

SUMMARY OF CONSUMER¹ COMMENTS TO THE FEDERAL RESERVE BOARD ON UNFAIR MORTGAGE LENDING PRACTICES

The Federal Reserve Board must strengthen its rule in order to change market incentives and prevent future lending abuses like the ones that have led to today's foreclosure crisis—the greatest since the Great Depression.

While the Board's proposed rule takes on significant issues at the heart of abusive lending, the rules fall short due to the Board's desire to balance protecting consumers with preservation of the credit markets—the markets that without significant regulation created today's crisis. Fair access to credit can be preserved with strong consumer protections; only abusive lending will be shut out by strong and sufficiently specific rules.

The Board's regulations should:

- **Cover all owner-occupied mortgage loans, including prime loans and home equity lines of credit.** Abuses in the prime market should not go unanswered. Many borrowers on fixed incomes have received unaffordable prime loans from depository institutions. HELOCS are also a growing part of the problem.
- **Require an ability to repay analysis for each loan.** The Board's proposed rule is important because unaffordable loans are at the core of today's crisis. However, a pattern and practice requirement will present an insurmountable barrier to most homeowners, who will not be able to obtain such information, or whose attorneys will be unable to procure such information in most cases involving individual homeowners.
- **Require a thorough and genuine income analysis.** Income verification is a basic component of ensuring affordable lending. The Board should eliminate the safe harbor for loans where the income relied upon is not materially greater than the actual income. This rule will prevent reasonable regulatory enforcement since creditors only will face liability where someone can prove the income relied upon was different from the actual income and examiners often will not have information about the actual income. The safe harbor will create an incentive to not comply with the rule and will create a significant barrier to borrowers seeking to challenge the income documentation on their loans. Moreover, where income verification does occur, creditors should be required to use the best available documentation rather than simply a range. We applaud the Board's inclusion of this range of acceptable sources of verification; we only ask that priority be given to the best evidence available.

¹ National Consumer Law Center on behalf of its low income clients, along with Consumer Action, Consumer Federation of America, Consumers Union, Leadership Conference on Civil Rights, National Association of Consumer Advocates, National Fair Housing Alliance, and the Empire Justice Center.

- **Ban prepayment penalties.** Prepayment penalties are often associated with racial steering and generally do not buy down the rate. If the Board chooses not to ban them, they should at least prohibit their use along with yield spread premiums. At a minimum, prepayment penalties should expire six months before any rate reset.
- **Require escrowing with a later and more substantial opt-out.** We applaud the Board's escrow requirement. However, borrowers should only be able to opt out once they have developed some equity and some payment history to indicate that they can make the escrow payments on their own.
- **Establish a fiduciary duty for all brokers and allow yield spread premiums only where the rate includes all closing costs; yield spread premiums also should be included in the HOEPA points and fees trigger.** Yield spread premiums are a major cause of homeowners being up-charged and are associated with racially disparate pricing. Consumers believe their broker works for them. The rules must eliminate the invisible means that cause borrowers to pay more than they should have to pay.
- **Address lender and originator incentives for appraisal fraud.** The appraisal rules should set up standards that a homeowner more easily can prove and that will put pressure on the creditor to police the appraiser.
- **Set significant requirements for mortgage servicers.** At a time where it is clear that servicers are not meeting the needs of borrowers in crisis, more than the proposed rule is needed. In particular, the Board should state that failure to provide reasonable loss mitigation prior to foreclosure is an unfair practice.
- **Provide early mortgage disclosures for all loans that are binding.** Only binding disclosures, obtained sufficiently in advance, will lead to the comparison shopping that TILA envisions.
- **Make the APR more prominent in advertisements to promote shopping based on this factor.** The APR is the one factor that borrowers can use so they are not comparing apples to oranges.
- **Provide effective remedies,** including a reasonable standard for actual damages; rescission for failure to provide early disclosures; and clarification that assignee liability applies to substantive violations in the rule where violations were apparent on the face of the loan file documents.

Only a stronger and more specific rule will protect borrowers from abusive mortgage practices and create the incentives that creditors, servicers and assignees need to engage in fair mortgage lending and servicing.