Via Electronic Delivery

August 15, 2007

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th St. & Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Home Equity Lending Market; **FRB** Docket No. OP-1288; 72 Federal Register 30380 (May 31, 2007)

Dear Ms. Johnson:

The American Bankers Associations (ABA)[1] and America's Community Bankers (ACB)[2] welcome the opportunity to respond to the request of the Board of Governors of the Federal Reserve System (Board) for comments on whether the Board should use its rulemaking authority to address concerns about certain loan terms or practices. We applaud the Board for taking steps to evaluate whether and how it can address predatory lending issues. We also commend the Board for its appreciation of how important it is to preserve incentives for responsible lenders to provide credit to borrowers, particularly to low- and moderate-income borrowers.

On June 14, 2007, the Board held a public hearing to evaluate the home equity lending market and adequacy of existing regulatory and legislative protections for consumers. Included in the topics addressed at this hearing was how the Board could use its rulemaking authority under section 129(l)(2) of the Home Ownership and Equity Protection Act (HOEPA) to address concerns about abusive lending practices and procedures—as well as possible predatory lending—in the mortgage market, including the subprime mortgage market. The Board has asked a number of specific questions about possible rulemaking and has requested comments in general on consumer protections in the mortgage market.

[1] ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, savings banks, and bankers banks--makes ABA the largest banking trade association in the country.

[2] ACB is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit *www.AmericasCommunityBankers.com*.

General Comments

ABA and ACB support the overall objective of protecting borrowers by fighting abusive or predatory lending practices and have supported in general the recent issuances of guidance by the federal banking agencies on nontraditional mortgages and on subprime lending. Moreover, we believe, and have repeatedly expressed this belief to the Agencies, that addressing the abuses in the subprime lending market and unfair or deceptive practices in general cannot be limited to only the banking industry, as the two previous guidance documents have been limited. As all of the federal banking regulators have testified to Congress in various hearings, the majority of abuses are not committed by members of the banking industry but rather by state-licensed brokers and lenders. Therefore, any guidance or regulations issued should apply not only to the banking industry but also to non-bank lenders, servicers, brokers, and others involved in the mortgage lending business.

ABA and ACB support appropriate and effective use by the Board of its HOEPA authority to curb abuses in the subprime lending market, particularly in situations where there is serious potential for a significant and unexpected change in repayment terms that jeopardize the potential for the loan to be repaid. We believe it is unnecessary and unwise, however, to apply to prime and fixed-rate mortgages the underwriting requirements discussed at the Board's hearings. Prime borrowers are well served by the type of flexible underwriting that is performed in the market currently.

While the contemplated expansion of HOEPA regulations should apply only to the subprime market, we firmly believe that subprime lending, when done responsibly, serves an important role in our society. It is very important to recognize that subprime lending in no way equates to predatory lending. Expansion of subprime credit in recent years has increased homeownership opportunities to under-served and minority populations as well as to those who have impaired credit due to temporary financial setbacks. Subprime lending is a key factor in the current, unprecedented homeownership rates, in general, and among minorities, in particular. Any regulatory response must be sufficiently flexible to permit lenders to work with existing customers who are experiencing difficulties.

Any rule also must apply only prospectively. Rulemakings under HOEPA require a determination that a practice is unfair or deceptive (or, in the case of certain refinancings, abusive). A determination that some or all of the practices at issue in the current rulemaking are unfair, deceptive, or abusive undoubtedly will raise the issue of whether the practice should be treated as if it has always been unfair, deceptive, or abusive. While certain practices – such as deliberately misrepresenting loan terms – clearly have never been acceptable, this is not the case with the practices under consideration. Indeed, any of the practices at issue may be perfectly appropriate and beneficial to the consumer, depending on the totality of the circumstances. The Board needs to ensure that loans already made are not effectively subject to standards of conduct that do not exist.

Because of the need for consumer protections in the subprime market to extend over all of the market players and not just the banking industry, we also support the recent pilot project to improve supervision of non-depository subprime mortgage lenders announced by the Board, the Office of Thrift Supervision, the Federal Trade Commission, and state agencies. As is discussed below, we are concerned that federal and state supervision of nonbank lenders and brokers lacks the infrastructure of supervision and enforcement that is necessary to protect consumers. The announced pilot project appears to represent a significant step in the right direction of fostering an examination and supervision infrastructure that is effective across the mortgage market.

Focus on the subprime lending market: The Board asks if new consumer protection regulations should be limited to subprime mortgages or to certain types of mortgages, or should apply to the entire mortgage market. The problems thus far have been largely confined to the subprime market. Thus, a regulatory response should be tailored to address the problem of subprime loans in which there are abusive practices; it should not extend to all mortgages.

However, in order for the Board to focus on the subprime market, the Board will need to craft a more workable definition of "subprime" than is currently being used by bank regulators. The regulators have been using a definition of "subprime"[3] that originally was created solely for safety and soundness regulation, not for consumer protection. HOEPA does not address safety and soundness; it is focused solely on consumer protection. While the two objectives are compatible, operating in different regulatory contexts they can – and do – lead to very different regulatory responses. For instance, while broad, open-ended terms may be appropriate when instructing banks on how they should design programs to address safety and soundness issues, such terms are inappropriate in consumer protection laws where greater specificity is needed to ensure compliance and avoid legal sanctions.

The definition of "subprime" used in the Subprime Statement is broad and, in many respects, vague. There was little problem in using this definition in the context of the 2001 guidance because it was used in the general supervisory review of a body of loans to evaluate whether the bank had a "subprime lending program." However, this definition (created to identify subprime lending *programs*) becomes very problematic when used to identify each and every subprime *borrower* and thus each subprime loan for consumer protection purposes. It becomes even more problematic when enforcement measures are applied, particularly since the Board has not stated which remedies under Regulation Z and the Truth-in-Lending Act will apply to violations of any rulemaking arising from

[3] The proposed Statement incorporates the definition of "subprime" that is used in the 2001 Expanded Guidance for Subprime Lending Programs. That document states:

> The term "subprime" refers to the credit characteristics of individual borrowers. Subprime borrowers typically have weakened credit histories that include payment delinquencies, and possibly more severe problems such as charge-offs, judgments, and bankruptcies. They may also display reduced repayment capacity as measured by credit scores, debt-to-income ratios, or other criteria that may encompass borrowers with incomplete credit histories. Subprime loans are loans to borrowers displaying one or more of these characteristics at the time of origination or purchase. Such loans have a higher risk of default than loans to prime borrowers. Generally, subprime borrowers will display a range of credit risk characteristics that may include one or more of the following:
> * Two or more 30-day delinquencies in the last 12 months, or one or more 60-day delinquencies in the last 24 months;
> * Judgment, foreclosure, repossession, or charge-off in the prior 24 months;
> * Bankruptcy in the last 5 years;
> * Relatively high default probability as evidenced by, for example, a credit bureau risk score (FICO) of 660 or below (depending on the product/collateral), or other bureau or proprietary scores with an equivalent default probability likelihood; and/or
> * Debt service-to-income ratio of 50% or greater, or otherwise limited ability to cover family living expenses after deducting total monthly debt-service requirements from monthly income.
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> **This list is illustrative rather than exhaustive and is not meant to define specific parameters for all subprime borrowers. Additionally, this definition may not match all market or institution specific subprime definitions, but should be viewed as a starting point from which the Agencies will expand examination efforts.**

[Emphasis added.]

the recent request for comment. For example, if violations are subject to private rights of action (including class actions involving the potential imposition of treble damages), banks and savings associations likely will take strong measures to avoid a lawsuit being filed let alone result in successful judgment. Lending that could possibly be asserted to be "subprime" may become excessively restricted or avoided altogether.

Compliance officers tell us that it is extremely difficult to use the current definition on a borrower-by-borrower basis. First, the definition is not complete but only illustrative. Second, it is difficult to know what satisfies criteria such as a "relatively high default probability" or an "otherwise limited ability to cover family living expenses." Even if workable tests could be established, each would have to be applied to every borrower and, if the borrower fit any one of them, the borrower would have to be classified as subprime.

The result is that compliance officers instead would simply have to require that their lenders treat all borrowers as subprime borrowers unless the borrower is clearly and demonstrably a prime borrower. The greater the possible penalties, the greater the caution that bank lenders will apply to their mortgage lending. This would have an overbroad and unfortunate result of applying to each borrower individually a definition meant to be applied to a pool of borrowers to determine if the pool was the result of a subprime lending program. It could have the presumably unintended effect of curtailing credit options to creditworthy borrowers who otherwise would benefit from the flexibility afforded by our banks and savings associations, an unfortunate result for borrowers individually and for important portions of the population nationally. The Board should not create that level of caution in lending to all borrowers who might exhibit even one of the suggested subprime characteristics.

Therefore, instead of using a broad, ambiguous definition that was intended to address safety and soundness concerns, **we recommend that the Board adopt a definition of "subprime" based on the type and terms of the loans that are prevalent in the subprime market**. This definition should apply to loans with significantly higher costs than those prevalent in the prime market and changeable loan terms—such as low initial rates, potentially rapid rate increases, and high or no rate caps—that in the absence of proper underwriting would be likely to result in the borrower being unable to service the loan. We believe that such an approach would more clearly reach those loans that have been the primary cause of the current abuses.

<u>Effectiveness of state laws</u>: The Board asks whether state laws that attempt to prohibit or restrict certain abusive lending practices are effective. We believe that uniform laws or regulations for a national financial market are much more effective for protecting consumers than are a variety of inconsistent state laws. The mortgage market today transcends local and state boundaries. Technological advances permit a consumer to obtain a mortgage loan from a lender on the other side of the country. This nationwide market requires nationwide protections. Accordingly, we support appropriate uniform federal laws.

Even in those states where there are strong consumer protection laws, in practice they may not be effective because brokers and non-federally insured financial institutions are not routinely examined (or examined at all) nor are they subject to the same levels of enforcement that are applicable to federally regulated institutions. In fact, there are numerous cases reported in the media in recent months of predatory or fraudulent lenders and brokers who, after being stopped from doing business in one state, simply moved to another state and started all over again. The imposition of any additional underwriting or disclosure requirements, whether by law or regulation, should be extended equally to all mortgage originators in all 50 states. **Consistent regulation, examination, and enforcement are needed** to rein in lenders that have perpetrated the worst offenses.

Of course, having uniform, universal standards solves only part of the problem. We are confident that such rules will be applied to the banking industry, since we are subject to a comprehensive and extensive supervisory and enforcement system. We are concerned, however, that there is not a comparable enforcement program generally available for non-bank financial firms. Until there is such a program, enforcement will remain uneven and customer protection will be imperfect. Indeed, customers could become perversely drawn to practitioners operating under less well enforced standards.

<u>Brokers and non-federally regulated lenders</u>: Generally, ABA and ACB members have not participated heavily in the subprime mortgage market. Where they do lend, banks and savings associations have strong ties to the neighborhoods in which they lend and have every incentive to preserve the health of these communities and to act in the best interests of their customers. While the growth in recent years of subprime and non-traditional lending has, in too many cases, resulted in questionable practices by some lenders, ABA and ACB members have overwhelmingly maintained conservative and prudent mortgage underwriting standards.

This has not consistently been the case with mortgage brokers and non-federally regulated lenders. Mortgage brokers generally have little or no continuing interest in the loans they originate. They collect an upfront fee and usually have no continuing liability or responsibility. Even when there is an indemnification from the broker to the lender, brokers may often be unable to honor that commitment because they are so thinly capitalized.

In order to afford protections to all borrowers, any expansion of HOEPA rules must apply equally to all lenders and especially to mortgage brokers. We believe strongly that better controls on mortgage brokers are needed to prohibit unscrupulous firms from engaging in unfair and deceptive lending practices. This could be accomplished by better broker licensing requirements and required disclosure of who the broker represents in the mortgage transaction. Borrowers should receive a clear disclosure from the mortgage broker of—

- the broker's role in the transaction;
- the maximum amount of any fee the broker may receive from the lender; and
- the fact that such fee may increase based on a higher rate or other product feature.

We also support minimum net worth requirements for mortgage brokers and/or expanded bonding or insurance to cover borrower losses and claims. Some financial experts have suggested instituting a deferred compensation program for mortgage brokers, in which elements of the fees are paid to brokers only as the loan becomes seasoned. Further evaluation of such a deferred compensation program may be worthwhile.

Answers to the Board's Questions About Specific Practices

I. Prepayment penalties.

- Should prepayment penalties be restricted? For example, should prepayment penalties that extend beyond the first adjustment period on an adjustable rate mortgage (ARM) be prohibited?

Prepayment penalties can sometimes benefit both parties to the loan transaction. In some instances, consumers benefit by receiving a lower interest rate, while lenders benefit by acquiring an asset that offers greater performance predictability. Thus, we urge the Board to exercise caution in the consideration of any restriction on prepayment penalties.

The primary concern appears to have centered around the use of prepayment penalties that effectively prohibit consumers from refinancing hybrid ARM loans that have comparatively low fixed rates for an initial period (typically 2 or 3 years) but significantly higher rates after the initial period. With respect to these products, we believe it is appropriate to restrict prepayment penalties. Many of the benefits from the use of prepayment penalties may be obtained and the problems avoided if prepayment penalties do not extend beyond 60 days before the first payment reset.

- Would enhanced disclosure of prepayment penalties help address concerns about abuses?

Borrowers should be given sufficient information to make informed choices about whether to take a loan with a prepayment penalty. Thus, we support disclosure of the existence of prepayment penalties and the circumstances under which they may be imposed.

- How would a prohibition or restriction on prepayment penalties affect consumers and the type and terms of credit offered?

We do not believe that the type of restrictions that we refer to above would have a significant impact on the availability or cost of mortgage credit to subprime borrowers. Some proposals to restrict prepayment penalties, could, however, result in higher costs to consumers and/or restrict the availability of credit by increasing the risks and costs faced by lenders.

II. Escrow for taxes and insurance on subprime loans.

- Should escrows for taxes and insurance be required for subprime mortgage loans? If escrows were to be required, should consumers be permitted to "opt out" of escrows?

Full disclosure of the requirement to pay taxes and insurance should be given. Moreover, lenders should consider taxes and insurance when evaluating a borrower's ability to repay. However, many of our banks and savings associations – particularly community banks and savings associations -- tell us that their state's escrow requirements are excessively onerous. Additionally, they report that they are less likely to extend their lending into states with onerous escrow requirements. These impediments ultimately can have the effect of limiting credit options to consumers. In situations where a bank elects to conduct business notwithstanding the onerous escrow requirements, the compliance costs ultimately will be passed along to the consumer. This reduction in options and increase in costs can be avoided if the borrower simply pays the tax and insurance obligations directly. Accordingly, we do not recommend that escrow accounts be required.

However, if the Board decides to require such accounts, consumers should be able to opt out of the creation of an escrow account. Moreover, the federal and state regulators should explore ways to minimize or eliminate the adverse impacts of existing state laws governing the creation and operation of escrow accounts.

- Should lenders be required to disclose the absence of escrows to consumers and if so, at what point during a transaction?

As stated above, if escrows for taxes and insurance are not required, there should be clear disclosure to the borrower of the fact that the borrower is responsible for these expenses.

- Should lenders be required to disclose an estimate of the consumer's tax and insurance obligations?

We believe that it is appropriate for lenders to disclose an estimate of the costs for taxes and insurance. Operationally, it would be untenable to provide any loan-specific estimate at or before the time of loan application. Therefore, such an estimate should be provided at the time that the Good Faith Estimate (GFE) is provided or later. In addition to taxes and insurance, estimates should be considered for similar normal and not-optional recurring monthly housing expenses, such as condominium or homeowner association fees.

- How would escrow requirements affect consumers and the type and terms of credit offered?

We believe that consumers would not be negatively impacted by requiring disclosure of the fact that escrows are not required but that the obligation to pay taxes and insurance exists, accompanied by a GFE of the first year's taxes and insurance. However, as noted in our first answer, we believe that requiring escrow accounts will in fact serve as a market barrier for some institutions and thus reduce consumer options and increase consumer costs.

III. "Stated income" or "low doc" loans.

- Should stated income or low-doc loans be prohibited for certain loans, such as loans to subprime borrowers?

We believe that subprime borrowers generally should be qualified with at least a W-2 or payment stub information to the extent that such information is available. Where such documentation is not available, reduced documentation or stated income loans should be permitted when there are compelling mitigating factors, such as a large down payment or where the nature of income or financial resources justify such consideration.

We do not believe that a complete ban on such loans is appropriate. Such an action might limit credit to many borrowers who have the ability to repay (including self-employed consumers, retired persons who may have considerable assets but little income, and recent immigrants) but who otherwise find it difficult to produce documentation. We note that while Comptroller of the Currency Dugan has criticized stated income loans, he has recognized that there may be limited circumstances when they are appropriate, such as a refinancing that does not involve a cash take-out and is underwritten by the same lender who provided the original mortgage.[4] He also observed that stated income loans can make sense for individuals who are self-employed or who work on commission and have understandable difficulty in documenting income. Consistent with these observations, we believe that any general rule that prohibits stated income or low-doc loans should be rebuttable where the circumstances warrant.

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[4] Remarks by John C. Dugan, Comptroller of the Currency, Before the Neighborhood Housing Services of New York, May 23, 2007.

- Should stated income or low-doc loans be prohibited for higher-risk loans, for example, for loans with high loan-to-value ratios?

The higher a loan's risk, either from a loan's features or from a borrower's characteristics, the more important it is to verify the borrower's income, assets, and liabilities. Stated income and low documentation may be considered when there are mitigating factors that clearly minimize the need for direct verification of the borrower's ability to repay.[5]

- How would a restriction on stated income or low-doc loans affect consumers and the type and terms of credit offered?

We believe that a complete ban on stated income or low-doc loans would likely inhibit the ability of certain borrowers (as discussed above) to obtain mortgage credit even though they might have the ability to repay. A general rebuttable presumption against stated income or low-doc subprime loans may be reasonable, since such a general rule would provide lenders and borrowers the flexibility to accommodate unique circumstances.

- Should lenders be required to disclose to the consumer that a stated income loan is being offered and allow the consumer the option to document income?

Yes, particularly if the consumer could obtain a lower cost loan if the consumer could provide verification of income.

IV. Unaffordable loans.

- Should lenders be required to underwrite all loans based on the fully-indexed rate and fully amortizing payments?

We believe that it is generally appropriate to underwrite *subprime* loans[6] at the fully-indexed rate with fully amortizing payments. This is particularly important regarding increases in payments on deeply discounted hybrid ARM loans with short fixed-rate periods, such as 2/28 and 3/27 mortgages.

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[5] We reiterate our concern, first noted in our introductory comments, about the Board addressing safety and soundness concerns through its authority vested by the HOEPA amendments. Stated income loans that have a high LTV ratio are more of a safety and soundness consideration than a consumer protection concern. It does not appear to us that the Board has the authority to address safety and soundness considerations in a rulemaking under HOEPA.

[6] As discussed above, we think it is appropriate for the Board to focus primarily on subprime loans in any further proceeding to address the current problems. If the Board is considering applying the requirement to underwrite to the fully indexed, fully amortized rate for prime loans, we note that there are many circumstances in which prime borrowers may benefit from an underwriting based on something other than the ability to repay at the fully indexed, fully amortized rate. As noted in one recent study, "Our findings suggest that people make sensible housing decisions in that the size of house they buy today relates to their future income, not just their current income and that innovations in mortgages over 30 years gave many people the opportunity to own a home that they would not have otherwise had, just because they didn't have enough assets in the bank at the moment they needed the house." K. Gerardi, H. Rosen, and P. Willen, *Do Households Benefit from Financial Deregulation and Innovation? The Case of the Mortgage Market*, NBER Working Paper No. W12967 (March, 2007), *available at* http://ssrn.com/abstract=971601. Thus, the Board should not curtail the flexibility that has proven so beneficial in expanding home ownership opportunities for prime borrowers.

There may be times, however, when it is appropriate to make an ARM loan when the borrower is likely to be able to refinance the loan at a lower rate before the reset date. For instance, a borrower may be able to demonstrate that his or her income will increase significantly in the near future (such as would be the case with a borrower who is completing professional training and who has accepted an offer of employment). In these instances, providing borrowers with the option of an ARM loan that is not underwritten at the fully-indexed rate provides a useful service that otherwise may not be available to the borrower. Thus, any general rule should provide flexibility to permit exceptions as warranted.

Any rule also should distinguish products based on the length of the initial fixed-rate period before payments reset. We strongly oppose the extension of the requirement for fully indexed underwriting for traditional hybrid mortgages, such as 5/1s, 7/1s, and 10/1s. Within a 5-year period, most borrowers will pay off or refinance the original loan. Thus, practically speaking, a loan with an interest rate reset after an initial fixed-rate period of 5 years is a loan for which the consumer will be deemed able to pay throughout the effective life of the loan. The recent problems have not involved these types of products, and thus no regulatory response is required.

Similarly, the rule should distinguish products based on the amount of the applicable interest rate adjustment caps. Loans that are subject to comparatively low reset caps – for instance, two percentage points per year – do not present the same risks of payment challenges that other hybrid ARMs can. Accordingly, any regulatory response to the current problems should be appropriately tailored to focus only on those loans where there is a significant risk of payment shock.

- Should there be a rebuttable presumption that a loan is unaffordable if the borrower's debt-to-income ratio exceeds 50 percent (at loan origination)?

Generally, we believe that a subprime loan with a debt-to-income (DTI) ratio above 50 percent is likely to be difficult for the consumer to maintain. However, there could be a number of circumstances in which the consumer can demonstrate that this high DTI will not continue. Moreover, there may be instances of debt consolidation loans where a consumer with a very high DTI consolidates loans in order to lower payments while still having a DTI that exceeds 50% after the consolidation. Accordingly, we urge the regulators to provide lenders the flexibility to accommodate unique circumstances as warranted.

- Are there specific consumer disclosures that would help address concerns about unaffordable loans?

We believe that it is vital for consumers to understand the full nature of their credit obligations in order to assure their ability to repay. Mortgage brokers and lenders have an affirmative obligation to be honest and not to misinform prospective borrowers in advertising or product descriptions.

Consumers should be given relevant information about the costs, terms, features and risks of a mortgage. Specifically, consumers should be informed of:

  - The risk of increased payment requirements, including how the new payment will be calculated when the fixed payment period expires;
  - How prepayment penalties will be calculated and when they will be imposed;
  - The existence of any balloon payments;
  - Any pricing premium associated with reduced documentation and stated income loans; and

- The borrower's responsibility for paying taxes and insurance, if they are not escrowed.

Financial institutions and brokers should provide clear and balanced generic information addressing the points described above when a consumer is shopping for a loan.

However, the disclosure provided during the shopping period can *only* be generic in nature, because the lender does not have sufficient information about the consumer or the specific type of mortgage he or she may desire. The disclosure during shopping should describe generic differences in types of loans, including examples of payment adjustments, prepayment fees, pricing increases for choosing reduced documentation, responsibility for paying taxes and insurance, and other key terms of the loan. We urge the federal regulators to provide a template that banks could use at their option that would contain generic examples of the disclosures discussed above. When the consumers apply for a mortgage, and at closing, they should be provided with clear descriptions of those loan attributes that are loan-specific.

- How would such provisions affect consumers and the type and terms of credit offered?

We do not believe that the disclosure provisions discussed above, prudently applied, would have a substantially deleterious impact on the ability of credit-worthy consumers to obtain mortgage credit. However, we believe that mortgage lenders need to have a certain degree of flexibility to offer, and consumers need to have the ability to choose from, the widest range of reasonable and responsible mortgage financing options. In order to accomplish this without taking advantage of borrowers or harming lenders, borrowers must be in a position to make informed choices that are appropriate to their needs and consistent with their ability to repay.

Additional Issues

<u>Financial education</u>: Financial education is the first and most important protection that consumers can have to avoid unscrupulous lenders and lending practices. In support of this, we note that all of the banking trade associations make a considerable commitment to financial education, as do individual banking firms and the banking regulatory agencies. We believe that the Board, in partnership with the other federal banking agencies, industry, and advocacy groups, can play an even more significant role in educating consumers regarding the nature and impact of borrowing for a home loan, and we stand ready to assist in any way you would find helpful. Ultimately, the key to minimizing abusive lending is to help consumers know how to recognize and avoid the predators and the fraudsters by understanding the products available to them and the disclosures provided.

Conclusion

The Board should use its rulemaking authority to amend appropriately the HOEPA regulations to minimize mortgage fraud and abusive lending. However, the Board should focus on the subprime lending segment of the market, and the Board must craft a clear, bright-line definition of subprime rather than use the current bank safety and soundness definition in the Interagency Statement on Subprime Lending. We believe that a definition that focuses on the characteristics of subprime lending practices that have contributed to the problems in the subprime market will work best. Further, the Board's use of its authority to regulate subprime lending practices can only be effective if it applies equally and effectively to all lenders, including mortgage brokers and nonbank institutions.

If there are any questions about these comments, please do not hesitate to contact Paul Smith, at (202) 663-5331, or Janet Frank, at (202) 857-3129.

Sincerely,

Mark Tenhundfeld
Director, Office of Regulatory Policy
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Robert Davis
Executive Vice President and Managing
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America's Community Bankers