

Statement of  
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Comptroller of the Currency  
before the  
Committee on Financial Services  
of the  
U.S. House of Representatives  
October 24, 2007

Chairman Frank, Ranking Member Bachus, and members of the Committee, thank you for the opportunity to testify on the “Mortgage Reform and Anti-Predatory Lending Act of 2007.” The OCC supports the establishment of national standards for subprime mortgages, which have been the source of so many recent problems in credit markets. We also support the bill’s goal of enhanced regulation of all mortgage brokers, whether used by banks or nonbanks.

In recognition of pervasive problems in the subprime market generally, the federal banking agencies tightened mortgage standards by issuing guidance on both subprime lending and nontraditional mortgages. We believe these federal banking agency standards addressed fundamental concerns about underwriting and marketing practices for these mortgages.

But these standards apply only to federally regulated institutions. They do not address similar practices at state-regulated institutions that are not banks, even though, by nearly all accounts, such institutions engaged in some of the most aggressive mortgage practices. As a result, the federal banking agency standards cannot be truly effective

unless they extend to non-federally regulated institutions as well, to create truly national standards. Such national standards could be achieved through state action, Federal Reserve Board rulemaking, or federal legislation, such as the bill that is the subject of today's hearing. Regardless of the path chosen, the OCC supports national standards for subprime mortgages similar to the federal banking agency standards.

From our initial understanding of the bill, which we have only had limited time to review, it would establish national standards for three different categories of mortgages.

- For all mortgages, the bill would establish national sales practice standards for “mortgage originators” through licensing and registration requirements, a federal duty of care, and anti-steering provisions.
- For subprime mortgages, the bill would – through the use of “safe harbor” provisions – establish national underwriting standards that are more stringent than the underwriting provisions in the federal banking agency standards.
- For HOEPA mortgages, the bill would lower the APR and fee triggers to make less costly mortgages subject to the enhanced HOEPA regulatory regime.

These three categories of changes plainly go beyond the federal banking agency standards. That is, some of the new national standards apply to mortgages other than subprime mortgages, and some of the bill's national subprime standards are more stringent. While we support some of these broader standards, others raise significant questions and concerns that we hope will be addressed as the process moves forward.

For example, the application of some of the new and extensive national mortgage standards to banks that do not provide subprime mortgages raises significant issues of regulatory burden and fairness. In particular, we question whether the burden of the

licensing and registration requirements for all bank employees involved in any type of mortgage origination is, given existing bank regulation, worth the marginal benefit – especially for community banks. Likewise, the federal duty of care and anti-steering provisions – which include highly subjective requirements that mortgages be “appropriate” and “in the consumer’s interest” – will be difficult to enforce, and could significantly increase the litigation exposure for all banks.

In addition, the more stringent underwriting standards for subprime mortgages would by definition restrict the availability of credit to subprime borrowers more than the federal banking agency standards. On the positive side, this reduction of credit would help ensure that the borrowers who obtain these loans could truly afford to repay them. On the negative side, the reduction would prevent some creditworthy borrowers from obtaining loans. It is impossible to determine *ex ante* the extent to which creditworthy borrowers would be denied loans due to the new and stricter standards. But this is clearly a trade-off in the bill. In addition, the stricter standards would also prevent more existing subprime borrowers with adjustable loans from refinancing such loans.

Finally, the OCC believes that there is an important point to be made about the bill’s enforcement remedies. On their face, the remedies appear even-handed because they apply equally to banks and nonbanks. But the reality is quite different. Because of existing enforcement provisions in federal banking law, application of the same set of bright-line standards to banks, brokers, and nonbanks would expose banks and their employees to a much wider range of potential enforcement actions than would be the case for brokers and non-banks. Put another way, banks and their employees would be subject to a stronger enforcement regime than nonbank lenders or mortgage brokers for the very

same violations of the bill's new provisions. We urge attention to the bill's enforcement mechanisms to ensure that the bill's standards are as effectively implemented and enforced at nonbank lenders and brokers as they would be at banks.

Thank you very much.