



March 28, 2006

Office of Thrift Supervision

Via E-mail to: regs.comments@ots.treas.gov

Subject: Docket number 2005-56

Dear Sir or Madam:

We at Mid America Bank appreciate the opportunity to comment on the Interagency Proposed Guidance on Nontraditional Mortgages. As a large retail 1-4 family lender, having lent over \$2 billion in home loans in 2005, Mid America shares similar concerns with the federal financial institution regulators that the lending process assures the safety and soundness of banks while providing home ownership opportunities to Americans. To that end, we support the monitoring of new loan products by an institution's management and board of directors, as well as complete, clear and simple explanations of loan products to consumers. However, we suggest that some aspects of the proposed Guidance are too expansive, and may have the effect of overly restricting home lending. Specifically, we offer the following comments:

1. It appears that the Guidance is advocating a type of "suitability" requirement similar to the securities industry. Although lenders support the dissemination of information to consumers and disclosure, as well as consumer protection laws such as those against predatory lending, a suitability requirement is inappropriate. Suitability in the case of a home loan is highly subjective due to the many types of loan programs and the many characteristics of loans that cross the lines of various products. For instance, the characteristic of a 40 year amortization may be offered on a conforming loan, a stated income loan and/or an interest only loan. There are a myriad of loan products and characteristics which would need to be considered if suitability were a requirement. Furthermore, many knowledgeable consumers may not agree with what a lender finds to be most suitable to them. Are lenders to tell consumers what they cannot have? Also, in the securities industry, a consumer may lose his or her principal if poor advice is given. In a mortgage loan transaction, the consumer cannot lose principal. That is only the lender's risk. Lastly, the highly subjective nature of suitability in a home lending transaction would be fodder for the plaintiff's class action bar.

2. The statement is made in the Collateral – Dependent Loans section of the Guidance, “Loans to borrowers who do not demonstrate the capacity to repay, as structured, from sources other than the collateral pledged are generally considered unsafe and unsound.” We suggest that this statement is too absolute and therefore inaccurate. This section should be deleted, or, as stated elsewhere in the Guidance, it should be explained that certain factors, such as a low loan to value ratio, can mitigate the “unsafe and unsound” description of collateral dependent loans.
3. Mid America Bank has been issuing no income verification (NIV) loans for many years. The delinquency percentage tracks very closely that of the bank’s entire 1-4 family portfolio. Credit scores have been found to be very accurate predictors of delinquency frequency. If a bank’s historical experience with a loan product has been very good, we do not believe there is a sound reason for the program to be curtailed or otherwise restricted.
4. It is stated in the simultaneous Second-Lien Loans section, “Loans with minimal owner equity should generally not have a payment structure that allows for delayed or negative amortization.” We suggest that it be noted that equity, while being very important, is only one of the risk factors.
5. Payment Option ARM loans and interest only loans are very different products with varied risk characteristics and levels of risk. We believe payment option ARM’s which allow for initial negative amortization carry significantly more risk than interest only loans. Because the principal amount of the loan can be greater than the appraised value for an option ARM, which is not the case for an interest only loan, and since the borrower’s payment can increase more over the same initial period than an interest only loan, we believe that less strict underwriting, monitoring and ALLL standards are appropriate for interest only loans.
6. We agree with the Guidance that concentration levels of new or innovative products should be monitored until the bank has historical experience with the products.
7. The Guidance states that in a loan sale without contractual recourse, if a seller decides to repurchase even a small number of loans on its own volition, even without contractual obligation, the seller would be required to maintain risk based capital against the entire sold portfolio or securitization. If a seller decides to repurchase loans because it is in the best interest of the business at that time, and not due to contractual recourse, the entire sale should not be tainted as recourse. In this scenario there is no legal obligation to repurchase in the contract or elsewhere in the law. How could and why would the regulator impose such recourse in the regulatory arena guidance when it does not legally exist between the principals to the transaction, the buyer and

seller? This issue has significant capital ramifications to all regulated financial institution lenders.

8. In general, we are concerned with the specificity contained in the Guidance. In addition to the characteristic of a particular “nontraditional” loan program many other factors are of significant importance in assessing an institutions 1-4 family lending. Factors such as the amount of ALLL reserves, capital levels, historical lending experience, whether loans are originated retail by a bank’s own employees, whether appraisals are done by a bank’s in house appraisal staff, portfolio and risk management practices are all considerations which should be taken into account when giving guidance to examiners and the industry.
9. By imposing restrictive standards on regulated financial institutions, the banking industry is placed at a disadvantage in relation to unregulated lenders. Many home loans are not originated by banks and thrifts or bought by them. Increasingly many loans are originated by non bank lenders and find their way to securities without ever going through a regulated financial institution. The banking industry does not want to lose customers. Home loans are a core account – a primary connection to consumers – to cross sell other products and services.
10. By issuing such a detailed, comprehensive Guidance, the regulators are going far to rewrite a bank’s underwriting standards in a restrictive manner. Heretofore determining underwriting standards had been the responsibility of the banks. Over many decades, history shows that bank and thrift underwriting of home loans has been excellent as demonstrated by the low level of bank losses on their 1-4 family portfolios. By Guidance being overly restrictive, many Americans may be prevented by federal regulators from owning a home.

We thank you for the opportunity to comment on the Guidance before it is issued.

Respectfully,

Kenneth Koranda
President
Mid America Bank
2650 Warrenville Road, Suite 500
Downers Grove, Il. 60515
630-663-3363
kkoranda@midamericabank.com