C H A P A

Citizens' Housing and Planning Association, Inc.

July 22, 2011

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

Re: Proposed Rule Regulation Z – "Ability to Repay"
12 CFR Part 226, docket No. R-1417, RIN 7100-AD-75

Dear Ms. Johnson:

We are submitting this letter in response to your request for comments on the proposed rule to amend Regulation Z of the Truth in Lending Act (TILA) to expand the scope of the ability-to-repay requirement in accordance with the Dodd-Frank Act.

Citizens' Housing and Planning Association (CHAPA) is a statewide nonprofit organization that promotes affordable housing and community development throughout Massachusetts and New England. We have been involved in programs to help low and moderate income households become homeowners for more than 20 years, helping to design financing programs, monitoring sales and resales in affordable developments and working with pre- and post-purchase counseling agencies throughout New England as a regional intermediary for HUD. We've seen the fallout from the foreclosure crisis close up and worked on statutory and programmatic responses, including revised state laws to better protect tenants and owners at risk of losing their homes. We also operate a program to facilitate the sale of foreclosed properties to responsible owners and have experienced all the challenges inherent in current servicing practices. Our members represent all segments of the housing market, including developers, consumers and tenants, bankers, community groups and state, local and federal officials.

We strongly support the expanded ability-to-repay requirement. Our comments focus on:

- the qualified mortgage (QM) definition as it relates to safe harbor and underwriting,
- suggested qualifications for the definition of "widely accepted underwriting standards", and
- a request that the Consumer Financial Protection Bureau use its exception authority to include proven public purpose mortgage programs to promote low and moderate income homeownership – including one widely used in Massachusetts – in the definition of QM.

Definition of Qualified Mortgage

§226.43(e) of the proposed rule includes two alternative definitions of qualified mortgage. They have identical requirements regarding loan features (e.g. points and fees, APR, and amortization characteristics). They differ, however, in terms of the underwriting requirements and originator liability. Alternative #1 would require only that a creditor verify the borrower's income or assets (and not the other 7 factors required for issuers of non-QM loans, including employment, debt to income ratios, and second mortgages). Along with a reduced underwriting requirement, it would provide an absolute safe harbor of compliance, meaning a borrower cannot later claim that the originator did not fulfill the

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requirement that they determine ability to repay. Alternative #2 would require that creditors verify all eight factors that originators of non-qualified mortgages must verify and consider and would make compliance a rebuttable presumption. We strongly urge you to adopt Alternative #2.

A rebuttable presumption of compliance is consistent with Dodd-Frank as the bill text does not call for creation of a safe harbor ("safe harbor" is in the heading of §1412 as an artifact of an earlier bill draft that included provisions for mortgage securitizers). A rebuttable presumption also makes sense in light of what we've witnessed with regard to lending practices in recent years.

We also strongly believe that creditors making qualified mortgages should be required to verify, document and consider that same eight underwriting factors that the rule proposes for non-qualified mortgages. All eight factors are critical to assessing a borrowers' ability to repay and necessary for sound underwriting. We also believe they should be required to use accepted underwriting standards, as originators of non-QM loans will be required to do.

We also recommend that the Bureau add predictable and recurring non-debt expenses (e.g. medical premiums or expenses, child care) to the factors lenders should consider in evaluating ability to repay for both QM and non-QM loans.

<u>Use of Widely Accepted Underwriting Standards</u>
While the proposed rule requires originators of non-QM loans to follow very specific procedures in calculating loan costs and borrower income and assets, it is completely flexible in terms of requirements for the actual determination of ability to repay. §226.43(c)(1) states that creditors *may* look to "widely accepted governmental or non-governmental underwriting standards." We agree with the comment in the proposed rule that it is important to look at all elements of a borrower's circumstance in determining ability to repay, rather than setting rigid rules for individual elements such as debt-to-income ratios. However, we also believe that the rule should set some parameters on allowed underwriting standards.

Specifically, we recommend that the final rule require that loans be empirically underwritten – that is, underwritten using governmental standards or widely accepted automated systems with a track record and information on loan performance that supports the concept of ability to repay. We also believe the definition should allow the standards used by publicly supported programs for low and moderate income homebuyers, if supported by loan performance data.

<u>Exceptions to the QM definition for State-Approved Loan Programs</u>

The Massachusetts Housing Partnership, a state quasi-public agency, has operated a much-lauded Soft Second loan program since the early 1990s to help low and moderate income households become homeowners with a low downpayment. As currently structured, buyers obtain a conventional 30-year fixed mortgage from a private lender for 77% of the purchase price and a soft second mortgage held in portfolio. The second mortgage is interest-only for the first 10 years and in some cases comes with an interest subsidy, resulting in a graduated payment in the second five years. Public funds finance a loan-loss reserve account, eliminating the need for private mortgage insurance, and borrowers must complete a rigorous homebuyer education and counseling program. To date, the program has made loans to over 15,000 families with an average income of less than $48,500 with strong results; the program's delinquency and foreclosure rates compare favorably with those for prime, fixed-rate mortgages.

Soft Second loans, as currently structured, do not qualify as QM because of their interest-only feature and the requirement under the general standard that borrowers qualify using fully-amortizing, substantially equal payments could also create challenges. Given the program's strong track record, we urge that the Consumer Financial Protection Bureau use its authority under TILA to allow state-approved mortgage loan products for low and moderate income homebuyers that include strong education and counseling components and post-purchase support and have a track record to qualify as QM. Provision should also be made to allow for new state-approved programs. Use of this authority will preserve the ability of public agencies to continue to respond to the evolving mortgage market with new loan innovations.

Thank you for your consideration of these comments.

Sincerely,

Aaron Gornstein

Aaron Gornstein
Executive Director