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From: legnatacorn [legnatacorn@acorn.org]

Sent: Thursday, September 12, 2002 8:46 PM

To: regs.comments@occ.treas.gov; regs.comments@federalreserve.gov; comments@fdic.gov; infocollection.comments@ots.treas.gov; jlackeyj@omb.eop.gov

Subject: notice on proposed collection of subprime loan originations/purchases by banks/thrifts

Attached and pasted below, please find ACORN's comments on the joint notice published in the Federal Register on July 12, 2002 at http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=87768523576+0+0+0&WAISaction=retrieve

September 10, 2002

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW
Public Information Room, Mailstop 1-5
Attention: 1557-0081
Washington, DC 20219
regs.comments@occ.treas.gov

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20551
RE: Consolidated Reports of Condition and Income, 7100-0036
regs.comments@federalreserve.gov

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal Division
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RE: Consolidated Reports of Condition and Income, 3064-0052
comments@fdic.gov

Information Collection Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
RE: TFR Revisions, OMB No. 1550-0023
infocollection.comments@ots.treas.gov

Joseph F. Lackey, Jr.
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building, Room 10235
Washington, DC 20503
jlackeyj@omb.eop.gov

Dear Madam/Sir:

On behalf of ACORN's 120,000 member families from low- and moderate-income communities across the country, I write regarding the federal banking agencies' joint proposed rule to begin collecting data on the amount of subprime lending engaged in by federally-insured banks and thrifts.

As the proposed rule acknowledges, the banking agencies do not currently monitor individual banks and

thrifts' involvement in the subprime market between examinations, nor do the agencies collect any industry-wide data on this issue. The Federal Reserve's collection of data on the APR spreads on high-cost mortgages will not be implemented until January 2004, and the data will not be available until mid-2005. We understand that the primary motivation behind this proposal is to improve the agencies' monitoring of the safety and soundness of the banks and thrifts you regulate, but the impact on consumers must also be taken into account, especially as predatory lending practices within the subprime market have inflicted so much damage to homeowners over the past several years. Our comments on the proposed regulation fall into three main categories: the use of credit scores in defining the subprime market, the definition of the subprime market, and the question of confidentiality of the collected information.

As you know, ACORN and its sister housing counseling agency, Acorn Housing Corporation, have a long history of pushing, and working with, banks and thrifts to increase the amount of business they do in underserved communities and extend the reach of the 'A' market. We have worked with banks and thrifts to improve the marketing of loans in our neighborhoods, develop loan products geared toward the needs of low- and moderate-income families, implement a housing counseling model to educate applicants about the home-buying process and improve their credit records, and increase underwriting flexibility to start making loans to credit-worthy families who previously were excluded from the 'A' market because they did not have the standard characteristics of middle- or upper-income borrowers. Substantial progress has been made on such issues as getting banks to recognize an applicant's history of on-time rent payments as an indication of credit-worthiness when the applicant does not have enough of a credit record and looking at the applicant's income history rather than how long she has been in her present job, given that low-wage workers tend to change jobs more frequently. As the steps banks and thrifts have taken through our CRA agreements have paid off in terms of increased loan production with very low default rates similar to the rest of their 'A' business, many of these changes have been adopted by the bank or thrift for all of its mortgage lending business and have become widely used throughout the industry. This work has always been guided by the general principle that deserving borrowers should always receive an 'A' loan, expanding access to mortgages that have lower fees and interest costs, which in turn reduces default rates as borrowers are better able to keep up with lower monthly mortgage payments.

In regard to the use of credit scores, we have serious concerns about cementing in 660 as a cutoff level between the prime and subprime markets. As credit scores' influence in the mortgage application process grew over the 1990s, we saw large numbers of low- and moderate-income and minority applicants who would have previously been approved under the previous character lending application process receiving scores of between 620 and 660. We then worked with banks to put those borrowers into 'A' loans and found that their subsequent repayment records justified the low rates and fees on their loans. For mortgage applicants counseled in the Acorn Housing program, whose scores range from 540 to 640, the 30-day delinquency rate for the AHC portfolios range from below 1% to 2.7%, which is well below the industry standard. A Freddie Mac study from May 2001 of 40,000 Affordable Gold mortgages, entitled *A Little Knowledge Is a Good Thing: Empirical Evidence of the Effectiveness of Pre-Purchase Homeownership Counseling*, found that one-on-one counseling reduced 90-day delinquency rates by 34 percent, and classroom counseling reduced delinquency by 26 percent. As a result of these and other similar experiences, many banks and thrifts currently set their credit score cutoff for 'A' loans around 620, rather than the level of 660 in the proposed rule.

There are also larger concerns about the use of credit scoring and its disproportionately negative impact on lower-income and minority applicants. In AHC's running of tens of thousands of credit scores for mortgage applicants each year, our loan counselors see repeated problems with the accuracy of credit reports. Many reports contain debts or late payments that in fact belong to other consumers with similar names or Social Security numbers. A substantial share of the information on late payments has been misreported by the creditor and are simply wrong. These errors have a disproportionate impact on low- and moderate-income and minority applicants, who encounter a range of additional obstacles to getting these reports fixed, from a lack of familiarity with or understanding of the credit process to a lower likelihood of being able to use a phone during the workday. In addition, many of the subprime lenders that target their products in lower-income and minority communities only report negative repayment data to the credit bureaus so that borrowers in their loans (and Fannie Mae CEO Franklin Raines has estimated that up to half of all borrowers in subprime loans should be receiving 'A' loans[1]) are never able to improve their credit record, even if they made their payments on time every month. On top of all of those factors that argue against too strict a use of credit scores, the credit bureaus have never disclosed the factors weighed in generating the scores so that characteristics common to lower-income or minority consumers might be held against them on a credit score when those characteristics might actually bear no relation to real credit risk.

Taken together, these facts indicate that the banking agencies' potential use of a 660 credit score as the cutoff

between 'A' and non-'A' mortgages would significantly reduce the availability of low-rate loans to lower-income and minority applicants and reverse progress that has been made on closing the homeownership gaps. If this proposal is implemented, many banks and thrifts inevitably will cite the higher capital requirements imposed by the agencies as an excuse to not make 'A' loans to applicants when past experience shows that those applicants are indeed worthy of receiving an 'A' loan. As a result, applicants will either be denied the opportunity for homeownership and its benefits of financial and retirement security or placed in a subprime loan with higher rates and fees, reducing their quality of life as mortgage costs consume a larger share of their monthly budgets and leave them more at risk for default.

If the Administration is really serious about pursuing its initiative to expand access to homeownership, it cannot at the same time institutionalize standards that lock out large numbers of credit-worthy applicants from the 'A' market.

We also ask the agencies to reconsider the proposed rule's assumption that anyone with a subprime loan falls into the category of a "subprime borrower." As Fannie Mae estimates that up to half of borrowers on subprime loans should be qualifying for 'A' loans, the category of subprime borrower does not seem to hold much validity. We acknowledge that much of this problem derives from finance companies that do not offer 'A' loans targeting their loans to lower-income and minority communities regardless of a consumer's credit history, but the issue is also directly relevant to larger conglomerates like Citigroup that have separate divisions selling 'A' and subprime loans in different communities. It should be Citigroup's basic fair lending responsibility to provide borrowers with the best loans they qualify for, but its Citifinancial branches, which are disproportionately concentrated in lower-income and minority communities, do not offer 'A' loans to applicants with 'A' credit. As a result, Citifinancial's high-cost loans to consumers with 'A' credit would not be counted toward the subprime totals. This ignores both the safety and soundness risk posed by the extra costs on the loan and, assuming they are able to keep up with the payments, rewards Citigroup for putting borrowers in higher-cost loans than they should receive based on where they live.

Instead, we believe the reporting requirements should use the same definition for the subprime market that the industry uses - higher pricing - and categorize only those mortgages with higher rates or fees as subprime loans.

Finally, we have serious concerns about the proposed rule's unjustifiable provision to keep secret the data generated on banks and thrifts' involvement in the subprime market. The banks and thrifts' arguments urging confidentiality bear remarkable parallels to the broader mortgage industry's pleas to the Federal Reserve to not collect loan pricing data under HMDA or to delay that data collection as long as possible. No matter the situation, the industry wants to collect the profits from originating and purchasing subprime loans but does not want to be tied to the abuses that are often found in the subprime market, and then fights the collection of more specific pricing data that would give at least some indication of whether their subprime loans involve abusive lending practices. The agencies' argument that the data should not be publicly released because some banks or thrifts might otherwise break the law by falsely reporting their data is a highly circular argument that uses the potential of law-breaking as the justification for not setting any laws.

These arguments ignore the fact that banks and thrifts are publicly-chartered institutions that receive substantial public benefits, such as deposit insurance and the discount window, along with the public confidence resulting from the regulatory system. No evidence has ever been presented that any data on subprime lending has ever been used irresponsibly or misinterpreted. But there have been banking lobbyists going to state legislators and city councilors urging that they be exempted from anti-predatory lending legislation because they are not involved in the subprime market and certainly not engaged in any abusive practices. We are also now hearing that the banks are now pushing for a preemption from the banking agencies from any state anti-predatory lending laws, such as those that have been passed recently in North Carolina, California, and Georgia. At the same time, none of the banking agencies have proposed or implemented tough consumer protections on high-cost loans. So here is what the banks and thrifts are arguing for: no release of any data on loan pricing, no release of any data on the volume of subprime loan originations and purchases, and complete exemption from any state and local laws protecting consumers against predatory loans. At the same time, more and more banks and thrifts are playing an active role in the subprime market where borrowers are charged higher rates and fees. In a subprime market characterized by opportunity-based pricing with tremendous initial profit potential, this combination will inevitably lead more banks to be involved in abusive lending practices, damaging families and neighborhoods, as well as public confidence in the banking system.

Thank you for your consideration. We would like to set up a meeting with each of the agencies to discuss this

matter in more detail. Please contact Chris Saffert in our Washington office at (202) 547-2500 to set up a meeting or provide any additional information.

Sincerely,

Maude Hurd
National President, ACORN

[1] "Financial Services in Distressed Communities," Fannie Mae Foundation, August 2001.