NACA
Neighborhood Assistance Corporation of America
www.naca.com
Bruce Marks
Chief Executive Officer
Headquarters:
Boston, MA
(888) 297-5568
OFFICES:
• **Atlanta, GA** (404) 377-4545
• **Augusta, GA** (706) 855-7464
• **Baltimore, MD** (410) 783-0465
• **Baton Rouge, LA** (225) 767-9224
• **Birmingham, AL** (205) 942-8111
• **Boston, MA** (617) 250-6244
• **Boston Counseling Center** (888) 302-6222
• **Buffalo, NY** (716) 834-6222
• **Charleston, SC** (843) 556-0497
• **Charlotte, NC** (704) 536-7676
• **Charlotte Counseling Ctr.** (888) 404-6222
• **Chicago, IL** (773) 723-6222
• **Cleveland, OH** (216) 619-4110
• **Columbia, SC** (803) 255-0223
• **Dallas/Ft. Worth, TX** (972) 283-1171
• **Denver, CO** (303) 694-5437
• **Houston, TX** (713) 706-3400
• **Jackson, MS** (601) 922-4008
• **Jacksonville, FL** (904) 306-9272
• **Kansas City, MO** (816) 531-6222
• **Las Vegas, NV** (702) 362-6199
• **Lawrence, MA** (978) 687-3993
• **Little Rock, AR** (501) 492-0083
• **Los Angeles, CA** (310) 412-2600
• **Memphis, TN** (901) 348-0115
• **Milwaukee, WI** (414) 442-6222
• **Miami, FL** (888) 302-6222
• **Minneapolis, MN** (763) 656-6222
• **NACA HAND** (877) 952-6222
• **NACA MAP** (877) 912-6222
• **Nashville, TN** (615) 781-4240
• **Newark, NJ/NY, NY** (973) 679-2601
• **New Haven, CT** (203) 562-6220
• **New Orleans, LA** (504) 241-2090
• **Oakland, CA** (510) 652-6622
• **Philadelphia, PA** (215) 531-5221
• **Phoenix, AZ** (602) 248-4408
• **Raleigh, NC** (919) 855-8484
• **San Antonio, TX** (210) 826-2828
• **Springfield, MA** (413) 788-6220
• **St. Louis, MO** (314) 645-8333
• **Tampa, FL** (813) 287-5051
• **Washington, D.C.** (202) 328-6333

July 22, 2011

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

Ms. Johnson,

The ability-to-pay regulations as proposed will have serious unintended consequences that will adversely affect the work of the Neighborhood Assistance Corporation of America ("NACA"), a nonprofit corporation dedicated to helping primarily low and moderate income families secure housing in traditionally underserved communities. The regulations are designed to address abuses in the marketplace caused by predators pedaling loan products with unconscionable terms. Unfortunately, as currently drafted, the regulations also will prevent NACA, and other nonprofits, from continuing to provide loans with extremely favorable terms to borrowers who otherwise would not have access to affordable credit.

NACA is the largest HUD-certified counseling organization in the country, responsible for approximately 30-percent of the total counseling provided by such organizations. NACA offers one of the best homeownership programs in the country for both existing homeowners with an unaffordable mortgage and those potential homebuyers looking to purchase a home. NACA would like to provide the many thousands of homeowners in the NACA program with the opportunity to comment on these regulations and their potential negative and unintended consequences. NACA would welcome any guidance regarding how such commentary should be presented.

NACA'S PURCHASE PROGRAM

NACA, working in long-term partnerships with Bank of America and Citigroup, has developed the preeminent product in the private marketplace for making truly affordable home mortgages available to primarily low-to-moderate income borrowers and communities.

The NACA Purchase Program has many remarkable features. It allows NACA clients to purchase or refinance homes with:

- no down payment,
- no closing costs,
- no fees,
- no requirement for perfect credit,
- and at a below-market, 30-year fixed interest rate.

All NACA Purchase Program clients receive the same terms, including the below-market, 30-year fixed interest rate, regardless of their credit score or other factors. Accordingly, they face no danger from yield spread premiums or other predatory practices that have plagued homeowners (indeed, in 2000, NACA offered Congressional testimony warning that such practices would trigger the current sub-prime mortgage crisis).

The NACA Purchase Program involves a multi-step process in which NACA carefully counsels and advises potential homeowners. First, the potential homeowner attends a four-hour homebuyer's workshop that provides a comprehensive overview of the home buying process, the NACA Purchase Program, how to become NACA Qualified, or mortgage-ready, and mortgage options. Next, over a series of weeks or months, a client will attend individual counseling sessions that can last up to two hours each. In these sessions, the counselor and the client discuss basic intake information, the type of home the client desires and can afford, the client's history regarding bill payment, outstanding debts, household expenses, rent payment history, assets, and other relevant issues. Using this information, a maximum PITI (principal, interest, taxes and insurance) is calculated and approved by NACA underwriters. Then, over a period of time, the client must demonstrate the ability to save the Payment Shock (i.e., the difference between the client's rent and the maximum mortgage payment) to become NACA Qualified. The Client is also provided information about various mortgage options, including but not limited to FHA, local options and NACA.

Once so qualified and approved, the client attends a Purchase Workshop, which provides information on identifying properties, the option to use a NACA-approved buyer's real estate broker, submitting and processing a mortgage application, and the closing process. The Purchase Workshop also discusses potential repair issues with homes and the support that NACA provides to make sure that repairs are completed in a prompt and fair manner through NACA's Home and Neighborhood Development Program.

Next, clients begin the process of locating a home to purchase. NACA clients have the option of using a NACA-approved buyer's real estate broker/agent to ensure that the client's interests are protected in the housing search process. Once a client selects a home and negotiates and signs a Purchase and Sale contract, the client can apply for NACA Credit Access to access the NACA mortgage product. This involves providing documents and data to the licensed NACA mortgage consultant to show the client's finances. With this satisfied, the client submits an application to NACA for credit approval in conjunction with a mortgage application, which undergoes mortgage processing and underwriting through the NACA program. Once NACA approves credit access, it submits a mortgage application to one of NACA's participating lenders. Upon approval by the bank, the potential new homeowner proceeds to closing with full monitoring and support by NACA personnel.

Under the NACA program, the client also, through special arrangements with NACA's industry partners, can buy-down the applicable interest rate. Under this special program, each point paid by the borrower permanently reduces the interest rate by one-quarter of one percent (.25%), with the option of reducing the rate as low as virtually zero percent. This unprecedented feature of the NACA program is a huge benefit to borrowers.

NACA even provides, through its Membership Assistance Program, substantial services to a client subsequent to closing. These include free financial counseling and access to financial assistance if the client misses a mortgage payment due to serious health problems, loss of employment or other issues.

NACA COMMENTS ON THE PROPOSED REGULATIONS

1. Nonprofits Should Be Excluded From Regulation Z's Definition of a "Loan Originator"

In order to avoid serious unintended effects stemming from the proposed regulations, Regulation Z's definition of "loan originator" should be reconsidered by the Consumer Financial Protection Bureau (CFPB) and a new definition should be adopted that excludes nonprofits. The proposed revisions to Regulation Z, at Sections 32(b) and 43(e), adopt the definition of "loan originator" recently announced by the Federal Reserve Board ("Board") in amendments to Regulation Z at Section 36(a)(1). The Board suggests, in its comments, that use of this definition in the proposed

Sections 32(b) and 43(e) is warranted by the need to promote consistency within Regulation Z. In recently adopting its definition of "loan originator" in Section 36, the Board specifically rejected comments calling for the exclusion of nonprofits. For the policy reasons set out below, and because of the potential unintended effects of the proposed regulations also described below, the Bureau should reconsider this decision.

Section 36's definition of "loan originator" was adopted by the Board in response to the abuses inflicted by unscrupulous mortgage brokers who played a significant role in producing the current subprime mortgage and economic crises. In the regulatory proceedings leading up to the adoption of the current definition, some commenters maintained that nonprofits should be excluded from the definition of "loan originator" because nonprofits do not engage in the pursuit of yield spread premiums, the steering of consumers to unfavorable loan terms or other abusive practices in the loan origination industry that the Board sought to sharply curtail. In response to these comments, the Board maintained that nonprofits had nothing to fear from being included in the definition of "loan originator," and thereby being made subject to Section 36's new substantive restrictions, so long as the nonprofits continued their history of avoiding abusive practices.

While the Board's sweeping definition of "loan originator" may have made sense in the context of Section 36's prohibition on abusive mortgage broker practices, its reasoning for doing so does not apply in the more nuanced context of the proposed regulations – that is the proposed revisions to Section 32 and the new Section 43. The Board must realize regulations are blunt instruments that, if not precisely drawn, can curtail as many good practices as abusive practices. Two examples of such untoward effects of the proposed regulations are set forth below.

2. The Proposed Rules' Treatment of "Loan Originator Compensation", "Points and Fees" and "Qualified Mortgages" Will Limit Consumer Access to Highly Favorable Loan Terms Made Available By Nonprofits Like NACA

As outlined above, NACA's driving purpose is to help potential home owners, who have few other opportunities in the marketplace, to secure a home on affordable terms. NACA not only offers extensive home-purchase counseling services to consumers but also, through special arrangements with leading lending institutions, offers each and every consumer who qualifies the opportunity to secure a mortgage loan having extraordinarily favorable terms - no down payment, no closing costs, no perfect credit requirement and a 30-year below-market fixed interest rate. As currently drafted, Sections 32(b)'s and 43(e)'s treatment of loan originator compensation and points and fees will seriously undercut special programs like NACA's.

As proposed, Sections 32(b)(1)(ii) and 43(b)(9) require that "points and fees" include all compensation paid, directly or indirectly, by a consumer or creditor to a "loan originator." In addition, proposed Sections 43(e)(2)(iii) and 43(e)(3) generally require that points and fees be capped at three percent of the loan amount for the loan to be designated a "qualified mortgage" that will either be a safe harbor in compliance with the overall ability-to-pay requirements or presumed to be in compliance. NACA relies on payments from its lending partners in order to provide the extensive services and extraordinary product it provides to prospective homeowners. If, as proposed, such payments are included in the calculation of "points and fees" and thereby subject to a three-percent cap for "qualified mortgages," the cap could be exceeded rendering the loan a non-qualified mortgage. Though such loans could still meet the overall ability-to-pay requirements because the creditor meets the underwriting documentation criteria in Section 43(c), neither NACA nor its funding partners would willingly choose to have anything to do with "non-qualified" mortgages. As a result, funding for NACA's special counseling program and the extraordinary mortgage NACA provides could be placed in jeopardy to the detriment of the underserved low and moderate income individuals and communities NACA serves.

Another equally adverse and unexpected consequence arises from this three-percent cap's application to NACA efforts to help its clients permanently buy-down, on very favorable terms, the interest rate to a very low level. As described above, through special arrangements with its industry partners, NACA clients can permanently lower the interest rate on their mortgage loans by .25 percent for each point paid. NACA profits in no manner from any such buy-down and offers it only in an effort to help its clients. The majority of NACA's low and moderate income family borrowers scrap together funds from relatives and friends in order to reduce their mortgage payment to as low as possible, to ensure that they stay in their homes long-term. Counting the points paid by NACA clients against the three-percent cap and thereby causing the loans to be stigmatized as "non-qualified" mortgages could cause NACA and its partners to eliminate the NACA program buy-down feature that is so highly sought by NACA clients and that helps them significantly.

As indicated above, these nettlesome problems could be remedied by excluding nonprofits from the definition of "loan originator" in Section 36. Alternatively, the proposed Sections 32(b), 43(b) and 43(e) could be amended to exclude, from either the limit on or definition of points and fees, any payments from creditors to nonprofits to support special loan programs, like NACA's, that are designed to originate mortgage loans for underserved low and moderate income families and communities. Taking such steps now is crucial since other planned regulatory changes will likely further diminish the interest of industry partners in supporting innovative programs like NACA's. For example, the Dodd-Frank amendments that apply, for the first time ever, HOEPA limitations on so-called "high price loans" to residential mortgage transactions could unintentionally further reduce industry partner interest in NACA-like programs because the compensation NACA receives from its industry partners and points purchased by client pursuant to NACA's buy-down program would be calculated into the points and fees applicable to HOEPA's five-percent points and fees cap. If payments by reputable lenders to nonprofits programs like NACA's and buy-down payments like those in NACA's program render a loan "high priced" under the new Dodd Frank amendments, yet to be implemented by regulation, then lenders will not want to fund and participate in such programs. This is so because many lenders refuse to fund "high priced" loans as a matter of policy even though such loans, in the case of NACA, would actually help low and moderate income individuals secure mortgages at interest rates they desire and with payments they can afford.

To avoid adverse unintended consequences being visited upon NACA's standard setting programs, NACA requests (i) that nonprofits be excluded from the definition of loan originator in Section 36; (ii) or, in the alternative, that payments from sponsoring lenders to nonprofits or payments pursuant to nonprofit buy-down programs be excluded from either the limits on or definition of points and fees set by the proposed Sections 32(b), 43(b) and 43(e).

Thank you for the opportunity to comment.

Sincerely,

Bruce Marks, CEO