HOUSING POLICY COUNCIL
THE FINANCIAL SERVICES ROUNDTABLE

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May 7, 2007

Office of the Comptroller of the Currency
250 E Street, SW
Public Information Room
Mail Stop 1-5
Washington, DC 20219
RE: Docket No. 2007-3005

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
RE: Docket No. 2007-09

Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RE: Statement on Subprime Mortgage Lending

Jennifer J. Johnson
Secretary
Board of Governors
of the Federal Reserve System
20th St. and Constitution Ave, NW
Washington, DC 20551
RE: Docket No. OP-1278

Mary Rupp
Secretary for the Board
National Credit Union Administration
1775 Duke St.
Alexandria, VA 22314-3428
RE: Comments on Statement on Subprime Mortgage Lending

Re: Docket No. 2007-3005, 72 Fed. Reg. 10533 (March 8, 2007)

Dear Sir or Madam:

The Housing Policy Council of The Financial Services Roundtable* is pleased to submit its comments on the Statement on Subprime Mortgage Lending proposed by the Federal regulatory agencies.

The Housing Policy Council supports the goal of the proposed Statement to strengthen underwriting standards, risk management practices, consumer protection standards and control systems for sub-prime lending. We believe it is crucial that the Statement strike a good balance between appropriate cautions on subprime mortgage lending and overly restrictive mandates that could lead to a contraction in the availability of mortgage credit, particularly for those consumers who find themselves unable to make payments under the current conditions they face.

We believe the Statement generally strikes the correct balance, and commend you for not only understanding the importance of appropriate regulation at this time, but in articulating it in a way that makes it clear that there is a difference between reviewing solutions for current borrowers

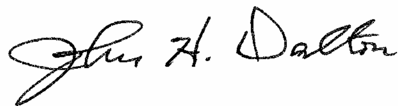
who are trying to work with their lenders to be able to repay loans that they already have and for those who are not yet borrowers.

While there are situations in which a “one size fits all” regulatory standard is appropriate, the present situation is complex and requires a prudent standard that is appropriately applied. Working out debt problems between lenders and borrowers requires a case by case analysis, and must be done under statutory and regulatory constraints that recognize that flexibility is a key component of any arrangement. We appreciate the fact that the regulators have recognized that the present situation requires this type of approach.

We also strongly believe that the standards sought by the proposed Statement should be applied on a uniform national basis and we encourage federal regulators to work with their state colleagues to ensure consistent standards are applied to all lenders.

We have addressed our concerns and suggestions in responses to the four questions posed in the Proposed Statement. We have also attached a copy of the Housing Policy Council’s Statement and Principles on Responsible Non-Prime Lending. We are certainly available and willing to answer any questions raised by these responses.

With best wishes,



John H. Dalton
President
Housing Policy Council
The Financial Services Roundtable

* The Housing Policy Council’s membership is 23 of the Nation’s leading mortgage finance companies. We estimate that our members originate roughly 65 percent of mortgages for American consumers. The Financial Services Roundtable is the CEO-level trade association of 100 of the nation’s largest integrated financial services companies. The Roundtable’s member companies provide banking, insurance and investment products and services to American consumers.

Proposed Statement on Subprime Lending
Answers to Questions in the Request for Comments

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?***

Answer:

No, the type of loans addressed in the Statement have been successfully utilized by borrowers without presenting inappropriate risks to the borrower or lender. Subprime hybrid ARMs were created out of a realization that underwriting standards of a decade ago failed to take into account the improvement in credit scores of subprime borrowers as they made regular and consistent payments over a two year period. Subprime hybrid ARMs were designed to take that into account and therefore give those borrowers the benefit of their improved credit performance.

Once underwriting had introduced that dynamic element into the process, it so clearly reflected reality, including the reality that most borrowers refinanced during the first two or three year life of the loan, that it became a cornerstone of underwriting for subprime lending. It permitted lenders to assist borrowers in beginning homeownership by offering affordable products and permitting them to improve their credit performance by regular payments. It became a part of the fabric of lending.

Its basic premise remains sound – lenders can determine the expected performance of a borrower sufficiently well that they can safely offer the borrower a lower rate for an introductory period, anticipating that many borrowers will refinance during that introductory period and obtain loans which at the time of that refinancing will reflect the ability of the borrower to repay the loan.

We have some limited empirical evidence for that. While we have not conducted a formal survey of our membership, anecdotal evidence from a few large members has shown that about 50% of the borrowers who refinance subprime hybrid ARMs obtain prime fixed rate loans or prime ARMs. An additional 25% acquire subprime fixed rate loans, and about 25% stay with subprime ARMs.

We would urge the regulators to recognize the need for loan products which provide financing for borrowers to stay in homes or purchase new homes while improving their FICO scores. Requiring fully indexed rates to serve as the sole basis of underwriting will eliminate that possibility for many homeowners. We recognize and support the need for sound underwriting and clear consumer disclosures for all loan products and we urge the agencies to consider these factors rather than a rigid standard based solely on a type of product.

The Housing Policy Council believes these products are useful when made in accordance with the principles on responsible sub-prime lending that the Housing Policy Council has adopted. We have attached a copy of those principles for your information as you craft the final statement.

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:

It is our judgment that there will be tens of thousands of potential subprime borrowers who will be unable to qualify under an inflexible interpretation of the standards established for the loans addressed in this Statement or for alternative loans in the same amount. Some of those borrowers will be currently obligated under subprime loans for which they will be unable to meet the monthly payments required under the reset periods in the adjustable rate portion of the loans. Therefore, while those who currently do not have a loan will be unable to begin the process of homeownership, others will be at risk of default on their present loans.

While it is difficult to predict just how many might not qualify for refinancing their loans with this guidance in place and while we have no documentary proof of our estimate, if the guidance means that in all cases borrowers must be able to repay the loan based unconditionally upon a fully indexed rate and fully amortizing repayment schedule, we estimate that as many as 40% of those currently holding subprime hybrid ARMs for which the initial fixed rate period has not ended will be unable to qualify.

Fixed rate loans do not present payment shock to borrowers except in those cases in which life events make the payment of any periodic amount difficult or impossible. We would submit that adjustable rate mortgages have also become acceptable to borrowers, and the adjustments in those products generally do not constitute "payment shock." Similarly, we believe that subprime hybrid ARMs in which there is a fixed initial payment rate followed by an increased payment schedule that adjusts periodically need not produce "payment shock" if certain conditions are met.

For example, if the differences in monthly payments between the initial fixed rate periods and the first reset period is clearly displayed to the borrower sufficiently early that the borrower has the ability to consider if those increased payments can be met, and if not, provides sufficient time that the borrower can consider other loans, then the borrower should be aware of the expected cost of future payments and can be prepared to meet the new payments when the loan adjusts and those new payments are due.

If the difference between the payments under the initial rate and under the initial reset rate is not only disclosed but is limited to a reasonable increment, and the difference between the payments under the initial rate and those based on the maximum rate to which the loan could be raised, calculated at the time the loan is originated, are reasonable, payment shock would be minimized.

Our member companies are actively engaged in contacting and working with borrowers who may find themselves unable to make payments as their subprime hybrid ARMs adjust. They have discovered that the borrowers in this group fall into a number of different categories.

For example, some of the borrowers have actual incomes less than that stated on their applications. Others have apparently engaged in speculative borrowing, counting on the increase in housing prices to permit them to repay or refinance their loans, thereby expanding their personal net worth. Others are borrowers who have suffered job losses, family sicknesses or divorces and find themselves without the source of income they expected to have. Others may not have paid attention to or not understood the notices which described the payment increases that would take place as the rate adjusted.

While it may just be a question of timing and payment adjustments may have more impact in the future, few of our members are reporting that they have experienced significant numbers of borrowers who are in distress because of payment adjustments. Most of the defaults are of those who have suffered loss of jobs, sickness, or other adverse life events.

Our members are working to address the problems of individual borrowers. For years, lenders have offered workout programs such as extended terms (to lower the payments), forbearance agreements (in which borrowers can cease making payments or make reduced payments for some period of time), lowered interest rates, capitalization of accrued interest, forgiveness of some principal and interest and other traditional loss mitigation techniques. For some, combinations of various techniques are being utilized as may be appropriate on a loan by loan basis. Responsible lenders know that all parties lose when a lender is forced to foreclose.

To avoid serious numbers of failed loans, the industry needs to have the ability to work with borrowers to try to restructure or refinance loans to permit the borrower to stay in the home under a payment schedule that is possible for the borrower to meet. To do that, the Statement as finally adopted must not dictate inflexible standards that will complicate resolutions for current borrowers who need repayment options.

Our members constantly consider new products which will be helpful in resolving these problems. For example, one of our member companies recently announced a new approach in which it will reduce rates on its fixed rate products by up to 50 basis points to help qualified subprime customers refinance into a fixed rate loan. Lenders are also offering extended loan terms (e.g., 40-50 years) to help customers achieve the lower payment of a subprime hybrid ARM but without the risk of an adjustable rate and/or a discounted start rate and payment. Other members are making similar decisions on products they are offering. In addition, companies are making special efforts to reach out to their borrowers to explain the options available to them. Many of our members have been encouraging the GSEs to work with them to develop new loan products that may be helpful for some borrowers in the present circumstances, ones which have longer maturities or smaller incremental movements in rates at reset periods or over the life of the loans. We fully expect such new innovations will continue to be offered in the market place as lenders work with borrowers to keep these homeowners in their homes.

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

Answer:

No. Prime borrowers by definition have better credit than subprime borrowers, and have demonstrated a record of managing their financial affairs in ways that enable them to borrow money at the best rates. That knowledge permits them to work closely with lenders to search for repayment options that work best for their lifestyle and financial situation. To deny such borrowers the opportunity to purchase products that differ somewhat from others would be unduly restrictive and would not contribute to the safety and soundness of the lenders or the repayment ability of the borrowers.

Generally, the industry practice is to place some kind of limitation on the ability of any borrower to engage in certain activities. Those practices are policed by the lenders and the supervisors, as well as by the market, and lenders whose practices deviate sharply from acceptable and sound practices find that funding sources in the secondary market become more expensive and insist upon additional limitations in their relationships.

The financial markets work quickly, and because they do, loans to prime borrowers who by definition have more capacity to meet obligations need not be restricted as are those to nonprime borrowers who, again by definition, have fewer financial reserves.

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:

We support limiting prepayment fees to the initial fixed rate period. HPC members believe they can adjust to a standard in a Statement on Sub-prime Lending that requires the prepayment fee period to terminate before 30 days prior to the end of the initial fixed rate term for all new subprime hybrid ARMs. They will be able to adjust their underwriting and their pricing to reflect the additional risk.

We also believe that 30 days is sufficient time for the borrower to find refinancing, and would be a reasonable period to adopt. From a practical perspective, the 30 days is effectively 60 days since a payment is not due for an additional 30 days beyond the reset date.

There is a relationship between the number of days a prepayment fee is in effect and the cost to the borrower. The cost to the borrower will be greater if the Statement requires that prepayment fees terminate 90 days before reset rather than 30 days before reset. We would urge the regulators to take that into account when considering the imposition of a mandatory termination date on prepayment fees.

Thank you for considering these views. If you have additional questions or require additional information, please contact Paul Leonard of the Housing Policy Council at 202 589-1921.

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Statement of Responsible Non-Prime Lending Practices and Key Principles

Statement of Responsible Non-Prime Lending Practices

The Housing Policy Council of The Financial Services Roundtable believes that all mortgage lenders should embrace responsible lending principles and work to keep people in their homes. Federal regulatory action or legislation on non-prime lending must strike a careful balance that provides enhanced consumer protections without unintentionally limiting the availability of loans to credit-worthy borrowers. Potential federal legislation to provide additional consumer protections must also establish a single uniform national standard that will provide consistent protections to consumers in all fifty states replacing state and local lending requirements. This standard should preserve the existing regulatory and enforcement authority of the federal banking regulators over federally chartered institutions and their affiliates.

Regulatory action, such as the pending federal subprime guidance, and potential national legislation should be based on the principle that lenders should only make home loans to borrowers whom they reasonably believe have the ability to repay the loans based on information available at the time the loan is made. In addition, loans should offer a demonstrable benefit to the consumer, such as purchasing a home, obtaining significant new money, converting an adjustable rate loan to a fixed rate or reducing monthly debt payments. Loan terms, features, benefits and risks should be disclosed to borrowers in ways that enable them to make an educated decision about the loan product that they choose. The timing and estimated amounts of future payment changes should be clearly communicated to borrowers in accordance with applicable disclosure laws and good business practices. Finally, servicers and investors should make available to borrowers appropriate options to help them sustain homeownership.

KEY PRINCIPLES:

1. **Ability to Repay**

   Lenders should only make home loans to borrowers whom the lenders reasonably believe have the ability to repay the loans based on information available at the time the loan is made. Ability to repay should be determined through a risk-layering assessment process utilizing appropriate underwriting standards and tools.

   As part of the standard underwriting process, non-prime ARMS with initial fixed rate periods of three years or less should be underwritten at a fully-indexed rate and with a fully amortizing payment schedule determined as of the time of loan underwriting.

   To assist existing borrowers in avoiding unnecessary foreclosures, lenders should not be required to use the fully-indexed, fully-amortizing standard in underwriting a loan. Lenders should also be allowed to consider significant compensating factors that support the borrower's ability to repay provided that the lender can demonstrate that steps have been taken to limit the layering of other risks consistent with the federal guidance.

   Non-prime mortgage loans with 100% combined loan to value ratios should be made only where there are significant compensating factors supporting the borrower's ability to repay.

2. **Documentation to Verify Ability to Repay**

   Lenders should obtain sufficient documentation for borrowers with higher risk attributes to verify the ability of the borrower to repay. Significant compensating factors, e.g. consistent good payment history, significant borrower equity or reserves, etc., should guide documentation requirements.

3. **Maximum Flexibility To Assist Existing Non- prime Borrowers**

   To assist existing non-prime borrowers who may have difficulty making loan payments as a result of an interest rate adjustment or other personal hardship, lenders should provide, and regulators should permit, maximum flexibility to restructure or provide forbearance on non-prime loans made in prior periods, subject to investor servicing contract requirements where applicable.

4. **Benefit to the Borrower**

   All non-prime loans should offer a demonstrable benefit to the consumer, such as purchasing a home, obtaining significant new money, converting an adjustable to a fixed rate loan, or reducing monthly debt payments.

5. **Payment Adjustments**

   Loan terms should include reasonable limits on the timing and amount of payment or interest rate adjustments at the time of reset. The potential for payment adjustments and the timing and extent of such adjustments should be clearly disclosed to borrowers.

6. **Clear Disclosures to Consumers**

   Lenders or others who have contact with a prospective borrower should provide clear disclosure at the time he or she is shopping for a loan and additional product specific disclosures at the time of application for a specific loan and at closing. The disclosure during shopping should describe generic differences in types of loans, including examples of payment adjustments, prepayment fees, pricing increases for choosing not to document income, responsibility for taxes and insurance, and other key terms of the loans. Subsequent required disclosures should include those features relevant to the specific loan obtained by the borrower.

7. **Homeownership**

   Lenders should continue to promote widespread availability of homeownership, but should be mindful that no homeowner or lender is benefited if the homeowner obtains a mortgage that he or she is unable to repay. Further, all responsible parties should be mindful that proposals to increase restrictive provisions governing nonprime lending may reduce the rate of homeownership in America.

8. **Uniform National Standards**

   Any legislation on non-prime lending should provide consistent protection for consumers in all fifty states by establishing a uniform national standard regulating the terms and conditions of originating and servicing nonprime loans. This standard should preserve the existing regulatory and enforcement authority of the federal banking regulators over federally chartered institutions and their affiliates and of state regulators over state chartered institutions unaffiliated with federally chartered institutions.

9. Broker Standards and Disclosure

Brokers should be licensed, adequately supervised and examined by regulatory entities, and should be bonded or possess sufficient net worth. Brokers should be required to disclose the nature of their relationship to the borrower, including how and by whom they will be compensated for their services and whether or not they are representing the borrower.

10. Lender- Broker Oversight

Lenders should establish and maintain systems that address both safety and soundness and oversight of brokers with whom they do business consistent with existing agency guidance.

11. Prepayment Fees

Lenders who offer prepayment provisions should provide borrowers sufficient information to enable them to make a reasoned choice to accept or reject an option incorporating prepayment fees. The information should disclose the benefits and risks of options with and without prepayment fees.

Prepayment fees for nonprime hybrid ARM loans should not extend beyond 30 days before the termination of the term associated with the first payment adjustment.

12. Proactive Servicer Action to Assist Borrowers

To assist non-prime borrowers in financial difficulty who may need to refinance, lenders, bondholders, and servicing agents should work together to establish procedures to enable servicers to attempt to contact borrowers at the earliest indication of difficulty and at a reasonable time prior to a significant payment adjustment to discuss possible options including restructuring or refinancing the terms of the loan.

13. Industry Action to Prevent Foreclosures

To help prevent foreclosures on non-prime loans, lenders may make available independent counseling to borrowers who are not able to repay mortgages under current terms. Such third party counseling could include discussion of the consumer's budget and finances; loan restructuring or refinancing; deed in lieu of foreclosure, and sale of the property**.** ***An example of counseling services available to the consumer is the HOPE foreclosure prevention partnership which provides free independent non-profit counseling to consumers through*** **a toll-free nationwide helpline, 1-888-995-HOPE,** ***and the availability of follow-up in-person counseling.***

14. Regulations and Enforcement

Appropriate financial regulators must apply uniform standards to all originators not covered by federal regulations or regulatory guidance, whether federally or state chartered or state licensed. Any guidance, regulation or legislation must be applied consistently and uniformly and provide protection to all non-prime borrowers.

April 9, 2007