Circumstances

The Federal Reserve must carefully develop commentary guiding lenders regarding suspensions and reductions in credit limit due to changes in borrower circumstances. The Federal Reserve is contemplating commentary that a lender can suspend or reduce a credit limit if a borrower is 30 days late on a payment. The commentary should extend that time period to 60 days in the case of a mortgage payment. Thirty days late is not a sufficient indicator that a borrower's financial condition has deteriorated significantly since a borrower may miss a payment due to a logistical circumstance such as lost or misplaced mail. Moreover, if a homeowner no longer has a mortgage payment, the commentary should stipulate that a delinquency on a credit card or other loan should be 90 days before the lender suspends or reduces a credit limit. When a borrower no longer has a mortgage payment to make, the borrower is more likely to rebound from delinquent payments and should be given extra time before his or her HELOC is affected.

Reinstatement Procedures

The Federal Reserve's proposals regarding reinstatement procedures will bolster due process for consumers. NCRC agrees with the proposal that creditors shall pay for investigations of consumers' financial standing when consumers request reinstatement of HELOCs and that the investigations be conducted within one month. Moreover, reinstatement procedures must be clearly described when lenders send consumers notices informing them of suspension of their HELOC or reduction of their credit limit.

Conclusion

NCRC urges the Federal Reserve to act in a resolute and expeditious manner in enacting consumer protections. The Federal Reserve must change its HELOC proposal to adopt the stronger protections of the closed-end proposal in order to avoid creating loopholes that would be seized by unscrupulous lenders. In addition, the Federal Reserve should act upon other NCRC recommendations in order to bolster the safeguards in its proposal. Our nation's foreclosure crisis demonstrates clearly that there has been a lack of consumer protection. If you have any questions, please contact me or Josh Silver, Vice President of Research and Policy, on 202-628-8866.

Sincerely,

John Taylor
President and CEO