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NCRC

September 30, 2003

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

Docket No. OP-1158

Dear Ms. Johnson:

NCRC, the nation's CRA trade association of 600 community organizations, appreciates the Federal Reserve's proposed guidance on anti-tying, but believes that the guidance needs to include stronger standards to protect consumers against abusive practices. The guidance must include a substantial discussion of when combinations of loans, credit insurance, and other non-bank products violate anti-tying provisions of the Bank Holding Company Act. The case history of court cases and Federal Reserve enforcement would be valuable additions to the proposed anti-tying guidance.

Single premium credit insurance and adding other unnecessary products to high cost loans are major abuses committed by predatory lenders. Predatory lenders often "tie" credit insurance to loans, telling borrowers that they must purchase the credit insurance. The anti-tying guidance must contain strong warnings against this practice. Yet, the proposed guidance barely mentions abuses associated with credit insurance.

The lack of attention to credit insurance and product packing in the proposed guidance is ironic in the wake of a recent lawsuit by the Federal Trade Commission (FTC). According to *Inside Mortgage Finance* (September 22, 2003 issue), the FTC has sued the Georgia-based subprime lender, Stewart Finance, for padding loans with credit insurance and car club memberships. In some cases, the lender rejected applicants after the applicants turned down the credit insurance.

The proposed guidance also needs more discussion of "voluntary" versus "coerced" acceptance of non-bank products by subprime borrowers. The guidance states that it is acceptable if a borrower voluntarily purchases a non-bank product or voluntarily purchases a package of products that include loans and non-bank products. The guidance includes examples of corporations purchasing loans and securities underwriting services from bank holding companies. In the context of the corporate examples, the guidance states that the terms of a loan agreement "will provide the best evidence of whether the customer was required to purchase" the non-bank product. An analysis of only the terms of an agreement, however, is insufficient in the case of subprime borrowers. Marketing techniques and sales tactics are often the most deceptive and coercive elements of the lender transaction with subprime borrowers not familiar with financial institutions. The guidance must therefore clearly differentiate among the relative importance of the factors determining coercive tying in the subprime consumer market as opposed to the commercial corporate market. The Federal Reserve Board could readily utilize the growing case history of government and private lawsuits against predatory lenders to identify and warn against illegal tying in the subprime market.

In short, the Federal Reserve Board must significantly strengthen its proposed guidance on tying to warn against coercive practices in the subprime market. At this point, the guidance appears to explain to banks what is permissible instead of issuing strong warnings against abusive lending and product padding. In response to the persistence and growth of predatory lending, certain federal agencies are busy preempting state anti-predatory law. Instead of aiding and abetting predatory lending, the Federal Reserve Board has an opportunity with this guidance to issue strong and comprehensive warnings against predatory lending.

If you have any questions, please contact me or Josh Silver, Vice President of Research and Policy, on 202-628-8866. Thank you for the opportunity to comment on this important matter.

Sincerely,

John Taylor
President and CEO