California CREDIT UNION LEAGUE NEVADA CREDIT UNION LEAGUE

July 19, 2011

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, N.W.
Washington, DC 20551

Re: Ability-to-Repay Mortgage Loan Proposed Rules
Docket No. R–1417; RIN No. 7100–AD75

Dear Ms. Johnson:

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to comment on the proposal by the Federal Reserve Board (Board) regarding its proposed revisions to Regulation Z requiring creditors to determine a consumer's ability to repay a mortgage loan before making the loan. These revisions are being made pursuant to the Dodd-Frank Act. By way of background, the California and Nevada Credit Union Leagues (Leagues) are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 10 million members.

The Leagues recognize that these rules are mandated by the Dodd-Frank Act (Act), which essentially codified the ability-to-repay requirements of the Board's 2008 HOEPA final rules. We thank the Board staff for closely keeping to the provisions as contained in the Act when drafting the proposal. In the balance of our letter, we would like to share our concerns and recommendations regarding provisions in the proposal that we believe are within the Board's authority to amend.

General Ability-to-Repay Standard

We believe that the general ability-to-repay standard contained in the proposal is largely reasonable and attainable for most loans made by credit unions, with the exception of the requirement that a creditor underwrite all adjustable-rate mortgages to their fully-indexed rate. The Leagues urge the Board to consider amending the requirement to apply only to adjustable-rate mortgages fixed for less than five years. A fixed rate for five years provides adequate protection from rising rates while providing sufficient time for consumers to increase household income, if needed. In addition, providers of private mortgage insurance (PMI) generally consider loans fixed for the first five years to be fixed-rate loans. The adoption of a similar standard in the regulation would provide cohesion and consistency for lenders.

Qualified Mortgage

The Leagues support proposed "Alternative 1," which would treat "qualified mortgages" as a legal safe harbor, as opposed to "Alternative 2," which provides merely a "rebuttable presumption of compliance." Further, we believe that "Alternative 2" does not provide any additional benefit to lenders from an underwriting standpoint than what is provided under "Alternative 1."

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Balloon Payment Qualified Mortgages

The Leagues support the proposal's provision to permit balloon payment mortgages to be considered "qualified mortgages" if made by lenders under $2 billion in assets that operate predominantly in "underserved" and "rural" areas. We believe this is necessary for maintaining consumer access to mortgage credit in these areas because it allows smaller institutions to control interest rate risk. However, we do not support the Board's proposed definitions of "underserved" and "rural," as they are much too narrow in scope to be meaningful in practice. Therefore, we urge the Board to adopt more expansive and realistic definitions of "underserved" and "rural" that include areas that have been determined to be "underserved" or "rural" by NCUA and other federal agencies.

Definition of "Total Loan Amount"

The Leagues agree with the proposed exclusion for bona fide third party charges not retained by the creditor (such as PMI) from the definition of "points and fees" for qualified mortgages. These arrangements typically result in a lower monthly payment to the borrower, and not excluding them would serve to unnecessarily limit a borrower's options.

Prepayment Penalties

The Leagues strongly oppose the proposed provision which would include within the definition of "prepayment penalties" waived closing costs that can be recouped in the event of prepayment. Such arrangements are generally not considered to be prepayment penalties under the Federal Credit Union Act (see NCUA Legal Opinion Letter 08-0731 for a discussion of the Agency's long-held position on this issue). Therefore, we urge the Board to not include waived settlement/closing costs and fees in the definition of prepayment penalties.

Verification of Third-Party Records

The Leagues support the proposed official staff commentary clarifying that a credit union's own deposit account statements fall within the definition of "third-party records." We also support the provisions of the proposal which permit consumers to orally verify their employment status, using the Department of Defense personnel database to verify the employment status of military personnel. Finally, we agree that creditors should not be required to verify with third-party records debts a consumer lists on the loan application that are listed not on his or her credit report. This practice is already used by credit unions and other lenders for unbanked borrowers that do not use traditional credit sources. In fact, some credit unions serve significant numbers of immigrants, as well as the self-employed, who may not have documents such as W-2 forms, pay stubs, and other "traditional" verification documents. In order to ensure continued access to mortgage credit for these groups, the Leagues request clarification from the Board that qualified mortgages can be underwritten based primarily or exclusively on financial institution records so long as those records show ability to repay.

However, we do not support the proposed requirement that consumer-prepared documents "be prepared or reviewed by a person other than the consumer, the creditor, any mortgage broker, or any agent of the creditor or mortgage broker" (e.g., a CPA). We believe such a requirement unnecessarily increases costs without providing sufficient corresponding benefits. Therefore, we recommend that the rule permit lenders to rely on consumer-prepared documents as long as those document are consistent with financial institution records or the consumer's tax records (e.g., transcripts of tax returns obtained by filing a Form 4506).

In closing, I appreciate the opportunity to provide our views, concerns, and recommendations to the Board. The Leagues generally support the proposed rule, but believe that several modifications are necessary to ensure continued consumer access to mortgage credit at fair rates, and to minimize unnecessary regulatory burden on credit unions.

Sincerely,

Diana R. Dykstra
President/CEO