NATIONAL ASSOCIATION
OF HOME BUILDERS

Advocacy Group

William P. Killmer
Group Executive Vice President

May 7, 2007

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington DC 20552
Attention: No. 2007-09

Ms. Jennifer J. Johnson
Secretary
Attention: Docket No. OP-1278
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, NW
Washington DC 20551

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

Office of the Comptroller of the Currency
Attention: Docket No. OCC-2007-0005
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219

Re: Statement on Subprime Mortgage Lending
72 FR 10533 (March 8, 2007)

Dear Sirs or Mesdames:

On behalf of the 235,000 member firms of the National Association of Home Builders (NAHB), I welcome the opportunity to respond to the request for comment, issued jointly by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration (the Agencies) regarding the proposed statement on subprime mortgage lending (Proposed Statement). If adopted, the Agencies expect financial institutions to use the Proposed Statement in their efforts to ensure that their risk management and consumer protection practices adequately address the risks associated with subprime mortgage loan products.

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NAHB encourages the Agencies to use the Proposed Statement not as a surrogate for regulations but rather as a supervisory protocol that supports institutions' efforts to manage their lending operations in a responsible manner, by giving direction combined with appropriate flexibility.

Background

The Proposed Statement was developed for the purpose of addressing emerging issues and questions in relation to certain subprime mortgage lending practices due to concerns that subprime borrowers may not be fully cognizant of the risk and consequences of certain adjustable-rate mortgage (ARM) products. In the proposal, the Agencies note that institutions should refer to the existing 1993 Interagency Guidelines for Real Estate Lending, the 1999 Interagency Guidance on Subprime Lending, and the 2001 Expanded Guidance for Subprime Lending Programs, which provide underwriting standards for all real estate loans and which define "subprime" lending. In addition, the proposal reiterates and encompasses many of the prudent underwriting and consumer protection principles set forth in the 2006 Interagency Guidance on Nontraditional Mortgage Product Risk. The Agencies suggest that institutions should consider these principles with regard to subprime mortgage lending.

Specifically, the Agencies are concerned with ARM products that contain short-term "teaser rates", substantial prepayment penalties that extend beyond the initial interest rate adjustment period, very high or unlimited interest rate resets, the need for frequent refinancing, low documentation in evaluating the borrower's creditworthiness, and inadequate consumer information regarding product features, terms and risks. In addition, the Agencies are very mindful of the increasing trend in combining these loans with other practices, such as risk layering, failure to establish escrow payments for property taxes and insurance, and reduced loan documentation with respect to creditworthiness. The Proposed Statement advises institutions that the inclusion of such features is acceptable only if there are other factors to mitigate the increased risk. The Agencies explicitly state that a higher interest rate is not considered an acceptable mitigating factor.

The Proposed Statement specifies that institutions should underwrite borrowers at the fully indexed interest rate, assuming a fully amortizing payment schedule. It also states that institutions should structure any prepayment penalties to allow borrowers sufficient opportunity to refinance, without penalty, prior to the initial interest rate reset date. The Proposed Statement places significant responsibility on lenders to inform borrowers of the risks of payment shock, the ramifications of prepayment penalties and balloon payments, and the cost of loan features such as reduced documentation.

NAHB Position

NAHB appreciates that the Agencies have initiated a dialogue on how the regulatory system should address subprime lending, and we especially appreciate having the Statement proposed for public comment to give all stakeholders an opportunity to express their views.

NAHB notes that the mortgage products that are the focus of the Proposed Statement have been available for many years but that market demand for these loans greatly increased during the housing boom of 2004-2005. Industry estimates suggest that the subprime share of all mortgage loans grew from 5 percent in 2001 to 20 percent in 2006. Subprime ARM loans offer payment flexibility and are effective and beneficial financial management tools that enable a more diverse group of qualified consumers to purchase homes. NAHB is mindful, however, that subprime products carry higher risk and are accounting for increased delinquency and foreclosure rates due to a shift in market conditions (higher interest rates, slower house price appreciation and declining home sales).

NAHB supports the supervisory approach taken in the Proposed Statement that directs financial institutions to have appropriate and prudent underwriting standards, risk management practices, and consumer disclosures. NAHB further supports the Agencies' ability to take remedial action against institutions that fail to adhere to safe and sound standards, exhibit predatory lending practices or violate consumer protection laws as outlined in the Proposed Statement. NAHB's support for the Proposed Statement, however, is conditioned on the Agencies exercising care in the application of the Statement in the supervision/examination process to avoid unnecessarily reducing the flow of mortgage credit, limiting consumer mortgage options, or raising housing credit costs for qualified home buyers.

NAHB notes that the subprime mortgage products that are the focus of the Proposed Statement have varying risk profiles, underwriting standards and borrower demographics. A financial institution's risk management protocol may vary on par with its mortgage offerings and we encourage the Agencies to make accommodations for such circumstances so long as the institution is conducting its mortgage operation in a safe and sound manner and provides adequate financial disclosures to consumers.

NAHB requests that the Agencies consider that the rigid application of static guidelines is inconsistent with the flexibility that is essential for certain specialized types of lending activity. While NAHB agrees with the principle that institutions should evaluate a borrower's ability to repay the debt from a longer term perspective, we are concerned that too rigid of a requirement to underwrite subprime ARM loans at the fully indexed rate may unnecessarily reduce the range of subprime borrowers who can qualify for mortgage financing. Therefore, NAHB suggests that the Statement should provide sufficient flexibility so that a financial institution could underwrite subprime loans using realistic expectations of interest rate trends and future borrower income, as long as these factors are supported by appropriate documentation and review.

Finally, it is important that efforts to ensure prudent mortgage lending and risk management practices as well as adequate consumer disclosures are comprehensive and uniform for all institutions and organizations that are involved in providing mortgage credit. In this regard, NAHB supports the Agencies' proposed requirement that institutions' control systems encompass both institution personnel and applicable third parties, such as mortgage brokers and correspondents. We also agree that institution compensation programs should avoid providing incentives that are inconsistent with prudent underwriting or that steer consumers to subprime loans to the exclusion of other products for which the borrower may qualify. Further, NAHB notes that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators have endorsed the Agencies' Proposed Statement and have stated that they will develop a comparable parallel model statement on subprime mortgage lending for state-supervised entities. NAHB supports this approach and believes a coordinated effort among federal and state agencies is necessary to ensure prudent lending practices and effective consumer protections while facilitating efficient operation of the residential mortgage markets.

Conclusion

NAHB stands ready to work with the Agencies to develop guidance that reflects the benefits that subprime mortgage products provide to financial institutions and their customers, and the enhanced safety and soundness and consumer awareness elements they deserve. Thank you again for the opportunity to comment. NAHB is available to answer any questions you may have concerning this statement or to provide any additional information that may be needed.

Best regards,

William P. Killmer
Executive Vice President
Advocacy Group

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