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October 15, 2007

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the Currency
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Public Reference Room, Mail Stop 1-5
Washington, DC 20219
regs.comments@occ.treas.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
regs.comments@ots.treas.gov

Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th St. & Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Mary F. Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428
regcomments@ncua.gov

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Comments@FDIC.gov

Re: **OCC** Docket No. OCC-2007-0013; **FRB** Docket No. OP-1292; **FDIC**
(No Docket Number); **OTS** Docket No. OTS-2007-0016; **NCUA** (No
Docket Number); Proposed Illustrations of Consumer Information for
Subprime Mortgage Lending; 72 Federal Register 45495; August 14, 2007

Ladies and Gentlemen:

The American Bankers Association (ABA)¹ appreciates the opportunity to
comment on the Illustrations of Consumer Information for Subprime Mortgage
Lending (the Illustrations) that recently were proposed by the Office of the
Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit

¹ The ABA represents the more than two million men and women who work in the nation's
banks and savings association. ABA brings together all categories of banking institutions to best
represent the interests of this rapidly changing industry. Its membership – which includes
community, regional, and money-center banks and holding companies, as well as mutual and
savings associations, trust companies, savings banks and bankers banks – makes ABA the largest
banking trade association in the country.

Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (the Agencies). These Illustrations are to be used in connection with the Agencies' recently issued Statement on Subprime Mortgage Lending (the Statement).² As discussed in more detail below, ABA generally supports the proposal but offers suggestions for two changes to the Illustrations.

Summary of Comments

- Consumer protections should apply to all lenders, not just insured depository institutions.
- The Illustrations serve an important function by providing financial institutions a template they may use to draft their own disclosures. By making the adoption of the Illustrations voluntary, the Agencies have struck the appropriate balance that enables banks to provide meaningful disclosures while avoiding unnecessary burdens.
- The Agencies should clarify that, in instances when disclosures must be given under both the Statement and the Nontraditional Mortgage Guidance, providing disclosures under one or the other will suffice.
- It appears as though home equity lines of credit (HELOCs) are not covered by the Statement and thus lenders would not be required to provide the disclosures discussed in the Statement. However, this is not explicitly stated. ABA urges the Agencies to make this clarification in the final rule so that consumers receive the appropriate disclosures with the appropriate product.

Discussion

ABA supports the industry's and Agencies' efforts to provide consumers with important information about mortgage products in order to enable them to prudently consider the associated costs, terms, features, and risks, as outlined in the Statement. However, we maintain that providing consumers with clear and balanced information on the benefits and risks of certain mortgage loans³ through a consistent regulatory structure, encompassing both standards and enforcement mechanisms, should apply to *all* mortgage lenders and brokers. As Director Reich recently pointed out, "[m]any of the abuses in home lending have come from a side of the mortgage market that is outside the reach of federal regulators, and in many cases also outside the reach of the states."⁴ Thus, the uneven application and enforcement of consumer disclosures potentially drives consumers to lenders not subject to the same consumer protections.

While the Statement mandates that certain disclosures be made in connection with subprime loans to borrowers, it does not provide a sample from which financial institutions may draw. The Illustrations accomplish this task, and the Agencies are to be commended for their efforts in providing the proposed Illustrations while at the same time making the use of these Illustrations

² Statement on Subprime Mortgage Lending, 72 *Fed. Reg.* 37569 (July 10, 2007).

³ The Illustrations were issued in order to provide uniform disclosures of the types of information contemplated by the Statement. 72 *Fed. Reg.* 45495. Given that the Illustrations are to be provided for mortgage products addressed in the Statement, the Illustrations apply only to "certain adjustable-rate mortgage (ARM) products typically offered to subprime borrowers" which have one of more characteristics enumerated in the Statement. See 72 *Fed. Reg.* at 37572.

⁴ John Reich, Director, Office of Thrift Supervision, Remarks to the Exchequer Club, Washington D.C. (Sept. 19, 2007).

voluntary. Such flexibility for an institution to use the Illustrations or to prepare its own disclosures (based on the examples in the Illustrations and information set forth in the Statement) is valuable and strikes an appropriate balance that enables financial institutions to provide meaningful disclosures while avoiding unnecessary burden. In particular, ABA appreciates that the Agencies have provided the industry with an indication of the level of detail that will suffice under the Statement. The proposed Illustrations, when final, will lessen uncertainty over the adequacy of any self-prepared disclosures. Additionally, providing consumers with disclosures of the information set forth in the Illustrations reduces the likelihood of litigation. Discussions with member bankers indicate that many financial institutions intend to develop their own documents for their products but nonetheless find the Illustrations helpful in that development process. The final Illustrations will serve an important function by providing financial institutions a template from which to draft their own documents.

The narrative language of the Illustrations closely matches that of the Nontraditional Mortgage Illustrations, for which ABA previously offered comments.⁵ Given that the purpose of the Illustrations is to provide greater clarity and ease of understanding to consumers, using overlapping language and maintaining \$200,000 as the Sample Loan Amount will provide consistency with the previously issued Nontraditional Mortgage Illustrations, which ABA believes will aid consumers. However, some members have expressed concern that in situations where a consumer is provided a nontraditional mortgage that possesses one or more of the characteristics outlined in the Statement, disclosures under both the Nontraditional Mortgage Guidance *and* the Statement could potentially be required. In this instance, providing two sets of disclosures, while similar in nature, could lead to increased consumer confusion, as well as increased costs to the industry. ABA therefore recommends that the Agencies include language that providing one or the other will satisfy the disclosure requirement. While either Illustration should be sufficient, ABA suggests that disclosures under the Nontraditional Mortgage Guidance Illustrations be offered in such situation, given they are more comprehensive in nature than the Illustrations.

The Statement is ambiguous as to whether or not HELOCs are covered under its terms. ABA believes that since HELOCs are specifically dealt with under the terms of the Credit Risk Management Guidance for Home Equity Lending⁶ it is logical that they are not covered by the Statement and, therefore, lenders would not be required to provide the specific disclosures discussed in the Statement and provided in the Illustrations. However, this is not explicitly stated. ABA urges the Agencies to make this clarification in the final rule so that consumers receive the appropriate disclosures with the appropriate product.

Conclusion

ABA supports the issuance of the proposed Illustrations as a useful and flexible tool to reduce regulatory burden imposed by the Statement on financial institutions while providing a template for compliance with the Statement's disclosure requirements. However, because of uneven application of the Statement (and attendant uneven application of the Illustrations), ABA

⁵ [Comment Letter](#) of the American Bankers Association, Proposed Illustrations of Consumer Information for Nontraditional Mortgage Products (Dec. 4, 2006).

⁶ See Joint Press Release, Agencies, Addendum to Credit Risk Management Guidance for Home Equity Lending (Sept. 29, 2006).

believes that the Illustrations may actually serve to undermine the intended results of these consumer protections.

Additionally, ABA urges the Agencies to provide a statement that when disclosures under both the Nontraditional Mortgage Guidance and the Statement are required, providing disclosures under one or the other, but not both, will be sufficient. Similarly, ABA believes that the Agencies should specifically clarify that HELOCs are not included under the terms of the Statement and Illustrations. If the Agencies have any questions about these comments, please contact the undersigned at (202) 663-5056, or via e-mail at cparidon@aba.com.

Sincerely,



Christopher M. Paridon
Counsel