Credit Union
ASSOCIATION
New York

July 22, 2011

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

RE: Docket No/ R-1417
RIN No. AD 7100AD 75

Dear Ms. Johnson:

On behalf of the Credit Union Association of New York, I would like to take this opportunity to comment on the Federal Reserve Board's proposed regulations implementing "the ability to repay" requirements of the Dodd-Frank Act. The goals of this legislation are ones with which the Association strongly agrees. Lenders should engage in proper underwriting standards and be held accountable for failure to do so. Similarly, loan modifications for borrowers in danger of default should be encouraged as the only realistic means of mitigating the continuing effects of the financial crisis. These are the precise activities that credit unions in New York State have engaged in and why credit unions have done noticeably better than banks in avoiding excessive foreclosures and delinquencies.

However, given the broad language of the Act, our concern is that improperly implementing this legislation will result in mortgage lending becoming overly burdensome, especially for many small to medium size credit unions. As a result, in promulgating this final regulation there are key areas where the Federal Reserve should exercise its flexibility so that credit unions can operate with clear guideposts.

Most importantly, the regulation should provide a safe harbor, not just a presumption of legality in favor of those credit unions and other financial institutions that provide "qualified mortgages "as such mortgages are defined under the Act. Implementing this suggestion will accomplish several goals: first, and most importantly, it will provide incentives for financial institutions to provide qualified mortgages since they will be able to offer mortgages that expose them to liability under the Truth in Lending Act. In contrast, if the regulation simply provides a presumption of legality, institutions will still face the cost of litigation even if they know that their lending practices will ultimately withstand legal scrutiny.

In its introductory material, the Federal Reserve points out that under this approach a qualified mortgage would actually have to meet fewer criteria than financial institutions will be required to consider when determining a consumer's ability to repay the loan. For example, a qualified mortgage does not require a financial institution to take into account a consumer's employment status or the

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simultaneous payment of outstanding loans. As a result, the Board is considering adding requirements for a qualified mortgage should include criteria beyond that which is delineated in the statute.

There is no need for a qualified mortgage to include additional criteria. Most importantly, the statutory intent is clear as Congress drafted specific criteria for both a consumer's ability to repay and a qualified mortgage. Consequently, in adding criteria the Board would not be filling in an area where the statute is silent, but instead would amend the definition of a qualified mortgage. In addition, the statutory requirements of a qualified mortgage as a loan that contains no interest only payments, has reasonable points and fees and is given to consumers with verified income and assets insures that lenders are not engaging in the type of loans that necessitated an ability to repay standard in the first place. Simply put, there is no incentive for a financial institution providing a qualified mortgage to act simply as a mortgage originator as opposed to a mortgage underwriter.

Under the Dodd- Frank Act Congress mandates that modifications from so called hybrid mortgages to standard mortgages must result in "materially lower monthly payments for the borrower. " The Board is proposing that lenders meet this obligation by reducing mortgage payments by at least ten percent (10%). This threshold is too high. In many respects the statutory requirements for converting hybrids to standard mortgages are already too strict and are likely to result in minimal modifications under this Act. For example, by making relief available only to people who made prompt loan payments and concentrating on mortgages due to readjust, the statute seems to be frozen in time and fails to reflect the continuing realities facing borrowers who are in danger of foreclosure not because of the complexity of mortgage arrangements, but simply because they are underemployed.

Against this backdrop, the threshold should be reduced to 5%. The 5% baseline will provide incentives to make modifications while providing important savings to borrowers. In contrast, a 10% minimum reduction will force credit unions to choose between taking on risky loans and forgoing modifications. This choice is not consistent with the main purpose of the statute.

In finalizing the modification regulation, the Federal Reserve should give consideration to exempting costs related to the recoding of mortgages from calculation of points and fees. New York has among the most expensive mortgage recording fees in the country. As a result, credit unions considering modifications under the statute will have to choose between imposing additional cost to the home owner, who may already be in trouble, and eating additional costs for a loan which is already too expensive. These expenses could be mitigated by specifying that under a newly modified standard mortgage that the points and fees for registering the new mortgage may be excluded from any caps finalized under this proposal.

Under the law creditors must verify a borrower's repayment ability using "verified and documented information. " The Board is generally interpreting this provision as mandating that lenders rely on third party documentation, such as tax returns. In developing feedback for this comment letter, it has come

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to the attention of the Association that there are unique circumstance where third party documentation will actually hinder credit unions from providing mortgagees which would otherwise meet the stringent standards reasonably expected under the statute. For example, many first and second generation immigrants are often using financial institutions for the first time and have not developed an extensive credit history or may not be comfortable s providing employment records and tax returns. In these circumstances, as long as the credit union can document the necessary due diligence to ensure that a borrower is, in fact, qualified; they should not restricted to third party documentation. For example, suppose a borrower applies for a mortgage claiming an income of $50,000 per year. The credit union should be able to document that they have reviewed the member's account and that there is a reasonable basis for concluding that the member makes $ 50,000 per year. So long as they can demonstrate and document the steps taken to verify information, they should not be prohibited from providing a mortgage so long as they can provide such documentation.

Mortgage lending has become increasingly complicated and burdensome in the name of protecting the consumer. Regulators should be mindful of the increased burden imposed by these legislative changes and we believe that the suggestions we have made will go a long way to providing flexibility as well as incentives to refinance mortgages where needed

Sincerely ,

William Mellin
CEO/President Credit Union Association of New York

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