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July 20, 2011

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

Dear Ms. Johnson:

This letter is written in response to request for comment on the proposed revisions to Regulation Z (Docket No. R-1417), which implements amendments made to the Truth-in-Lending Act under the Dodd-Frank Wall Street Reform and Consumer Protection Act, which establishes standards for determining a consumer's ability to repay mortgage loans and limits certain terms which may be contained in a mortgage.

We are generally supportive of the flexibility provided in the proposed rule related to underwriting, documenting and verifying information. We believe that it is important to allow flexibility in underwriting and not be overly prescriptive in defining qualification standards. While it is acceptable to reference government underwriting standards as possible sources of guidelines for creditors, it is important to keep these only as reference sources. We apply our own underwriting standards, which has resulted in a low risk of default and loss. These standards are often more flexible than the government standards and are based on the consumer's ability to repay a debt. Utilizing more restrictive guidelines can unnecessarily reduce availability of credit to lower income borrowers. Therefore, we would encourage that the final rule and commentary clearly indicate that government standards are only possible sources of underwriting standards.

To provide some data for consideration, our institution's loss history for mortgage loans originated between 2002 and 2008 represent 0.36% by number and 0.095% by dollar. Please note that these figures include all residential mortgage loans, including loans involving rental properties. Losses peaked for loans originated in 2007, where mortgage loan losses represented 0.96% by number and 0.476% by dollar. When losses started to increase, we evaluated whether to change our underwriting requirements as had been done by other lenders. There were several loans involving low-to-moderate income borrowers that ultimately went into default. However, when we looked at the specific loans, the underwriting was not a factor in the default or ultimate

loss. The borrowers had the ability to repay the loans at origination, but their employment situations changed as the economy turned. They were unable to continue making payments on any of their debts, and that is why the loans went into default. Declining property values due to changing market conditions also contributed to the losses. As a result of our analysis, we did not make any changes to our underwriting standards.

One item that we allow in underwriting, and for which comment was solicited under the proposal, involves debt obligations that are almost paid off. When calculating our debt service coverage ratio, we allow our officers to exclude installment debt payments if there are 10 or less payments remaining. This practice has been common in mortgage financing for quite some time. We have not noticed any increase in default resulting from this flexibility in underwriting. As such, we believe that the final rule should allow for the exclusion of these obligations in determining ability to repay.

Comment was also solicited as to whether creditors that utilize residual income in underwriting transactions should be required to deduct federal and state income taxes. We do not believe that this should be a requirement. Every consumer's tax situation is different. Self-employed and borrowers operating in multiple states present special challenges. When determining ability to repay, the underwriter may look to past tax returns to estimate recurring income. An historical analysis may or may not be conducted. Allowances in the tax codes are subject to change and can effectively negate any tax liability for some parties and not for others. In addition, not all transactions require tax returns or multiple years of tax returns. This is dependent upon the size and nature of the transaction as well as nature of the borrower's income or financial assets being relied upon for repayment. Tax brackets are generally not requested from borrowers as part of the application process. Utilizing assumptions could lead to disparate treatment that is not truly reflective of the consumer's overall income situation. Therefore, we don't believe that the rule should require income taxes to be deducted from residual income.

Comment was solicited on the methods used to ensure that documents prepared by self-employed borrowers are reliable for determining repayment ability. For larger transactions, we require tax returns in addition to a current year profit and loss statement for self-employed borrowers. The interim statement is primarily used to look at trends relative to tax return data in these situations, so less reliance is placed on them. For small dollar transactions, we currently may only request an internally prepared statement. If the customer holds the business account with our institution, we may look at deposit history to determine if it seems in line with the revenues reported. Outflows could also be looked at to determine if they are in line with expenses. However, this analysis becomes more difficult if the business is not a customer of the bank.

It is not practical to require all small businesses to have their financial statements reviewed by accountants or other third parties to

verify accuracy. Many small business owners take advantage of the software tools available to prepare statements and only have accountants involved when it is tax season. We believe that this is an area where the rule can allow for some flexibility. The vast majority of customers are legitimate and not looking to defraud a lender by providing inaccurate information. In addition, should there be a significant process required to verify the accuracy of the information, it would not be cost effective to originate smaller loans to self-employed borrowers. This could have the consequence of reducing the availability of credit to these consumers. We would encourage the agency to use its authority under the statute to exempt internally prepared business financial statements from the third party verification standards in order to promote continued credit availability on reasonable terms.

The rest of our comments will focus on the proposed standards for "qualified mortgages" and provision of legal protections for creditors originating such loans. We are in favor of proposed Alternative One, which provides a safe harbor to creditors that originate qualified mortgages meeting the specific requirements contained in the statute. This alternative provides appropriate protection to creditors while creating an incentive to originate loans meeting the qualified mortgage definition. Our belief is that Congress intended to create true protections for creditors as an incentive to originate loans meeting the statute. This intent appears to be indicated in statute, as they gave the rulemaking agency the authority to revise the "Safe Harbor Criteria" (Dodd-Frank Act Section 1412; TILA Section 129C(b)(3)(B)).

The qualified mortgage definition in the statute and in the proposal exclude terms that were determined to be problematic for consumers. Under the definition, loans may not allow for interest only periods or negative amortization. Balloon payments are limited. Income and resources for repayment are verified and documented. They are underwritten based on fully amortizing payments. Points and fees as well as loan terms are also limited. All of these terms lead to a low likelihood of default by a consumer. Given the new cause of action and increased liability provisions, creditors should be afforded legal protection for originating loans under the qualified mortgage definition.

It also appears that Congress was concerned about the funding for mortgage markets in general and ability to sell mortgage loans when crafting the safe harbor. The section governing a presumption of ability to repay applies to participants in the mortgage lending market. The language in the statute states that any creditor or assignee of a mortgage loan may presume that the ability to repay standards have been met if the loan is a qualified mortgage (Dodd-Frank Act Section 1412; TILA Section 129C(b)(1)). It is our belief that this was done to minimize any negative impact on the availability and appropriate flow of funding for mortgages at reasonable rates. Without the safe harbor protection, subsequent purchasers would require a significant amount of due diligence to ensure that the general ability to repay standards have been met. This will increase the costs associated with all loans, which will be passed onto the consumer in

the form of higher rates, and restrict liquidity available to fund additional mortgage loans.

We do not believe that Alternative Two would be appropriate for many of the reasons listed above. To provide what amounts to lesser legal protection for complying will all of the ability to repay standards seems counterintuitive. There would be no incentive to offer true qualified mortgages, as the cost to process and potentially sell would be the same. If the agency determines that Alternative Two is going to be the method adopted, then we would ask that consideration be given to exempting mortgage loans from some of the ability to repay requirements. Specifically, if a lender has verified income with a recent paystub from an employer and has no reason to believe that the borrower is no longer employed, then the rule should allow for the transaction to proceed without verification of employment.

Verification of employment does burden the employer as well. Employers are often reluctant to verify information, and smaller employers lack the resources to do so in a timely manner. While it may make sense for larger mortgage transactions, it isn't necessary for most transactions. As stated previously, the vast majority of borrowers are legitimate and not seeking to defraud lenders. Requiring employment verification on top of income verification is redundant in many cases, slows the process and adds to the cost of processing loans. These costs often outweigh the benefits and will need to be passed on in the form of higher rates and fees. The agency has the authority to exempt transactions from part of the requirements in order to promote continued credit availability on reasonable terms. We would encourage the agency to use this authority should it proceed with Alternative Two.

Thank you for taking our comments into consideration. If you have any questions or would like clarification on anything contained in this letter, please contact me at (303)235-1321.

Sincerely,

David A. Kelly, CRCM
Executive Vice President