helpMarch 29, 2006

VIA E-MAIL ONLY

Office of the Comptroller of the Currency
250 E Street, SW
Public Reference Room
Mail Stop 1-5
Washington, DC 20219
Attn.: Docket No. 05-21

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn.: Docket No. 2005-56
reg.comments@ots.treas.gov

Robert E. Feldman
Executive Secretary
Attn: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Jennifer Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th St. and Constitution Ave, NW
Washington, DC 20551
Attn.: Docket No. OP-1246

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

Attn.: Docket No. 2005-56, OP-1246

Re: Proposed Guidance- Interagency Guidance on Nontraditional Mortgage Products
70 FR 77249 (December 29, 2005)

Ladies and Gentlemen:

Guaranty Bank[1] ("Guaranty") appreciates the opportunity to comment on the Proposed Guidance – Interagency Guidance on Nontraditional Mortgage Products ("Proposed Guidance") issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the "Agencies").

[1] Guaranty Bank is a federal savings bank headquartered in the Milwaukee Wisconsin area with over 150 retail bank locations throughout Wisconsin, Northern Illinois, metropolitan Detroit Michigan, Atlanta Georgia and the Minneapolis, Minnesota area. Despite having just under $2 billion in assets, over the past 3 years our lending operations have originated over $20 billion in home mortgage loans throughout the United States.

Along with deposit operations, home mortgage lending is our central function. For many years, we have been able to serve more homebuyers in a changing and growing market by using alternative mortgage products[2] in addition to the 15 and 30-year fixed interest rate mortgages that were virtually the ubiquitous options years ago. When properly underwritten, we believe that alternative mortgage products, including those with payment options that can result in zero or negative amortization, confer important benefits to both financial institutions and homebuyers.

Guaranty agrees that institutions must use care and prudent practices to originate alternative mortgage products and to manage portfolios containing these products, but we do not believe it is necessary to issue guidance to depository institutions to reiterate these points. If the Agencies, nevertheless, deem it appropriate to issue a final guidance, we believe that revisions are needed to avoid; (i) excessive regulatory burdens, (ii) competitive inequities and (iii) restrictions that would hamper our ability to offer the widest array of products available to serve all of our customers appropriately.

Frankly, the imposition of the restrictive guidelines noted in the Proposed Guidance might force Guaranty to cease offering these types of loans. If other regulated institutions respond similarly, it would leave non-regulated lenders and brokers as the only providers. Since these unregulated entities do not undergo bank-like examination and supervision, their restraint in properly using these products for the right kinds of customers may not be as measured.

The guidelines in the Proposed Guidance for loan terms and underwriting standards are largely consistent with our current practices. However, we are concerned that the Agencies' approach is too prescriptive and could limit appropriate use of alternative mortgage products for many customers who would benefit.

In particular, some of the "worst case" underwriting concepts would prevent many qualified borrowers from obtaining competitively priced home financing. Although Guaranty agrees that loans with short-term "teaser" rates should be underwritten at the fully indexed rate, this concept should not be extended to require all loans to be underwritten at the long-term rate or to assume fully-amortized payments, regardless of the period to which the initial rate applies. Most mortgages are prepaid long before their maturity dates, so to make a contrary assumption as the minimum underwriting standard is overly cautious. Likewise, the Proposed Guidance's caution to assume that borrowers make only minimum payments during the deferral period when calculating the amount that the loan balance can increase, may also be overly restrictive and not reflective of actual borrower behavior in the vast majority of cases.

---

[2] We agree with comments noted in some industry trade association comment letters that the types of mortgages that are the subject of the Proposed Guidance are better referred to as "alternative" mortgages instead of "nontraditional" mortgages. As defined by the Agencies, these products include Interest Only ARMs ("IOs"), Hybrid ARMs, Option ARMs, and mortgages with relaxed requirements for verification of income, but there are many other types of alternative mortgages as well beyond standard 30 and 15 year amortization conforming loans.

Portfolio and Risk Management

We believe that the Agencies should continue to evaluate on a lender-by-lender basis the existing risk management processes of each financial institution for the identification of portfolio risk segments and the setting of concentration limits in light of the specific risks posed for each institution. Although Guaranty tends to sell most of its originations to institutional investors as opposed to holding the loans in its portfolio, we still oppose the Proposed Guidance's concentration limits. We agree that concentrations should be monitored for riskier exposures, but we believe monitoring can be adequately performed by management based on each institution's portfolio and business model.

The Agencies should allow flexibility in risk management and not impose stress-testing guidelines that necessitate sophisticated financial software and databases where the cost may outweigh the risk management benefits. A bank that holds a very small amount of alternative mortgages in its portfolio in relation to the balance of its asset base may not need the same risk monitoring tools as an institution with greater concentrations. Further, the Proposed Guidance should make clear that the need to consider the borrower's ability to absorb higher payments does not require unrealistic, worst-case assumptions about the whole portfolio. The stress testing that is done should consider realistic ranges of default rates and prepayments for the individual institution and its overall risk profile.

Consumer Protection

Guaranty agrees that it is incumbent upon lenders to provide consumers with sufficient information to clearly understand the loan terms and features associated with all mortgage products, including alternative mortgage products. As with other aspects of this proposal, however, we are concerned that the disclosure requirements will only apply to regulated depository institutions, leaving consumers exposed to the disclosure practices of others. Any mandate for new, more elaborate disclosure requirements should apply to all lenders. Accordingly, a better way to ensure that disclosures are uniform would be to consider amending the Truth in Lending Act (or some other federal law) to address the specific disclosure requirements consumers need.

How a lender ensures that disclosures are timely provided, on the other hand, should be left to the lender to determine the most cost effective compliance procedures. The Proposed Guidance also calls for institutions to monitor third-party originated loans to ensure compliance with the institutions' policies and procedures regarding disclosures. We are concerned about the practical implications of this mandate and how it might actually be implemented in any kind of effective manner.

Conclusion

Prudent underwriting, careful portfolio management and informed borrowers are already recognized as essential to the safety and soundness of our lending activities. We believe the Proposed Guidance is unnecessary because we already employ sufficient controls in our underwriting and portfolio management to manage these risks. We believe that the Proposed Guidance imposes excessive regulatory burdens and restrictions that may deter us from offering the widest array of products available to serve our communities responsibly, without demonstration of a corresponding benefit to consumers. Finally, we are concerned that the Proposed Guidance only applies to depository institutions and will therefore create competitive inequities.

Guaranty Bank appreciates the opportunity to comment on this important matter. If you have any questions, please contact the undersigned at 414/362-5610 or brian.levy@gbmail.com.

Sincerely,

Brian S Levy
Senior Vice President and General Counsel*
Guaranty Bank

*Admitted only in Illinois