



May 07, 2007

**VIA EMAIL**

Office of the Comptroller of the Currency  
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Washington, DC 20219  
[Regs.comments@occ.treas.gov](mailto:Regs.comments@occ.treas.gov)  
Docket Number: OCC-2007-0005

Mr. Robert E. Feldman, Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, DC 20429  
[comments@FDIC.gov](mailto:comments@FDIC.gov)

Ms. Mary Rupp, Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, Virginia 22314-3428  
[regcomments@ncua.gov](mailto:regcomments@ncua.gov)

Ms. Jennifer J. Johnson,  
Secretary  
Board of Governors of the  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave. N.W.  
Washington, DC 20551  
[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)  
Docket No. PO-1278

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, DC 20552  
[regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov)  
Docket No. 2007-09

**Re: Proposed Statement on Subprime Mortgage Lending.**

Dear Sirs and Madams:

The Wisconsin Bankers Association (WBA) is the largest financial institution trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the proposed statement on subprime mortgage lending.

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA)(collectively, the Agencies) have issued a proposed statement on subprime mortgage lending (Statement) seeking comment on the need for policies, procedures and systems to ensure that

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institutions' subprime mortgage lending is conducted in a safe and sound manner and does not constitute predatory lending. WBA would first like to state that it does not support the practice of predatory lending and believes that WBA members are not in the business of conducting such lending. To assist the Agencies with their proposed Statement, WBA offers the following comments.

## **Background**

The Agencies have developed the proposed Statement to address what the Agencies have considered as emerging issues and questions relating to certain subprime mortgage lending practices. In particular, the Agencies are concerned with adjustable rate mortgage (ARM) products marketed to subprime borrowers. These ARM products frequently have: (1) offers of a low, initial payment based upon a short-term "teaser rate"; (2) approvals of borrowers without appropriate documentation of borrowers' income; (3) issues surrounding "payment shock" due to very high or unlimited increases in payment amounts during reset periods; (4) product features resulting in frequent refinancing to maintain affordable monthly payments; (5) substantial prepayment penalties and/or prepayment penalties that extend beyond the initial interest rate adjustment period; and/or (6) provided borrowers with inadequate information relative to product features, material loan terms and product risks, prepayment penalties, and the borrower's obligations to pay property taxes and insurance.

The Agencies have previously released several Interagency Guidances (1993 *Interagency Guidelines for Real Estate Lending*, 1999 *Interagency Guidance on Subprime Lending*, 2001 *Expanded Guidance for Subprime Lending Program*, and 2006 *Interagency Guidance on Nontraditional Mortgage Product Risks*) which the Agencies acknowledge addresses many of their concerns and already provides principals applicable to product risk management practices and consumer protection laws.

## **Proposed Statement**

### Predatory Lending Considerations and Underwriting Standards

The Agencies have identified that institutions marketing subprime mortgage loans should ensure that they do not engage in the type of predatory lending discussed in the previously issued 2001 *Expanded Guidance for Subprime Lending Program*. That Guidance identifies predatory lending as involving at least one of the following: (1) making mortgage loans based primarily upon the property's foreclosure or liquidation value rather than on the borrower's ability to repay the mortgage according to its terms; (2) conducting business commonly referred to as "loan flipping" where the borrower is induced to refinance multiple times in order to charge high points and fees; and (3) engaging in fraud or deception to hide the true nature of the mortgage loan product from unsophisticated borrowers.

In addition, the Agencies reference within the Statement that institutions should refer to the 1993 *Interagency Guidelines for Real Estate Lending* for underwriting standards for all real estate loans. The Agencies also recognize that the *Interagency Guidance on Nontraditional Mortgage Product Risks* outlines criteria for qualifying borrowers for products that may result in payment shock and to recognize the impact such change in payment may have on the borrower's ability to repay the mortgage satisfactorily. The Statement includes a suggestion that an institution's debt-to-income ratio (DTI) should also be analyzed in a manner to assess a borrower's total monthly housing-related payments as a percentage of gross monthly income. To address that, the Agencies propose a calculation of principal, interest, taxes, and insurance-to-income (PITI) ratio calculation.

WBA believes the previously issued guidelines and guidance documents already sufficiently address the Agencies expectations regarding predatory lending to ensure solid, prudent underwriting criteria for mortgage products. In fact, the Agencies acknowledge the extensive listing of existing requirements throughout the Statement. This extensive list is proof that financial institutions are already prohibited from such actions, already have rules with which each must comply, and are routinely examined for compliance with these requirements.

In addition, WBA argues that financial institutions are already charged with incorporating prudent, safe underwriting requirements into their lending policies pursuant to existing laws and regulations. As such, the specific creation of a new PITI is unnecessary. WBA believes financial institutions creating such policies already take into consideration the borrower's ability of repayment under various scenarios. WBA steadfastly believes that financial institutions supervised by the Agencies are not the cause of the problems recently seen in the subprime mortgage lending market. Therefore, WBA cannot in good conscience support the proposed Statement.

#### Consumer Protection Principles

The Agencies identify within the Statement that fundamental consumer protection principals relevant to the underwriting and marketing of mortgage loans should include: approvals of loans based on the borrower's ability to repay the loan according to all of its terms; and providing the borrower with information to understand terms, costs, and risks of the loan product. The Agencies propose that "mortgage loan product descriptions" and advertisements should include information regarding payment shock, prepayment penalties, balloon payments, cost of reduced documentation loans, and a borrower's responsibility for taxes and insurance.

WBA argues the additional requirements for "mortgage product descriptions" and advertisements will make any type of advertisement difficult. Without some exceptions for certain types of media, institutions would be forced to place long disclosures in print advertisements, thereby forcing the consumer to read paragraphs of small print. Radio advertisements pose similar difficulties, such as the need for long fast-talking announcements of additional information. Should the Agencies finalize the Statement, WBA recommends an exception from the proposed additional information for certain types of media similar to those found in the Truth in Savings Act for advertising deposit products. Alternatively, WBA recommends the Agencies allow for the additional information to be provided to the consumer as part of existing disclosure requirements given at the time of application, such as the Consumer Handbook on Adjustable Rate Mortgages (CHARM booklet).

#### Need for Consistency

If there is to be a final statement on subprime mortgage lending issued, it must be consistent with existing regulatory and examination requirements. Financial institutions are currently prohibited from engaging in unfair or deceptive acts or practices, and advertising in a misleading or inaccurate manner under Section 5 of the Federal Trade Commission Act, under section 8 of Federal Deposit Insurance (FDI), and the Truth in Lending Act's (TILA). However, the Statement will now create new requirements inconsistent with TILA, thus requiring financial institutions to add more information into their advertisements.

The Statement's advertisement requirements also reach to "mortgage product descriptions;" however TILA already has several disclosures, which must be given to the borrower at the time of application. Certain variable-rate transactions secured by a consumer's principal dwelling require financial institutions to provide the CHARM booklet noted earlier and a loan-program disclosure at the time of application. The CHARM booklet outlines the features, factors, and risks of an ARM product. The variable-rate loan program disclosure requires several specific statements regarding changes in interest rate, payment and other loan terms, as well as identification of any index or formula used to determine the interest rate, and an illustration of a worst-case payment example. The disclosures required under TILA, as revised by the Home Ownership and Equity Protection Act (HOEPA), is another example of mandatory disclosures for certain transactions containing prescribed information about the loan product, including: balloon payments; variable rates; and notice that the borrower is not required to complete the agreement. Notwithstanding these existing requirements, the Statement would establish new mortgage product descriptions inconsistent with existing regulations.

WBA would also like to address the Agencies inconsistent use of the term subprime mortgage lending. If the Agencies issue a final Statement, the term "subprime mortgage lending" needs to be defined and used consistently. Early in the Statement, the Agencies use the term subprime mortgage loans, yet later in the Statement the term is broadened to "mortgage product." WBA is very concerned that inconsistency will result in a broader application of a final Statement to mortgage products rather than to subprime mortgage products. If the Agencies issue a final statement, WBA requests the Agencies clearly define the term subprime lending and address the other inconsistencies noted above.

#### Supervisory Review

The Agencies state that during routine examinations they will carefully scrutinize the risk management and consumer compliance processes, policies and procedures of an institution. Institutions that do not "adequately manage" these matters will be asked to take remedial action. In addition, the Agencies state they will take action against institutions that fail to implement or adhere to safe and sound standards, exhibit predatory lending practices, or violate consumer protection laws.

WBA believes the Agencies have an existing duty to ensure institutions are compliant with anti-predatory lending requirements and safe and sound lending procedures, and therefore wishes once again to voice the opinion that the Statement is unnecessary. WBA argues that financial institutions are routinely examined under existing regulatory requirements to ensure they are not engaging in predatory lending and have adequate underwriting practices.

WBA is also very concerned about new examination expectations resulting from finalization of the Statement. Without greater clarification within the Statement, financial institutions will not have adequate guidance on how each examiner is to determine whether a financial institution has "adequately managed" the predatory lending practices and safety and soundness matters.

#### **Conclusion**

WBA would again like to state that it does not support the practice of predatory lending. However, WBA believes the Statement is a regulatory burden for an industry that is not known to conduct predatory lending and is routinely examined. As earlier stated, institutions supervised by the Agencies are not the cause of the recent problems concerning subprime mortgage lending; therefore, WBA believes the Statement unnecessary. However, WBA strongly suggests that subprime mortgage lending standards be created and applied by appropriate authorities to institutions not supervised by the Agencies. For these reasons, WBA urges the Agencies to withdraw its proposed Statement.

Once again, WBA appreciates the opportunity to comment on the proposed Statement.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Bauer", with a large, stylized initial "K" and a long horizontal flourish extending to the right.

Kurt R. Bauer  
President/CEO