Requests for Comments
The Commonwealth of Massachusetts
Office of the Attorney General

M.G.L. c. 93A, 940 C.M.R. 8.00: Mortgage Lenders and Mortgage Brokers

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I. Introduction

The National Consumer Law Center[1] is pleased to submit these comments in response to the Office of the Attorney General's Request for Comments on contemplated amendments, pursuant to Massachusetts General Laws Chapter 93A, of the regulations which govern the conduct of mortgage brokers and mortgage lenders.

We are pleased that the Office of the Attorney General is contemplating revising the regulations, 940 C.M.R. 8.00 et seq., to address the growing foreclosure crisis in Massachusetts. The rate of homes entering foreclosure rose sharply in 2006 and continued its rise to record breaking levels in the first quarter of 2007. Loans made by the subprime lending industry have been universally recognized as a significant contributor to the foreclosure crisis.[2] The foreclosure rate for subprime mortgages in Massachusetts, including the abusive ones targeted at low-income homeowners, at it's peak was 15.6 times higher than for prime conventional mortgages.[3] According to the

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[1] The National Consumer Law Center, Inc. (NCLC) is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. These comments are submitted on behalf of its low-income clients. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of sixteen practice treatises and annual supplements on consumer credit laws, including *Truth In Lending* (5th ed. 2003) and *Cost of Credit* (3rd ed. 2005) and *Foreclosures* (1st ed. 2005). The publications, as well as our bimonthly newsletters, which include *NCLC Reports Consumer Credit & Usury Ed.*, describe the law currently applicable to all types of consumer loan transactions.

[2] See, e.g., Sen. Charles E. Schumer, Chairman, Special Report by the Joint Economic Committee, *Sheltering Neighborhoods from the Subprime Foreclosure Storm*; Ellen Schloemer, Wei Li, Keith Ernst, and Kathleen Keest, *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners*, Center for Responsible Lending (December 2006).

[3] Mortgage Bankers Association, National Delinquency Survey, Third Quarter 2006, at 5.

Federal Reserve Bank of Boston, subprime adjustable rate mortgages were connected to more than 55 percent of the state's foreclosure filings in the third quarter of 2006.[4]

Research has documented the prevalence of subprime lenders in low-income and minority communities.[5] Older cities and towns populated by African-American, Latino and low-income homeowners are disproportionately targeted by subprime lenders and residents of these communities lose their homes at a faster rate than others. While banks, lenders and other investors on the secondary market can protect themselves from the costs associated with a high foreclosure rate, Massachusetts consumers are paying the ultimate price, with the loss of their home and hard-earned equity. Foreclosure is a financial disaster for individuals, families and communities in the Commonwealth; it depletes wealth from already vulnerable populations.

Amending the existing regulations to add protections for consumers in the loan origination process and holding assignees liable for the abuses associated with these loans, would be far reaching. In addition, the Center applauds the emergency regulations implemented by the Attorney General which would protect desperate homeowners from foreclosure rescue scam artists. We suggest the Attorney General consider amendments to the current mortgage broker and lender regulations which would do the following:

I. Expand the scope of existing regulations to protect consumers with purchase money mortgages.
II. Impose a fiduciary duty on brokers.
III. Impose a suitability standard which includes an assessment of the borrower's ability to repay.
IV. Hold assignees liable for the conduct of originators.
V. The proposed emergency regulations on Foreclosure Rescue Transactions and Foreclosure-Related Services should be made permanent.
VI. Conclusion and answers to questions posed by the Attorney General

Where appropriate, we have provided suggested language which will help the Attorney General in crafting these standards.

I. Expand the scope of existing regulations to protect consumers with purchase money mortgages

Currently 940 C.M.R. 8.00 et seq. applies to non purchase money mortgages. Expanding the scope of the regulations to cover purchase money mortgages would add an umbrella of protections for vulnerable consumers. Massachusetts consumers are being steered to high-rate subprime lenders for purchase money loans. A report prepared by

[4] Reade, Julia, *Foreclosure Trends in Massachusetts*, Federal Reserve Bank of Boston (Jan. 5, 2007 Version).

[5] See e.g., Jim Campen, *Borrowing Trouble VII: Higher-Cost Mortgage Lending in Boston, Greater Boston and Massachusetts, 2005* (January 2007), available at www.masscommunityandbanking.org; Calvin Bradford, *Risk or Race: Racial Disparities and the Subprime Refinance Market*, Center for Community Change (May 2002), available at: http://www.communitychange.org/default.asp.

Jim Campen in January 2007 for the Massachusetts Community & Banking Council noted that high-rate purchase money mortgage loans outnumber refinance loans. One out of every four (25.6%) home-purchase loans made statewide in 2005 was a high-APR loan; 17.1% were refinance loans. In established cities and towns with heavy minority populations, the use of high-rate loans for home purchase is even more stark. In Lawrence, over two-thirds (67.5%) of all home purchase loans were high-APR loans; in Brocton 58.5%; in Everett 59.5%; and Springfield 54%.[6] Moreover, the report noted, high-APR purchase money loans accounted for over half the loans made to both African-Americans and Latinos.[7]

This is a significant and troubling development. As part our Massachusetts Foreclosure Prevention Project, the Center has worked closely for over a decade with attorneys and advocates in Massachusetts. We have reviewed many loan transactional documents and noted that the abusive practices we documented in high-rate refinance loans are now prevalent in purchase money mortgages. These include:

- falsification of income or assets on loan applications;
- excessive and unearned fees and costs;
- balloon payments, especially in 80/20 loans; and
- excessive prepayment penalties, especially in hybrid adjustable rate mortgages.

Despite the prevalence of abusive terms, consumers have fewer legal protections for purchase money mortgages. Important legal protections, such as the right to rescind under state and federal Truth in Lending laws, do not apply to purchase money loans. Moreover, though many of the loans are high-rate, they fall just below the trigger established by HOEPA and the state's Predatory Home Loan Practices Act.

Consumers who use a high-cost loan to finance the purchase of their home also face a significant risk of foreclosure. A subprime purchase money loan has a 102% higher risk of foreclosure than a subprime refinance loan.[8] This statistic is borne out by the experience of advocates at the Center where many of the loans we review are in foreclose within the first year.

II. Impose a fiduciary duty on mortgage brokers

Mortgage brokers originate over 60% of the loans in the United States, including two-third of the subprime loans. As most loans are immediately sold to investors on the secondary market, the broker's primary financial incentive is to close the loan, and collect his fee and commission, not the long term performance of the loan. This financial

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[6] Jim Campen, *Borrowing Trouble VII: Higher-Cost Mortgage Lending in Boston, Greater Boston and Massachusetts, 2005* (January 2007) at 5-6.
[7] Id. At 7.
[8] Ellen Schloemer, Wei Li, Keith Ernst, and Kathleen Keest, *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners*, Center for Responsible Lending (December 2006) at 21-22 (using 2003 data).

incentive coupled with the lack of transparency in the mortgage marketplace has resulted in many well documented abuses in the mortgage brokering industry.[9] Among the most common practices we as consumer advocates witness in brokered loans are falsified income or assets on the loan application, forgery, pressuring the borrower to sign (sometimes) blank documents and making false promises. Locally, the Division of Banks investigated and brought enforcement actions against a number of mortgage brokers. The investigations documented that some brokers have deliberately steered low and moderate-income consumers, and those with limited English language ability, into loans that they cannot afford by using misleading tactics and outright fraud.

The mortgage process and loan documents are baffling to borrowers, even those with advanced degrees, and incomprehensible to consumers of limited literacy and education. Brokers take full advantage of the complexity of the transaction. Brokers act as "trusted advisors;" they hold themselves out in advertisement and other marketing materials as experts in the mortgage lending process willing to help consumers find a mortgage. Consumers rely on their expertise and they trust that the broker will use their best efforts to find them an appropriate loan. As gatekeepers in the lending process, brokers bear a special responsibility to consumers given the disparity in the level of knowledge, expertise and skill between the two parties.

In addition, consumers pay thousands of dollars in fees to brokers either directly, or indirectly in the form of a higher APR where a yield spread premium was a part of the transaction. Consumers justifiably believe that, like other financial professionals, they are hiring brokers to represent their interest. A fiduciary duty would require the broker to act in the best interest of the consumer by, among other obligations, disclosing all the materials terms of the loan. This duty would extend to advising borrowers of the disadvantageous terms of the loan, such as the inclusion of a large balloon payment.[10] Mortgage brokers in California have, by case law, a fiduciary duty to their clients. This standard seems to have been successfully integrated into the ethical standards that brokers set for themselves in that state.[11]

III. Impose a suitability standard which includes an assessment of the borrower's ability to repay

We recommend that the Attorney General amend the regulations to impose an affirmative duty on mortgage brokers and mortgage lenders to only make suitable loans. The assessment of suitability should also evaluate the borrower's ability to repay the loan.

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[9] See, e.g., *Equity Predators: Stripping, Flipping and Packing Their Way to Profits: Hearing Before the Senate Special Committee on Aging*, 105th Congress 31 (1998).

[10] Borrower rely on the broker's description of the major features of the loan; many are unaware that their loans contain a large balloon payment.

[11] See, e.g., The California Association of Mortgage Brokers' Code of Ethics on its website at http://www.cambweb.org/n_members/index.html ("[t]he CAMB member, in keeping with their fiduciary duty, should maintain absolute fidelity to the client's best interests").

A. Impose an affirmative duty on mortgage brokers and mortgage lenders to provide suitable loans to their customers

The Attorney General should adopt a standard which requires mortgage lenders and brokers to reasonably ensure that any home loan offered is suitable for the consumer's purposes, including, but not limited to, consideration of the consumer's current and reasonably expected income, current and expected obligations, employment status, and other available financial resources.

We suggest a standard which would make it an unfair or deceptive act or practice for a mortgage lender or mortgage broker to make an unsuitable loan, with the duty to provide a suitable loan specifically defined as below:

> ***Duty to Provide Suitable Loans.*** When providing a loan, a creditor or mortgage broker shall reasonably ensure that any home loan provided is suitable for the consumer's purposes. Factors to determine suitability include, but are not limited to -
>
> (A) the totality of the consumer's circumstances;
> (B) the purposes of the loan, including a consideration of the reasons why a consumer sought the loan;
> (C) the consumer's reasonable ability to repay the principal and interest on the loan (except with respect to a reverse mortgage), as well as other obligations;
> (D) the effect of the loan on the consumer's current and future equity in the home;
> (E) the costs and savings of consolidating short term debt into the loan, including the costs of additional interest to be paid on the consolidated short term debt and the effect on current and future equity;
> (F) the home loan products and terms available to the consumer in the home loan market given his or her credit qualifications and the property that secures or will secure the home loan; and
> (G) the documentation of ability to repay that the consumer has made available or reasonably could have made available.

This suitability standard requires the broker or lender to objectively evaluate the characteristics of the loan, the property, the borrower's ability to repay and the borrower's equity – in other words it encapsulates what a responsible lender should document through a routine underwriting process. The standard requires mortgage professionals to consider the circumstances of a particular borrower and offer him or her a loan that is affordable in the short and long term.

Disclosures and the mortgage industry's efforts at self-regulation have been wholly ineffective in protecting consumers from abuses in the marketplace. Consumers are now faced with a menu of mortgage products, some of which are very complicated and contain terms that are disadvantageous or put the borrower at risk of foreclosure. Consumers are forced to rely on the knowledge and expertise of the broker or lender in evaluating these products. A suitability standard simply states that in presenting options to the consumer the broker or lender should refrain from offering products that are not suited to the borrower's needs or ability to repay. The standard allows the borrower to chose among appropriate products.

Sales professionals on Wall Street have a duty to ensure that the investment products they offer are suitable.[12] Financial professionals in other industries have a similar obligation. For ordinary Americans, their biggest investment will not be on Wall Street, but in their home. Consumers should be assured that the broker or lender will deal fairly with them by offering them loans that are suitable given their needs and circumstances.

B. Mortgage lenders and brokers should assess the borrower's ability to repay the loan

A duty to make loans that are suitable for the borrowers' needs requires that brokers and lenders determine that a borrower has the ability to repay the home loan. Regulators must restore prudent underwriting practices by requiring lenders and brokers to make a basic analysis of whether the borrower can actually afford the loan, including any increases allowed by an adjustable rate clause. Lender's may complain that consumers will be unable to obtain credit. However, loans without adequate documentation of repayment ability – so called "low doc" or limited documentation loans – are designed to fail. According to research by the Center for Responsible Lending, loans that were originated with low or no documentation of the borrower's income had a 63.7% greater risk of foreclosure than loans with full documentation.[13] In addition, housing and consumer advocates consistently cite reduced or no documentation loans as ones where there is a high level of broker fraud, including falsified income.

A significant portion of the subprime loans being made currently are so called hybrid ARMS, which are fixed for two or three years and then adjust thereafter. Many of these loans were underwritten without consideration of whether the borrower could afford the loan past the initial low teaser rate period.[14] Borrowers who qualify for these loans based on an initial low rate with a stated income or reduced documentation analysis face payment shock when the rate substantially adjusts upwards after two or three years.

To address this problem we recommend that the Attorney General require that all sources of income be verified by tax returns, payroll receipts, bank records, or other third-party information. In addition, for hybrid ARMS, lenders should ensure that the borrower has the capacity to pay all housing related debt based on the maximum possible rate which could apply under the terms of the loan for the first seven years. We suggest a standard which would assess the ability to repay based on the following standard:

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[12] For a discussion of suitability as it apples to the investment industry and may be applied to the mortgage industry see Kathleen C. Engel and Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, Vol. 80 Texas Law Review p. 1317-1363 (May 2002).

[13] Ellen Schloemer, Wei Li, Keith Ernst, and Kathleen Keest, *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners*, Center for Responsible Lending (December 2006) at 21 (using 2003 data).

[14] Sen. Charles E. Schumer, Chairman, Special Report by the Joint Economic Committee, *Sheltering Neighborhoods from the Subprime Foreclosure Storm*.

***Ability to Repay*—**The determination of a consumer's reasonable ability to repay the loan being offered shall include, but shall not be limited to, consideration of:

(A) the consumer's employment status;
(B) the consumer's income;
(C) other financial resources available to the consumer, other than the consumer's equity in the principal dwelling that secures or would secure the home loan;
(D) the ratio of the consumer's income to the sum of the consumer's existing debt and the proposed home loan debt;
(E) the consumer's current expenses;
(F) the scheduled payments that would be due under the home loan being proposed to the consumer, counting total and periodic payments of principal and interest (calculated in accordance with this paragraph), taxes and homeowner's insurance (whether or not escrowed), assessments, and private mortgage insurance premiums; provided that scheduled payments of principal and interest shall be calculated as follows:
    (i) in the case of a fixed rate loan, the maximum monthly payments due under the terms of the loan being offered;
    (ii) in the case of an adjustable rate loan, the maximum monthly payments that could be due during the first seven years of the loan term, which must be calculated with reference to the maximum interest rate allowable under the loan being offered, as well as the changes in payments which would result from differences in the payments toward principal of the loan, taking into account negative amortization; and
(G) the consumer's residual income after payment of current expenses and proposed home loan payments.

***Verification Required*—**A consumer's statement of purpose, circumstance, and ability to repay is not conclusive of suitability. All sources of income are verified by tax returns, payroll receipts, bank records, or the best and most appropriate form of documentation available.

We recommend that the Attorney General require lenders and brokers to consider a borrower's "residual income" in addition to other factors when assessing repayment ability. In determining the ability to repay, the Department of Veterans Affairs (VA) has developed income underwriting guidelines for low-income borrowers that include an assessment of "residual income." An assessment of a borrower's residual income is important because even reasonable debt to income ratios leave many low-income borrowers with unreasonably small amounts of dollars in absolute terms to pay for utilities, food, transportation, and other basic needs. The VA has established amounts for different regions and family sizes, that represent the minimum required residual income after subtracting mortgage, utility and work-related expenses.[15]

[15] 38 C.F.R. § 36.4337; VA Form 26-6393.

Taking residual income into account is most important for borrowers with low incomes, for whom the ratios do not adequately measure repayment ability. As subprime lenders have disproportionately high percentages of low-income borrowers, residual income analysis is an essential component of determining repayment ability for subprime mortgages.

C. Lenders and brokers should be prohibited from steering consumers to high-cost loans

Many consumers who receive subprime mortgages could qualify for prime loans, but are instead steered into accepting higher cost subprime loans. As discussed above, the majority of those steered to high-rate loans are African-American or Latino. We suggest amending the regulations to impose a standard that would prohibit steering:

Steering Prohibited

a. based on the information available a creditor or mortgage broker has a duty to connect a creditworthy borrower to a suitable product available in their market by originating or brokering such a loan by another creditor on behalf of the consumer or referring the borrower to an originator or broker who has such a loan product.
b. In the event the creditor or mortgage broker determines that the borrower is not creditworthy, state in writing to the borrower:
    i. the factors contributing to the creditor or brokers conclusion
    ii. other reasons the creditor's products are not available or suitable for the borrower.
c. If it is reasonable to believe that the borrower could obtain a more suitable loan than is available from the mortgage broker or creditor, the mortgage broker or creditor shall inform the borrower of that fact in writing.

IV. There should be full assignee liability for all loans

There should be full liability for assignees of all loans, not just high cost loans, for all claims and defenses. A strong assignee liability provision is essential to protect consumers from abusive lending practices. Such a provision would force secondary market investors to more effectively police the marketplace by refusing to purchase mortgages from lenders who make abusive loans and by forcing originators to adopt prudent underwriting practices. Assignees would no longer be able to profit from the wrongdoing of the originator. Moreover, consumers will benefit by being able to pursue legitimate claims for mortgage fraud even when the originator has sold the loan. When the mortgage loan is sold the homeowner is stranded and unable to assert defenses to foreclosure actions initiated by the loan holder.

A strong HOEPA-like assignee liability provision is needed for all loans, as very few loans are covered by the federal statute, or the state Predatory Home Loan Practices

Act.[16] The bulk of the abuses that are documented are in loans that fall below the threshold established by the two statutes.

V. The proposed emergency regulations on Foreclosure Rescue Transactions and Foreclosure-Related Services should be made permanent

The convergence of high-real estate values, a down-turn in the real estate market, coupled with weak foreclosure laws has unleashed an unprecedented wave of fraud and equity-depleting scams aimed at Massachusetts homeowners. As documented in the Center's report, *Dreams Foreclosed: The Rampant Theft of Americans' Homes Through Equity-Stripping Foreclosure Rescue Scams,*[17] there are endless variations on these scams, but three main patterns emerged:

- The first variation is the "phantom help" scam where the "rescuer" charges outrageous fees either for light-duty phone calls and paperwork the homeowner could have easily performed, or makes a promise of additional representation that never occurs. The homeowner is usually left without enough assistance to save the home and with little or no time left to prevent the loss of the home or to seek other assistance. The "rescuer" essentially takes the fees and abandons the homeowner to a fate that may have been prevented with better intervention and assistance.

- A second variety of the scam is the "bailout" that never quite works. This scenario includes various schemes under which the homeowner surrenders title to the house in the belief that he is entering a deal where he will be able to remain as a renter, and then repurchase the house over the next few years. The terms of these so-called "lease/buyback" schemes are so onerous that the buyback becomes impossible and the homeowner permanently loses possession of the home and the "rescuers" walks off with all or most of the home's equity. Alternatively, the homeowner's ability to repurchase the property may be cut off by a sale to a bona fide third party purchaser. As tenants in their property the homeowners face eviction for failing to comply with oppressive and unaffordable lease terms.

- Another variety is a bait-and-switch where the homeowner does not realize he or she is surrendering ownership of the house in exchange for a "rescue." Many homeowners later insist that they believed they were signing documents for a new loan to make the mortgage current. Many also say they had made it quite clear they had no intention of selling or giving up their home to anyone. This type of scam often involves fraud and forgeries of deeds. In many cases, the home is transferred for a small fraction of its actual value.

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[16] M.G.L.c. 183C, § 1 et seq.

[17] Available at http://www.consumerlaw.org/issues/foreclosure/index.shtml. See also Lauren K. Saunders, Tara Twomey, Carolyn Carter, *Combating Foreclosure Rescue Scams: A Practice Guide*, National Consumer Law Center (2006).

Elders are at risk. They are targeted by foreclosure rescue scammers because they have owned their homes for generations and have built up significant equity. In addition, elders are often attached to their homes and terrified at the prospect of moving; and they may also have particular trouble understanding complicated financial transactions, and may be more willing to trust a kind offer to help.

We applaud the Attorney General's emergency regulations on Foreclosure Rescue Transactions and Foreclosure-Related Services, 940 C.M.R. 24.00, which prohibit or regulate the most pernicious forms of this scam. As we recommended in the *Dreams Foreclosed* report, the best way to prohibit foreclosure scammers from stealing money and equity from struggling homeowners is to ban the activity outright. Therefore we support the prohibition of foreclosure rescue transactions engaged in for compensation or gain as outlined in 940 C.M.R. 24.02(a). Foreclosure rescue scammers make substantial profits from these transactions as homeowners unwittingly transfer ownership for a fraction of the home's value. The scammers then proceed to deplete any equity in the home by obtaining loans against the property. Massachusetts, by broadly prohibiting these transactions, is at the forefront in dealing with this crisis.

Moreover, the ban on advance fees for foreclosure related services and the restrictions on the marketing of these schemes will put a damper on this variation of the fraud. Once the foreclosure process becomes public, thousands of desperate homeowners are inundated with offers of assistance. Often the solicitation appears to be government-issued or is otherwise designed to deceive homeowners. Foreclosure scammers know that given the speed of the foreclosure process in this state, homeowners can be persuaded to pay up front for the promise of a solution. Requiring the payment of fees for services actually rendered will save many homeowners from giving the few dollars they have left to scammers who have done nothing or very little to save the home.

In conclusion, the proposed emergency regulations on Foreclosure Rescue Transactions and Foreclosure-Related Services are outstanding and should be made permanent.

VI. Conclusion & Answers to Questions Posed by the Attorney General

The industry may argue that amending the Attorney General's regulations will reduce access to credit. However, we believe that access to abusive credit does not benefit consumers. This is evidenced by our state's current record high foreclosure rate where many homeowners easily obtained credit that was not in their best interest. As the Federal Reserve Board commented: "a borrower does not benefit from . . . expanded access to credit if the credit is offered on unfair terms or involves predatory practices. Because consumers who obtain subprime mortgage loans have fewer credit options. or because they perceive that they have fewer options, they may be more vulnerable to unscrupulous lenders and brokers."[18]

[18] 65 Fed. Reg. 81438, 81441 (Dec. 26, 2000)

The National Consumer Law Center hopes that the Attorney General will consider implementing regulations that will lead to a cessation of the abusive lending practices that have so decimated our communities. The Center also thanks the Attorney General for its aggressive enforcement of state consumer protection laws. Most notable is the enforcement action against Ameriquest one of the most troubled lenders in our state.

Answers to Questions Posed by the Attorney General

1. *Enlarging the scope of the regulations*: Should the scope of the existing mortgage broker and lender regulations expand to include purchases money mortgage loans, as well as mortgage transactions that refinance an existing loan?

   We would support the expansion of the current regulations to include purchase money mortgages. Please see discussion in section I.

2. *Borrower's ability to repay a loan*: What are the merits or drawbacks of a regulation which would prohibit mortgage brokers and lenders from processing or making mortgage loans unless they reasonably believe that the borrower can repay the loan?

   Requiring lenders and brokers to assess a borrower's ability to repay a loan would restore prudent underwriting practices to the industry. Please see discussion in section III(B).

3. *Limiting "no doc" or limited documentation loans*: To avoid unfair or deceptive commercial conduct, are restrictions on "no documentation" or limited documentation loans warranted? Yes.

   All sources of income should be verified. Please see discussion in section III(B).

   a.) If so, describe the form of further restrictions that you believe are warranted.

   All sources of income should be verified by tax returns, payroll receipts, bank records, or other third-party information. In addition, for hybrid ARMS, lenders should ensure that the borrower has the capacity to pay all housing related debt based on the maximum possible rate which could apply under the terms of the loan for the first seven years. Please see discussion in section III(B).

b.) Should a mortgage broker or lender that wishes to process or make a no-documentation or limited documentation loan be required first to verify, by a signed document, the borrower's actual income and source of income, among other information?

All sources of income should be verified. Please see discussion in section III(B).

c.) Would you support a regulation which would further identify as an unfair or deceptive act or practice for a lender to make a no-documentation or limited documentation loan when the borrower's employment or income are not reasonable in light of the borrower's financial or other circumstances? Yes.

This is evidence that the borrower's income cannot support the mortgage. Many of the loans that we have examined, that have ended up in foreclosure shortly after they were made contain such inadequate documentation of income. Please see discussion in section III(B).

4. *Fiduciary or similar duty for mortgage brokers*: Should mortgage brokers owe a fiduciary duty or a different duty to borrowers on whose behalf they arrange or obtain mortgage loans?

Yes, we would support imposing a fiduciary duty on mortgage brokers. Please see discussion in section II.

a.) What are the merits or drawbacks of a regulation which would identify as an unfair or deceptive act or practice for a mortgage broker to process or arrange a loan that is not in the interests of the borrower?

Brokers market themselves as, and indeed possess, superior knowledge and skill about the mortgage process. Consumers justifiably rely on their expertise and expect brokers to act in their best interest. Please see discussion in section II.

5. *Borrower suitability standard*: Do you support a regulation which would require lenders to take steps to ensure that the loans they provide to borrowers are suitable for the borrowers, in light of the borrower's financial condition, credit record and other bona fide qualification criteria? Yes.

Yes, we support a suitability standard. Please see discussion in section III.

6. *Assignee liability provisions*: Do you support a regulation that would provide that borrowers can raise against the assignee or purchaser of mortgage loans claims and defenses which could have been raised against the broker or lender that originated the loan? Yes.

Yes, we support such a standard. Please see discussion in section IV.

a.) Do you support a regulation which would provide assignee liability for all loans, or for certain types of loans, for instance, “subprime” loans (which would reach loans beyond “high cost” loans)? Yes.

Yes, we support a standard that provides assignee liability for all loans. Please see discussion in section IV.