OPPORTUNITYFINANCE NETWORK

August 15, 2007

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

Attention: Docket Number OP-1288
regs.comments@federalreserve.gov

Re: Comments on Home Equity Lending Market

Dear Ms. Johnson,

Opportunity Finance Network[1] appreciates the chance to comment on the effectiveness of the Home Ownership and Equity Protection Act (HOEPA) as it relates to the subprime mortgage market.

Opportunity Finance Network commends the Federal Reserve Board (Board) for its continued efforts to combat predatory lending practices and ensure a responsible mortgage system. We support strong legislative and regulatory solutions that facilitate affordable, responsible credit for all Americans.

This letter highlights four major concerns with nontraditional mortgages in the subprime market: prepayment penalties; escrow for taxes and insurance; borrower income verification; and loan cost disclosure. We also provide information about Opportunity Finance Network's origination and servicing platform and products to serve the subprime market as a positive example of subprime mortgage products. Opportunity Finance Network urges the Board to use its regulatory authority provided in HOEPA in the Truth in Lending Act (TILA), Regulation Z (12 CFR 226.32 and 34) to approve regulations that protect consumers from loans with unfair and deceptive terms.

According to the Mortgage Bankers Association, 223,000 households with subprime loans lost their homes to foreclosure and 725,000 missed mortgage payments in the third quarter of 2006. Defaults at the end of 2006 exceeded the rate in the last recession of 2001. According to the FDIC, more than 14% of the $1.28 trillion in outstanding subprime loans were delinquent by the end of 2006.

To preserve homeownership for American families, we need real, systemic change in policies that protect homeownership. The explosion of the largely unregulated subprime lending industry has contributed to an increase in abusive lending practices that threaten to undo many of the community reinvestment gains of the last decade and changed the face of the financial services industry. Predatory lending, in all its forms, strips billions of dollars from consumers and communities in the United States. A rigorous predatory lending standard will protect new homeowners created by the Administration's initiatives to increase minority and low-income homeowners, as these populations are among those most vulnerable to predatory lending.

[1] Opportunity Finance Network, the national network of more than 160 financial institutions creates growth that is good for communities, investors, individuals, and the economy. Its members include Community Development Financial Institutions (CDFIs) and other opportunity finance institutions that work just outside the margins of conventional finance to bring those markets into the economic mainstream and to help the economic mainstream flow into those markets. CDFI financing has resulted in significant numbers of new jobs, jobs preserved, quality, affordable housing units, and new commercial and community facility space in all 50 states. Over the past 30 years, the Opportunity Finance industry has provided more than $23 billion in financing that would not otherwise have happened in markets that conventional finance would not otherwise reach.

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Prohibit Prepayment Penalties

The Board asks, "Should prepayment penalties be restricted?" Many subprime mortgages include prepayment penalties, which can cost families thousands of dollars when they refinance or pay off their loans early. Too often, the borrower does not receive a lower interest rate in exchange for the prepayment penalty. In the inefficient subprime lending industry, prepayment penalties are simply another method of stripping home equity or trapping borrowers in costly loans. These fees are only appropriate when they are in exchange for a real benefit to the borrower.

While prepayment penalties are common for interest-only ARMs, it appears that few subprime lenders currently impose prepayment penalties where the term outlasts the interest-only period. The Center for Responsible Lending found that 53.1% of interest-only ARMs had a prepayment penalty at origination; on only 0.9% of these loans was the prepayment penalty term greater than the interest-only period.

Opportunity Finance Network encourages the Board to follow the lead of the federal credit unions, which prohibit charging prepayment penalties[2] and apply this to all subprime ARM loans. By acting now to prohibit prepayment penalties on subprime loans, the Board can protect borrowers from being trapped in unaffordable loans without causing a major disruption to the market.

Proper Notification of Tax and Insurance Obligations

The Board asks, "Should escrows for taxes and insurance be required for subprime mortgage loans?" At the least, lender's underwriting should take into account charges that borrowers certainly will incur. Opportunity Finance Network urges the Board to declare it an unfair and deceptive practice to exclude from the repayment analysis the cost of hazard insurance and property tax escrows in connection with subprime loans.

Borrower's Income Verification and Proper Documentation

Opportunity Finance Network is concerned about the approval of borrowers without considering appropriate documentation of income. Verification of the borrower's income, assets, and liabilities is essential to our efforts to protect the public interest. If a lender makes a nontraditional subprime loan, the Board should not permit reduced documentation. Documentation, after all, serves as a check on the risk of the loan.

Disclosure of the True Cost of a Loan

In order to protect consumers from delinquency and foreclosures, they must understand the material terms, costs, and risks of loan products at the time of product selection, not when they submit an application or at closing, allowing them to choose among payment options. Proper disclosure should apply to *all* mortgage product communications.

Opportunity Finance Network is gravely concerned about certain adjustable-rate mortgage (ARM) products with low initial payments based on a fixed introductory or "teaser" rate that expires after a short initial period then adjusts to a variable index rate plus a margin for the remaining terms of the loan.

Too many lenders focused on the minority and low-income market have abandoned prudent lending standards to make ARM loans that borrowers cannot repay without refinancing or selling their home. Because of this irresponsible underwriting, an increasing number of homeowners cannot make their mortgage payments, making them vulnerable to foreclosure. As of September 2005, ARMs accounted for roughly 70% of the prime mortgage products originated and securitized and 80% of the subprime sector.[3] Studies show that these types of subprime mortgages typically include features that increase the

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[2] 12 CFR 701.21

[3] *2006 Global Structured Finance Outlook: Economic and Sector-by-Sector Analysis*, Fitch Ratings Credit Policy, (New York, NY), January 17, 2006, at 12.

chance of foreclosure regardless of the borrower's credit. Responsible lending demands a realistic analysis of the borrower's ability to repay the loan based on all its terms.

Opportunity Finance Network strongly agrees with the recent guidance that states,

> "An institution's analysis of a borrower's repayment capacity should include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule. In addition, for products that permit negative amortization, the repayment analysis should be based upon the initial loan amount plus any balance increase that may accrue from the negative amortization provision."

The Board should take this guidance a step further and declare it to be an unfair and deceptive act or practice for any lender to fail to adequately disclose the terms of a loan using the fully indexed rate or to exclude from the repayment analysis of a loan the cost of hazard insurance and property tax escrows at the time of loan application.

Control Systems

In additional to the specific comment request by the Board, there is a need for control systems for safety and soundness. Institutions should be accountable, not only for their personnel, but also for applicable third parties, including mortgage brokers or correspondents. As Sheila Bair, FDIC Chair stated recently, "The most visible problems are among independent mortgage lenders, which we don't regulate, and this is where coordinated action is needed most."[4]

A Center for Responsible Lending analysis of 2004 Home Mortgage Disclosure Act (HMDA) data shows that 58% of first-lien subprime home loans were made by non-supervised lenders that reported their data to the U.S. Department of Housing and Urban Development (HUD). In other words, a majority of subprime loans are made by lenders that are not subject to safety and soundness oversight. When a reporting institution makes loans through a mortgage broker, the institution rather than the broker reports the HMDA data. Mortgage brokers accounted for 59.3% of subprime originations in 2005.[5] Opportunity Finance Network strongly recommends that at least some of the underwriting standards apply to all mortgage lenders and brokers, not just depository institutions. To accomplish this goal, the Board should work with the FTC to begin rulemaking proceedings to declare certain acts and practices related to underwriting of nontraditional mortgages to be unfair or deceptive acts or practices under Sections 18(a) & 18(f) of the FTC Act and 15 USC §§ 57a(a) & (f).

The subprime industry now rewards lenders and brokers who charge borrowers excessive points and fees or channel them toward riskier loan products. Unknown to most borrowers, brokers receive payments known as "yield spread premiums" for selling loans at a higher interest rate than the lender requires. Opportunity Finance Network believes that these practices should not just be avoided, but prohibited through regulation.

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[4] Remarks by Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation to the Greenlining Institute's 14th Annual Minority Economic Development & Homeownership Conference (Los Angeles, CA), April 19. 2007, http://www.fdic.gov/news/news/speeches/chairman/spapr1907.html

[5] "Brokers Flex Their Muscle in 2005, Powering Record Subprime Year," *Inside B&C Lending,* (Bethesda, MD), March 17, 2006. See also, "A Guide to HMDA Reporting: Getting It Right!," Federal Financial Institutions Examination Council, January 1, 2004.

Effective Lending in the Subprime Market

Opportunity Finance Network has created a residential mortgage platform, which is a competitive response to predatory and other high-cost lenders by offering alternative residential mortgage products. The mortgage platform operates under the banner of Opportunity Mortgage Network.

Our platform will offer multiple products, and one such product is particularly beneficial to borrowers that lack the savings assets to be approved for a mortgage without mortgage insurance premiums. Under the Opportunity Mortgage Network platform, Community Development Financial Institutions (CDFIs) and other nonprofits originate and broker the products into a specially designed centralized processing, fulfillment, closing, financial literacy, and servicing infrastructure. Opportunity Finance Network is offering turnkey operating systems, technology, training, certification, marketing, and lead generation to make it easy for CDFIs and nonprofits to be part of the solution to predatory lending by serving as originators of fair and competitive mortgage products. Each of the CDFIs and nonprofits under the platform must complete a certain number of hours of training in order to be certified to originate under the platform.

The aforementioned Opportunity Mortgage Network mortgage product has a five percent down payment assistance feature secured with a first and second mortgage, and supported with an 80-/20-/5-percent investor split. The 20-percent portion is credit enhanced with cash reserves and/or third party insurance, and the wholesale lender retains recourse on the 80 percent portion.

Key product features include:

- 105% LTV;
- 30-year fixed rate;
- Minimum 580 FICO;
- Maximum outstanding $5,000 in medical collection;
- National pre- and post-closing financial literacy with foreclosure intervention;
- Designed to serve low- and moderate-income, minority, and immigrant borrowers;
- First-time homebuyer friendly but not exclusive to first-time homebuyers;
- Prohibits any adjustable rate or "no/limited documentation" mortgage;
- Originators are prohibited from charging any fees beyond the fee structures delineated for the product and will be terminated if found charging fees outside the fee structure;
- All loans under the platform are serviced with the establishment of borrower escrows for taxes and insurance;
- No prepayment penalty;
- Three different levels of review for credit underwriting and compliance involving three separate, highly experienced, and well regarded parties; and
- A centralized processing system, owned by Neighbor Works America (JustPriceSystems, Inc.), manages all mortgage application processing, credit verification, and appraisal services.

Conclusion

It is vital that the Board take immediate steps to protect consumers and restore confidence in the mortgage market. Current regulations are insufficient to protect consumers from abusive lending practices in the subprime market. We urge the Board to use its rulemaking authority under HOEPA, specifically Section 129(l)(2) that confers regulatory authority on the Board to prohibit acts or practices in connection with mortgage loans and refinancing for unfair, deceptive, evasive, and abusive lending practices not in the borrower's interest, to implement the following:

- The Board should follow the lead of the federal credit unions and prohibit prepayment penalties and apply this to all subprime ARM loans.
- The Board should declare it an unfair and deceptive practice to exclude from the repayment analysis the cost of hazard insurance and property tax escrows in connection with subprime loans.
- If a lender makes a nontraditional subprime loan, the Board should not permit reduced documentation.
- The Board should declare it to be an unfair and deceptive act or practice for any lender to fail to adequately disclose the terms of a loan using the fully indexed rate or to exclude from the repayment analysis of a loan the cost of hazard insurance and property tax escrows at the time of loan application.
- Institutions should be accountable, not only for their personnel, but also for applicable third parties, including mortgage brokers or correspondents.
- "Yield spread premiums" for selling loans at a higher interest rate than the lender requires should be prohibited.

Opportunity Finance Network thanks the Board for the opportunity to comment and we look forward to working in partnership with the Federal Reserve System to reduce unscrupulous lending practices. If you have questions or concerns about these comments, please do not hesitate to contact me at 215.320.4304 or mpinsky@opportunityfinance.net.

Sincerely,

Mark Pinsky

Mark Pinsky
President and CEO