CENTURY HOUSING
A NONPROFIT CORPORATION

1000 CORPORATE POINTE, SUITE 200 CULVER CITY, CALIFORNIA 90230
PHONE 310 · 258 · 0700 FAX 310 · 258 · 0701

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May 7, 2007

Office of the Comptroller of the Currency
250 E Street SW, Mail Stop 1-5
Washington DC 20219

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington DC 20552

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington DC 20051

Mary Rupp, Secretary to the Board
National Credit Union Administration
1775 Duke Street
Alexandria VA 22314-3428

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

RE: Proposed Statement on Subprime Mortgage Lending [72 FR 10533]
OCC 2007-0005
Fed Docket No. OP-1278
OTS Docket No. 2007-09
NCUA No. 2007-09

Thank you for the opportunity to comment on the proposed Statement on Subprime Mortgage Lending. While this proposal is an improvement upon the "Interagency Guidance on Subprime Lending" issued by the members of the Federal Financial Institutions Examination Council on March 1, 1999, the "Expanded Guidance for Subprime Lending Programs" issued by the FFIEC members on January 31, 2001, and the "Interagency Guidance on Nontraditional Mortgage Product Risks" issued by FFIEC members on October 4, 2006, they are too little, too late.

This proposed Guidance, while useful in some respects, fails to respond to the basic nature of the subprime mortgage lending marketplace, nor does it offer adequate protection for consumers of these mortgage products.

The primary failure of the Proposed Statement on Subprime Mortgage Lending is that it fails to adequately recognize that a substantial portion of the subprime "problem loans" are not originated by regulated financial institutions. Rather, these loans are typically originated from unregulated subsidiaries and affiliates of regulated institutions, or by mortgage brokers, real estate agents and others who are either unregulated or inconsistently regulated by the states.

While the Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators have issued "guidance" following the pattern of the FFIEC members, they do not have the force of law nor, in many states, are they utilized by regulators even when there is a state regulatory scheme in place.

Unless Congress extends the authority of federal regulators over all mortgage lenders, or in some other way imposes uniform restrictions on lending (e.g., by prohibiting sale of such mortgages or mortgage backed securities containing such instruments in the regulated marketplace), then the abuses will continue, and borrowers will continue to find, after a short period of homeownership, that their dreams were false and they face default, foreclosure and possible bankruptcy.

While regulation, advice and guidance may provide some minor assistance, it will not be enough. **The current crisis in mortgage lending, defaults and foreclosures all have one common basis: a mistaken policy initiative attempting to extend homeownership to families who are unprepared to become homeowners**. When policy goals were set to raise the proportion of homeowning American families from 60 percent to 70 percent and beyond, public and private institutions modified their policies and practices to try to meet that goal. Subprime lending is a natural result.

Century Housing has financed the development of some 13,000 units of affordable housing in the greater Los Angeles area in the past 20 years. Many of those were homes sold to low-income homebuyers, who received financial assistance to assure that their monthly mortgage payments were affordable at their actual incomes. All of these homebuyers received comprehensive pre-purchase financial counseling, designed not only to help them understand the purchase, and subsequent physical and financial maintenance of a home, but also general financial literacy. Over the years, Century has discovered that many of these low-income families need post-purchase assistance as much or more than they needed pre-purchase counseling.

Century retains a financial position in the homes, which often allows us to intervene and rescue the family from financial disaster frequently brought on by predatory or subprime lending practices. In some cases, subprime lenders anxious to originate a loan would waive title insurance coverage on Century's recorded position. In other cases, homeowners were convinced to borrow more money than they wanted to, only to discover that they could not afford the loan payments and faced eviction from their home.

The lesson is clear—without significant post-purchase assistance, and in some cases, regardless of the availability of counseling, many financially marginal homebuyers will lose their homes. They do not have the financial reserves to weather setbacks, and if payment shock or any meaningful change in circumstances occurs, they will not be able to avoid default, foreclosure, and possibly bankruptcy.

One direct result of the subprime mortgage practices of some lenders is the financial crisis now being faced by tens of thousands of families who were convinced that they could afford to become homeowners, when decades of experience indicated that they could not. In addition to the financial woes of the homeowners facing loss of their investments and homes, subprime lending practices are also leading to the catastrophic collapse of a segment of the mortgage lending industry, causing many thousands of workers to lose their jobs, and financial loses for investors.

An indirect effect has been a runaway increase in home prices fueled in large part by the increased demand caused by subprime lending practices, which brought otherwise unqualified buyers into the market, bidding up prices to unsupportable levels. The resulting overheated housing market is making homeownership prohibitively expensive even for those who could otherwise qualify for a conventional, conforming mortgage loan, and a retrenchment in the home building industry, with concomitant employment, investment and economic consequences.

Another indirect result of subprime lending resulting from the overheated market is that many otherwise secure families have been convinced to convert part of their "equity" in their homes into capital that has been spent on consumer goods or services. Now that the markets in many parts of the nation have stopped rising or are declining, these homeowners find themselves owing more than their homes are worth, and sometimes more than they can afford to pay.

It is commendable that private lenders, regulatory institutions, and elected officials are all expressing concern for the innocent borrowers who are facing default, foreclosure and possible bankruptcy. However, the measures being proposed to date, like the Proposed Statement on Subprime Mortgage Lending, are as likely to save from loss those who attempted to take unfair advantage of a system ripe for abuse, and the lenders who profited from lax or lack of regulation, as they are to protect the homebuyers who entered the market as a result of a failed public policy and the promise of sharing in the escalating wealth that real estate investment seemed to promise.

One of the commentators on this proposal noted that real estate lending has historically been based upon the "Three C's"—Credit, Capacity to repay and Collateral. The subprime lending products that led to the current situation violated all three of these cornerstones of lending. In part, this is because homes are considered to be just one more form of capital investment, on a par with stocks, bonds and insurance.

For many decades, mortgage lending was restricted to a special class of financial institution. Deregulation of the financial industry and lending in general has ended the special relationship that homebuyers had with their community savings and loan or thrift. Now homeownership is considered to be primarily a financial investment, just one more way to invest and build wealth, and not simply a secure place to raise a family. Real estate practitioners now regularly explain to their clients that a home with "too much equity" and insufficient debt is not "working hard enough," that the ROI is too low, and they should either move up to a more expensive home or borrow against their equity to invest or consume. Since housing is now just one more form of investment, with all the speculative risk that entails, it may be time to begin regulating real estate investment as other financial investments are regulated.

The Securities and Exchange Commission has long imposed regulations on both sellers and buyers of securities, limiting participation in highly speculative forms of investment to "Qualified Purchasers" and "Accredited Investors." The SEC limits certain activities to these classes so as to help insure that the investors are capable of evaluating and bearing the risks inherent in the high risk investment vehicles. By extending a similar regulation to the subprime mortgage industry, it would be feasible to reduce the risk of harm to innocent homebuyers, while allowing sophisticated investors who engage in "house flipping" and other activities motivated purely by investment goals to continue borrowing.

Sincerely,

G. Allan Kingston

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Senator Christopher Dodd
Senator Richard Shelby
Senator Charles Schumer
Representative Nancy Pelosi
Representative Barney Frank
Representative Spencer Bachus
Representative Maxine Waters
Representative Brad Sherman
Representative Ed Royce
Representative Gary Miller