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September 10, 2002

Communications Division
Office of the Comptroller of the Currency
250 E Street, S.W.
Public Information Room
Mailstop 1-5
Attention: 1557-0081
Washington, D.C. 20219

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th and C Streets, N.W.
Washington, D.C. 20551
Re: Consolidated Reports of Condition and Income, 7100-0036

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal Division
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Re: Consolidated Reports of Condition and Income, 3064-0052

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

Ladies and Gentlemen:

The Consumer Bankers Association ("CBA")[1] greatly appreciates the opportunity to comment on the joint notice and request for comment ("Proposal") of the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of

[1] The Consumer Bankers Association is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer finance (auto, home equity, credit cards and education), electronic retail delivery systems, bank sales of investment products, small business services, and community development. CBA was founded in 1919 and provides leadership and representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include most of the nation's largest bank holding companies as well as regionals and super-community banks that collectively hold two-thirds of the industry's total assets.

Thrift Supervision ("Agencies"). The Agencies are seeking comment on proposed revisions to the Consolidated Reports of Condition and Income ("Call Report") for banks and the Thrift Financial Report ("TFR") for savings associations, before submitting the revisions to the Office of Management and Budget for review and approval.

According to the Agencies, the purpose of the Proposal is to "enable the agencies to better plan their examinations of banking institutions and to monitor off-site the extent of, changes in, and performance of, subprime lending programs." Citing the disproportionate number of subprime lenders on the FDIC's "problem institution" list during the past two years, the Proposal notes the lack of regular periodic reporting of subprime lending activities, and the consequent difficulty of monitoring institutions.

We recognize the Agencies' need to find a more reliable way to regularly monitor individual institutions' subprime lending programs—the level of growth and the performance of portfolios-- between examinations. As the agencies have noted, the examination process itself, due to the length of time between exams, cannot provide adequate information about potential problems. The information is also needed between exams to make more informed and risk-based judgments about where and when to focus limited examination resources.

However, as the Agencies note, "there is no standard industry-wide approach to the definitions of either subprime loans or sublending program, which means that the meanings of these terms are institution specific." As a result, it is important that the requirements of the new reporting requirements remain flexible. Institutions must be allowed some leeway to determine whether their lending meets the requirements, within reasonable limits. We recognize that institutions often wish to have greater specificity and clarity to guide their reporting, but we believe this is an example of a case where the need for some subjectivity trumps the need for bright line measures.

Coverage

It is perhaps inevitable that the Agencies have chosen to employ the same definitions of "subprime" and "program" that were first issued as part of the Expanded Guidance for Subprime Lending, January 31, 2001 ("Guidance"), and have since been used by examiners. At the time, we objected to the characteristics, and we wish to reiterate the objections.

Like the Guidance, the Proposal defines subprime loans as loans to borrowers displaying one or more of these characteristics at the time of origination or purchase. Generally, subprime borrowers will display a range of credit risk characteristics that may include one or more of the following:

- Two or more 30-day delinquencies in the last 12 months, or one or more 60-day delinquencies in the last 24 months;
- Judgment, foreclosure, repossession, or charge-off in the prior 24 months;
- Bankruptcy in the last 5 years;
- Relatively high default probability as evidenced by, for example, a credit bureau score (FICO) of 660 or below (depending on the product/collateral), or other bureau or proprietary scores with an equivalent default probability likelihood; and/or
- Debt service-to-income ratio of 50% or greater, or otherwise limited ability to cover family living expenses after deducting total monthly debt-service requirements from monthly income.

The Proposal indicates that this list is illustrative rather than exhaustive and does not define specific parameters for all subprime borrowers. The Proposal also states, institutions that have identified borrowers as "subprime" based on their own internal rating systems should be reported as such.

In addition, the Proposal provides a list of activity which the definition of subprime lending generally does not apply to, such as:

- Prime loans that develop credit problems after acquisition;
- Loans initially extended in subprime programs that are later upgraded, because of their performance, to programs targeted to prime borrowers;
- Community development loans as defined in the Community Reinvestment Act regulations that may have some higher risk characteristics, but are otherwise mitigated by guarantees from government programs, private credit enhancements, or other appropriate risk mitigation techniques; and
- Institutions that extend credit to subprime borrowers as part of their standard community lending process or make loans to subprime borrowers as an occasional exception.

The Proposal would expand reporting only for institutions that have subprime lending programs. The term "program" refers to the process of acquiring on a regular or targeted basis, through either origination or purchase, loans to subprime borrowers that are to be held in the institution's own portfolio or accumulated and packaged for sale. If there is any question about whether an institution is a programmatic subprime lender, it would contact is primary regulator, who would make the determination.

According to the Agencies, "the average credit risk profile of such programs or portfolios will likely display significantly higher delinquency and/or loss rates than prime portfolios." While this may statistically prove true in the aggregate, we believe that the coverage of the characteristics is too broad. As we stated when the Guidance was issued in January 2001, the characteristics do not reflect our member banks' experiences with risk. Many who do view themselves as subprime lenders routinely make loans they consider to be "prime" loans to borrowers with one or more of these characteristics. For example, a credit bureau FICO score of 660 is unreasonably high in many cases, and not reflective of the marketplace; a 50% debt-to-income ratio could place many high net worth customers into a subprime classification; and applicants who have two or more 30-day delinquencies are often not classified as subprime. We would therefore encourage the Agencies to reexamine the characteristics and make whatever adjustments are appropriate to more accurately reflect the standards more commonly considered as subprime by the industry.

Subjectivity

We support efforts by the Agencies to permit some subjectivity to be employed by institutions in reporting. In particular, it is valuable that the Proposal permits institutions to employ their own internal rating systems in lieu of the characteristics in the Proposal, where appropriate. The subjectivity built into the Proposal is necessary to mitigate the problems of attempting to create a "one size fits all" approach to this issue—particularly since many institutions are not comfortable with the fit. Since there is no one definition of subprime (nor ought there to be), it is necessary and appropriate for institutions to be permitted to provide the data based on their own perceptions of risk. If, for example, an institution treats a portfolio or program as "prime" notwithstanding the fact that some of the characteristics in the Proposal

fit the loans (e.g. employing FICO scores of 660 or below), it ought to be permitted to do so. The alternative would be for the tail to wag the dog: Institutions would need to develop their programs to suit federal data collection requirements, rather than the other way around. It would also create a de facto federal definition of subprime that might be employed in other—less appropriate—contexts.

Therefore, while we recognize that some standardization is needed to provide an "apples-to-apples" comparison for monitoring purposes, we support the use of language that permits some subjectivity. For example, the Agencies describe the list of characteristics as "illustrative rather than exhaustive"; and also state: "Institutions that have identified borrowers as 'subprime' based on their own internal rating systems should be reported (sic) as such". It is also good that the Agencies will permit institutions to seek clarification on their subprime programs that vary from the characteristics set forth in the Proposal. As noted in the Proposal, "If a reporting institution has a question as to whether it has a subprime lending program, it should contact its primary federal regulator."

Confidentiality

Under the Proposal, information received would be accorded confidential treatment on an individual institution basis. We entirely agree on the need for confidentiality because, as the Agencies state, "the reported information will not be entirely comparable from one institution to the next, leading to potential misinterpretation of the data by the public." According to the Proposal, "the agencies believe there is a risk that the data will be misinterpreted and that their release at this time could cause potential harm to an institution or an increased risk to deposit insurance funds." We could not agree more.

If, as stated, the purpose of the data is to determine where to focus examination efforts, the public availability of the data is not needed. More importantly, it would not be clear to the public viewing the data that they are not uniform, and not comparable from institution to institution. We are particularly concerned about public availability because, as noted above, we do not believe that the characteristics necessarily reflect many institutions' practices. For those lenders who are not and do not want to be considered subprime lenders, the release of the data could create misunderstanding that could be costly to their reputations, at the very least.[2]

The Proposal states that, "...after experience has been gained with the data, e.g., after six or eight quarters, the agencies will reevaluate whether this treatment should be retained." We assume that any decision to release the information would be done on a prospective basis. All our comments are based on the assumption of confidentiality. It would be inappropriate at best to offer confidentiality only to take it away at a later date. We also recommend that you publish for comment any proposal to eliminate the confidential treatment of the information on a prospective basis.

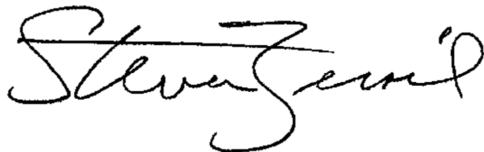
[2] We are not suggesting that there is anything wrong with good subprime lending. Indeed, we believe that risk based pricing of loan products (which makes subprime lending possible) has been beneficial for consumers and fueled an explosive growth in housing and credit. Rather, we are referring to the reality of the public perception in light of recent attacks against subprime lending, based on a mistaken identification with abusive practices.

Timing of Implementation

Until definitions of subprime loans and subprime lending programs are developed, it would be difficult for banks to automate the collection of this type of data. Much of the data will have to be collected manually. Therefore, we request that the implementation date be extended two calendar quarters from the time the final rule is adopted (e.g., if the final rule is adopted in November 2002, the new schedule would be implemented for the June 30, 2003 Call Reports).

Once again, we appreciate the opportunity to comment on the Proposal.

Sincerely,



Steven I. Zeisel

Vice President and Senior Counsel