May 7, 2007

Regulation Comments
Chief Counsel's Office
1700 G Street, NW
Office of Thrift Supervision
Washington, D.C. 20552
72 FR 10533
Regs.comments@ots.treas.gov

Re: Proposed Statement on Subprime Mortgage Lending
OTS Docket Number 2007-09 (March 8, 2007)

Dear Sir or Madam:

Washington Mutual appreciates the opportunity to comment on the Statement on Subprime Mortgage Lending (the "Statement") that has been proposed by the federal banking and credit union agencies (the "Agencies"). As the nation's third largest mortgage lender, we remain committed to subprime lending. We believe that it fulfills a critical need in our nation's housing industry. Without subprime lending, millions of qualified Americans would be unable to fulfill *and retain* the dream of homeownership.

Washington Mutual generally supports the principles outlined in the Statement. We support the Agencies' goal of giving the right information at the appropriate time in a form that will enable borrowers to understand both the risks and the benefits of product features. We agree that this should include disclosure about potential payment shock, prepayment penalties or fees and the cost of low documentation loans.

We recognize that subprime borrowers may be especially susceptible to the payment shock that can occur at the end of a short-term (i.e., up to 3 years) fixed rate period. We therefore support the Agencies' goal of ensuring that mortgage loans are underwritten in a prudent fashion that includes consideration of the borrowers' ability to repay the debt. In the case of short-term hybrid ARMs, this may often mean qualifying borrowers using payments based on the fully indexed rate and on a fully amortizing repayment schedule. However, subprime borrowers' financial circumstances, needs and preferences may vary widely and prudent underwriting must account for a variety of factors. We therefore urge the Agencies to adopt a final Statement that maintains flexibility and optimizes the ability of responsible lenders to service the entire subprime market. Flexibility is especially critical in the case of current subprime borrowers who, if lenders are forced to utilize rigid qualification standards, could be marooned in loans that they can no longer afford.

Washington Mutual was actively involved in developing the Housing Policy Council's Principles on Subprime Lending. These principles address many of the points contained in the Statement. We have attached our response to the four specific questions presented in your Statement. Because we believe that the responses to questions one and two largely overlap, we have taken the liberty of combining our responses to these questions. These responses provide more detail on our comments and concerns and we would be pleased to discuss any of them with you.

Sincerely,

David C. Schneider
President
Home Loans

Proposed Statement on Subprime Mortgage Lending
Answers to Questions

1. The proposed qualification standards are likely to result in fewer borrowers qualifying for the type of subprime loans addressed in this Statement, with no guarantee that such borrowers will qualify for alternative loans in the same amount. Do such loans always present inappropriate risks to lenders or borrowers that [they] should be discouraged, or alternatively, when and under what circumstances are they appropriate?

2. *Will the proposed Statement unduly restrict the ability of existing subprime borrowers to refinance their loans and avoid payment shock? The Agencies also are specifically interested in the availability of mortgage products that would not present the risk of payment shock.*

Answer:

Hybrid ARMS were born out of consumer demand for creative financing that better balanced the security of a fixed interest rate with the affordability of an adjustable rate loan. Over time, lenders began offering a wide range of hybrid ARMs. The longer the fixed rate period, the higher the start rate, as lenders assumed more interest rate risk. In the subprime industry, the two year hybrid ARM became the product of choice. The fixed period of two years not only kept the starting payment affordable, it also provided the subprime borrower with a chance to improve their credit through a good payment history.

We fully appreciate the Agencies' concern that interest rate adjustments on short-term hybrid ARMs (i.e., up to 3 years) can result in payment shock for many subprime borrowers. However, we also believe that inflexible guidelines would have an unnecessarily chilling effect on the ability of subprime borrowers to obtain home financing. While we generally agree that short term subprime hybrid ARMs should be qualified at the fully indexed rate, in some situations there may be compensating factors that would offset this need. Moreover, if lenders were suddenly forced to qualify all subprime borrowers at the fully indexed rate, tens of thousands of borrowers would be stranded in adjusting hybrid ARMs that they can no longer afford. This would, in turn, deny these consumers the opportunity to extend their fixed periods beyond two or three years and thus more time to improve their credit. In many cases, it may even cost them their homes.

We also believe that the risk of payment shock can be substantially mitigated by early disclosures to consumers about potential payment increases and by reasonable caps on the amount of interest rate increases. Regulation Z already requires lenders to provide borrowers with estimated payment schedules. In addition, lenders are required to provide sample "worst case payment scenarios" to all applicants
for adjustable rate loans. We have also added warnings about the potential for payment shock to our short term hybrid marketing materials.

Washington Mutual believes that responsible lenders and servicers will proactively respond to the needs of suprime borrowers, thus avoiding the need for a regulatory fiat. In April we announced a 2 billion dollar commitment to assist our subprime borrowers in obtaining the financing they need if they find that they cannot make their monthly payments. We will be offering subprime borrowers discounts of up to 50 basis points to help them refinance into fixed rate loans. In the case of loans we hold for investment, we are developing a targeted modification program that will include features such as modifications to fixed rates and term extensions. We now offer loans with 40 year amortizations but which balloon in 30 years. We are also implementing 50 year loan program that will keep fully indexed and fully amortizing payments more affordable.

We recognize that no party wins when a lender is forced to foreclose on a borrower. We will therefore continue our efforts to provide loan forbearances and loan restructurings (e.g. extending terms, reducing rates, lowering payments and partial forgiveness of debt) to borrowers in need of temporary or permanent assistance. We have also established a team of specialists who will counsel borrowers wishing to learn more about the available options.

3. *Should the principles of this proposed Statement be applied beyond the subprime ARM market?*

Answer:

No. By definition, prime and "Alt A" borrowers have demonstrated a greater ability to manage credit. This includes a proven ability to plan for and adapt to increases in interest rates and payments. Extending coverage of the Statement beyond subprime lending would be a draconian remedy to a problem that does not actually exist.

4. *We seek comment on the practice of institutions that limit prepayment penalties to the initial fixed rate period. Additionally, we seek comment on how this practice, if adopted, would assist consumers and impact institutions, by providing borrowers with a timely opportunity to determine appropriate actions relating to their mortgages. We also seek comment on whether an institution's limiting of the expiration of prepayment penalties such that they occur within the final 90 days of the fixed rate period is a practice that would help meet borrower needs.*

Answer:

Washington Mutual offers pricing packages both with and without prepayment fees. In return for that fee, the borrower receives a reduction in interest rate or loan fees. The longer the prepayment fee, the greater the discount. Although Washington Mutual has no opposition to some curtailment of prepayment fee periods, the Agencies should understand that such a mandate could increase the rates or fees charged to some subprime borrowers and reduce their choices. If the Agencies do adopt a limitation on prepayment fees, we believe that 30 days prior to the first interest rate adjustment should be sufficient. The Agencies should note that, because the payment increase would not take effect for another month, a 30 day limitation would actually provide the borrower approximately 60 days to refinance their loan without incurring a prepayment fee.