FLORIDA BANKERS ASSOCIATION

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Filed via e-mail

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Re: **FDIC** (No docket number provided); **FRB** Docket No. OP-1246; **OCC** Docket No. 05-21; **OTS** Docket No. 2005-56; Proposed Interagency Guidance on Nontraditional Mortgage Products; 70 Federal Register 77249; December 29, 2005.

Ladies and Gentlemen:

These comments are made on behalf of the Florida Bankers Association ("FBA"). FBA is the trade association that represents the great majority of commercial banks and thrifts operating in this state. Given the importance of the housing market to this state and its citizens as well as its financial institutions we believe it important that we comment on the proposed guidance.

As an initial comment, we understand and agree that the regulators should stay on top of the market for mortgage products as it evolves. We appreciate it that our regulators stay in front potential issues and address them before they become critical. The issuance of guidance is therefore timely and appropriate.

We have, however, significant concerns that the specific proposal is not well thought out and has the potential to cause more problems than it would prevent or solve.

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First, we believe the guidance is not well conceived in that it attempts to cover too much ground. Specifically, it is a mix of safety and soundness considerations with consumer protection provisions. Consumer protection regulation is a very complex area that is currently the subject of specific, if not minute, requirements. Regulation Z in concept and in many details covers they same type of concern as the guidance. A second set of much less clearly defined consumer protection actions will primarily cause confusion and we doubt would realistically advance consumer interests.

We agree with the suggestion that a generic advice about alternative mortgages provided to consumers would be far preferable and more effective than trying to create a new disclosure format.

We further agree with the suggestion that the consumer and the safety and soundness provisions should be separate and proceed separately.

Second, we have a great concern that the guidance will create lawsuits and civil liability. To the extent that the guidance in its detail sets a standard that financial institutions must meet, any arguable failure to comply will be grist for consumer class action litigation business. Our history with Regulation Z clearly demonstrates that there is great risk for financial institutions in this regard. At least Regulation Z has statutory limitations on liability.

Third, we are not convinced that blanket guidance is required. Alternative mortgage products have been around for many years. They are time tested and have worked well. We believe the record shows that most institutions have handled them responsibly both from the consumer interest and the safety and soundness perspective. The one size fits all approach does not seem called for. We are concerned, for example, that the terms of the guidance applied generally will have the effect of eliminating stated income loans and reduced documentation loans even though these products have proved in most instances to be safe and positive for the consumer.

Fourth, our members are reluctant to take on the regulation of other businesses. As we understand the guidance financial institutions would be responsible for compliance with this guidance by those from whom they acquired mortgages. This is a major burden that will most likely be addressed by severely limiting the number of companies with whom an institution will deal. This will have several consequences. First, there will be less access for consumers because there will be fewer companies seeking their business. Second, there will be a concentration in the mortgage origination business as only the few large players who have sophisticated (compliant) systems will survive. This will result in upward pricing.

<u>Fifth</u>, the guidance will not solve the consumer problems. The sale of the products, which have proved to be desired in the market, will migrate to unregulated channels. Regulated institutions in the meantime will be at a competitive disadvantage. Consumers will end up having the products that are of concern sold to them by unregulated business who are more likely to engage in undesirable practices. Unregulated companies will also have the competitive advantage of not having to comply with the guidance which means that they will garner more of the consumer business and thus make the guidance less effective.

<u>Sixth</u>, one of the most serious economic issues we face in Florida is the lack of affordable housing. With the increase in housing costs it becomes more and more difficult for our working citizens to purchase a home. Alternative mortgages have been of great help in getting persons into homes. To the extent that this guidance makes these products less accessible, as we believe will happen, it will adversely affect our citizens and our economy. The effect is regressive in that it will have greater impact on the less advantaged for whom many of the alternative products were crafted.

FBA has reviewed the comments of the American Bankers Association and the Americas Community Banks and believes that they have identified legitimate concerns and have made responsible suggestions for the modification and improvement of the proposed guidance.

We appreciate the opportunity to make these comments and look forward to working with you as this process continues.

Sincerely,

Alex Sanchez
President & CEO