NATIONAL COMMUNITY REINVESTMENT COALITION NCRC

July 30, 2009

NCRC Comments on "Mortgage Acts and Practices Rulemaking, Rule No. R911004" – Rule No. R911004

To Whom it May Concern:

The National Community Reinvestment Coalition (NCRC) appreciates that the Federal Trade Commission's Advance Notice of Proposed Rulemaking (ANPR) is intended to make unfair and deceptive practices illegal. The nation faces a foreclosure crisis in large part because risky lending was not constrained due to a lack of consumer protections and safety and soundness standards.

NCRC is an association of more than 600 community-based organizations that promote access to basic banking services, including credit and savings, to create and sustain affordable housing, job development and vibrant communities for America's working families. Our members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority and women-owned business associations, local and social service providers from across the nation.

NCRC operates a program called the National Homeownership Sustainability Fund (NHSF). The NHSF assists victims of predatory lending modify or refinance their loans. NHSF has helped more than 5,000 families and has saved more than $500 million in equity. The program has encountered a number of abusive practices including appraisal fraud, inflated incomes in low documentation lending, onerous prepayment penalties, unsustainable debt-to-income ratios, and servicing abuses.

Based on NCRC's NHSF program, we recommend the following:

Create "Plain Vanilla" Category of Loans: As outlined in the President's regulatory reform proposals for a Consumer Financial Protection Agency, the federal agencies should create a "plain vanilla" category of loans, which are loans with standard features readily understood by consumers. This category of loans would consist of fixed-rate, 30 year mortgages with prime rates. Lenders would be required to offer borrowers a choice of plain vanilla mortgages if they offer any other mortgages that do not meet the criteria of plain vanilla mortgages. The rationale behind this proposal is that plain vanilla mortgages of the fixed-rate variety have considerably fewer defaults and are prone to fewer abuses than other mortgages. In fact, one of the great innovations in the United States' mortgage markets for decades before the rapid increase of subprime lending was a standard, fixed-rate mortgage at low rates that made it possible for the majority of Americans to enjoy affordable and sustainable homeownership.

High-cost and Non-Traditional Loans: The mortgages that would not be considered plain vanilla mortgages would be high-cost and non-traditional loans. High-cost loans would be loans with the interest rate triggers identified in the Federal Reserve's changes to HOEPA and HMDA in July 2008. In addition, NCRC recommends a fee trigger of 5 percent of the loan amount to identify loans that are not plain vanilla. Non-traditional loans are those with adjustable rates and interest only or other payment features that result in negative amortization. NCRC urges the FTC to apply greater protections on these non-plain vanilla mortgages and also to apply greater fines for violations because the foreclosure crisis demonstrates that a disproportionate amount of abuses occurred with these mortgages.

Protections Regarding Loan Terms and Conditions: NCRC recommends that a comprehensive series of protections regarding loan terms and conditions apply to a broad category of loans so that lending is affordable and sustainable. The FTC should apply a rigorous ability-to-repay standard. This standard should establish a threshold debt-to-income ratio beyond which a loan is presumed not to be affordable. The ability-to-repay standard should require underwriting at the maximum possible rate in the case of adjustable rate mortgages. A residual income analysis must also be required. The ability-to-repay standards should also require that all borrower income be documented.

When the Federal Reserve requested comment on its HOEPA ruling, the FDIC recommended that the Federal Reserve Board ban prepayment penalties on high-cost loans and apply an across the board ban on yield spread premiums. We concur that prepayment penalties must be banned on high-cost loans and recommend that the ban also apply to non-traditional loans. In too many cases, NCRC's foreclosure prevention program has witnessed prepayment penalties thwarting borrowers from refinancing into more affordable loans. Yield-spread premiums are also subject to widespread abuse as NCRC has assisted borrowers who had yield-spread premiums (YSPs) and also paid exorbitant fees. We understand the Federal Reserve's current HOEPA proposal bans YSPs for both brokers and loan officers of bank and mortgage companies. We urge the FTC to follow suit. The only possible exception for the YSP ban would be in plain vanilla loans that contain no other fees or upfront payments to lenders or brokers (Senator Dodd had introduced an anti-predatory lending bill a couple of years ago with this approach).

Escrows must be required for all loans. Trade publications have just started reporting that a lack of escrows has made modifications extremely difficult since including taxes and insurance payments make modifications unaffordable. In fact, a lack of escrows in the first place significantly contributed to payment shock and unaffordable loans for borrowers.

The FTC also needs to consider bans on payment option and interest only loans that feature negative amortization or that allow payment options and interest only payments beyond a

carefully prescribed time limit (of 7 to 10 years). Non-traditional loans with these terms proved to be too risky for borrowers during the current crisis.

Steering loans with higher interest rates and/or onerous terms and conditions to borrowers that qualify for more favorable loans and/or plain vanilla loans must be outlawed. As documented by numerous studies by NCRC and others, steering minorities and other protected classes into higher cost loans was a prominent feature of abusive lending during the last several years. In fact, if the agencies had cracked down on steering a number of years ago, the magnitude of the current crisis could have been considerably smaller since the more vigorous enforcement would have deterred abusive lending from spreading beyond predominantly minority communities.

Stop Appraisal and Servicing Abuses: The Federal Reserve's HOEPA changes in the summer of 2008 regarding appraisal and servicing abuses should be adopted by the FTC. This includes no intimidation of appraisers, prompt recording of lender payments by servicers, and prompt payoff information provided by servicers. In addition, NCRC recommends that servicers be required to make reasonable efforts to modify loans before foreclosing. Servicers must demonstrate that they assessed the feasibility of modifying and when modifying could not make loans affordable, the servicers made good faith efforts to purse short-sales or deeds-in-lieu before foreclosing.

NCRC's "Predatory Appraisals: Stealing the American Dream" (2005) documented the prevalence and harm caused by inflated appraisals. NCRC found that where there were incidences of appraisal fraud in either purchasing or refinancing, mortgage payments increased substantially over time. Fifty-three percent of borrowers subjected to appraisal fraud experienced a 20-50 percent increase on their monthly payments; 29 percent experienced up to a 20 percent increase on their monthly payments; and 18 percent experienced a 50 percent or higher increase on monthly payments.[1]

Owners of Real Estate Owned properties (REOs) are eager to dispose of REOs because REOs are costly to maintain and attract vandalism and crime. These REO owners have enlisted real estate brokers to issue Broker Price Opinions (BPOs) of the value of the REOs. The real estate brokers, acting as agents of the REO owners, develop hasty and inaccurate BPOs that underestimate the values of the REOs. Undervaluation is often destructive to local markets and depresses the value and equity of neighbors of REO properties.

The FTC should prohibit BPOs from being the primary means of determining the value of property for home purchases, refinance, and other types of loans using homes as collateral.

[1] NCRC, Predatory Appraisals: Stealing the American Dream, NCRC 2005.

Moreover, since valuation of REOs can be difficult and prone to abuse, BPOs should be outlawed in the case of REOs.

Codify the Home Valuation Code of Conduct for Appraisals

NCRC founded the Center for Responsible Appraisals and Valuations (Center) after receiving a significant number of complaints from borrowers about overvalued appraisals. The Center encourages mortgage finance professionals to adopt a code of conduct pledging to ensure fair and accurate appraisals for borrowers; informs the public about those who have taken the code of conduct so that borrowers can make more informed choices about mortgage finance professionals; and mediates differences between professionals about valuations, as well as files complaints on behalf of appraisers when they report pressure by lenders, brokers, and others to inflate housing values.

NCRC's Center endorses valuation best-practices for all industry participants. Therefore, NCRC recommends that the FTC codify the Home Valuation Code of Conduct (HVCC) negotiated among New York Attorney General Andrew Cuomo, the Government Sponsored Enterprises (GSEs), and the GSE's regulator (first OFHEO and then FHFA). These provisions provide additional clarity regarding no intimidation and coercion of appraisers, and also establish procedures for ensuring that appraisals are conducted impartially when the lending institution owns an affiliate that conducts appraisals.[2]

In particular, NCRC strongly endorses the HVCC ban on appraisals directly ordered by mortgage brokers. In a white paper issued in 2006, NCRC's Center reasoned that if a regulated institution buys the loan package from a broker, the broker, as an interested party, clearly cannot order, manage, influence, review, or control the appraisal. Because this would interfere with the normal functions performed by the broker in "shopping the loan" for the borrower, it is necessary for the broker to place a qualified, independent intermediary between it and the appraisal function. That intermediary must be totally independent of the transaction. Thus, the utilization of any entity that has, or might have, an interest in the transaction would not be compliant with proper appraisal practices. In fact, in a surprising number of fair lending mystery shops conducted of mortgage brokers by NCRC, the broker being audited represented to the shoppers that they knew appraisers who could ensure the origination because they "knew how to get value out of homes."

[2] http://www.orea.ca.gov/pdf/HVCCFinalCODE122308.pdf.

Conclusion

NCRC appreciates the opportunity to comment on the ANPR and encourages the FTC to propose a rule in an expeditious manner since a lack of regulatory oversight was a major factor contributing to the foreclosure crisis. If you have any questions about our comment letter, please contact me or Josh Silver, Vice President of Research and Policy, on 202-628-8866. Thank you for your consideration.

Sincerely,

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John Taylor

President and CEO