citigroup

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By electronic delivery

May 7, 2007

Office of the Comptroller of the Currency
250 E. Street, SW
Public Information Room, Mail Stop 1-5
Washington, DC 20219
Attn: Docket No. 2007-3005

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

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20249
Attn: Comments

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

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

Re: Proposed Statement on Subprime Mortgage Lending Products

Ladies and Gentlemen:

Citigroup Inc. ("Citigroup"), on behalf of itself and its subsidiaries, appreciates the opportunity to submit this comment in response to the request for comment on the Proposed Statement on Subprime Mortgage Lending (the "Proposed Statement") published in the Federal Register on March 8, 2007, by the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System (the "Federal Reserve"), the Federal Deposit Insurance Corporation, the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA") (collectively, the "Agencies").

A. Overview of our Principal Points.

1. Citigroup Supports the Agencies Efforts. Citigroup supports the Agencies' efforts to promote strong underwriting practices in the mortgage industry through the issuance of the Proposed Statement. We believe the Proposed Statement addresses many of the practices and products that have contributed to rising mortgage delinquency and foreclosure rates. See Section B below.

2. Competitive Issues and Widespread Customer Benefit. It is essential that the final statement also be adopted by state regulators to assure a level playing field for all lenders and to assure the practices promoted in the Proposed Statement benefit all consumers. See Section C below.

3. Uniform Application. In order to facilitate the uniform application of the rules to all lenders, including state-regulated lenders, we both: (a) encourage the Agencies to make most of the rules in the Proposed Statement as "bright line" as possible, which will facilitate uniform application, interpretation and enforcement by states that adopt parallel rules, and (b) encourage the Agencies to use their rulemaking authority under the Parity Act (12 USC 3801) and the Home Ownership and Equity Protection Act (15 USC 1639, "HOEPA") to adopt "bright line" regulations in this area. See Section D below.

4. Limit Rules to Subprime Loans as Defined in Reg C. Because the risks to borrowers addressed by the Proposed Statement are generally confined to subprime lending, we recommend that new rules apply only to "subprime" loans. Consistent with our preference for bright line tests, we further recommend that the Agencies define "subprime" loans as loans with APRs in excess of the HMDA APR thresholds established by Federal Reserve Regulation C ("Reg C"). See Section E below.

5. Disclosure Rules Should Be Amended, But Only Through Changes to Reg Z. We strongly support the Agencies' objective to provide clear, accurate and timely disclosures to consumers. However, we respectfully believe that, in general, changes to the mortgage disclosure rules should not be made through "guidance" or "statements," but rather through changes to Federal Reserve Regulation Z ("Reg Z"). Despite our belief that any new rules imposed by the Proposed Statement should generally apply only to subprime loans, we believe that the Reg Z disclosure rules should be uniform whether a loan is prime or subprime. See Section F below.

6. Specific Comments and Concerns. We have specific comments and recommendations on several aspects of the Proposed Statement, including: (a) risk layering; (b) prepayment penalties; (c) qualifying subprime ARMs on the fully indexed rate and qualifying payments; (d) debt-to-income ("DTI") ratio analysis; (e) disclosures; (f) control systems; (g) impact on credit availability; (h) impact on stated income and

reduced documentation loans; and (i) whether the scope of the Proposed Statement should extend beyond 2/28 and 3/27 subprime ARM loans. See Section G below.

B. Citigroup Supports the Agencies Efforts.

1. In General. Citigroup supports the Agencies' efforts to promote strong underwriting practices in the mortgage industry through the issuance of the Proposed Statement. We believe the Proposed Statement addresses many of the practices and products that have contributed to rising mortgage delinquency and foreclosure rates.

2. Complements Existing Interagency Guidance. We agree that the Proposed Statement will complement existing interagency guidance on subprime and non-traditional lending products, including: the 1993 Interagency Guidance for Real Estate Lending, the 1999 Interagency Guidance on Subprime Lending, the 2001 Expanded Guidance for Subprime Lending Programs and the 2006 Interagency Guidance on Nontraditional Mortgage Product Risks. We also agree that it is important for the Agencies to act to extend its line of guidance to address issues raised by 2/28s and 3/27s.

3. Notice and Comment. We also support the decision of the Agencies to follow notice and comment procedure which allows for more careful and informed decision-making.

4. Joint Rulemaking. Although it is troubling that the Proposed Statement would not reach all of our competitors, we are pleased that the Agencies are acting jointly so at least banks, thrifts and their affiliates will operate under the same rules. We commend the Agencies for working in coordination with state bank regulators and with associations like the Conference of State Bank Supervisions ("CSBS") and the American Association of Residential Mortgage Regulators ("AARMR").

5. Citigroup Stands Ready to Work With The Agencies. We stand ready to work with the Agencies on arriving at comprehensive solutions to the Agencies' areas of concern. Citigroup is proud of its record of leadership in the mortgage area, including its adoption in 2000 of the Citigroup Real Estate Lending Initiatives and its ongoing work with community groups in the area of foreclosure prevention.

C. Competitive Issues and Widespread Customer Benefit.

It is essential that the rules applicable to federally-regulated lenders also be adopted by state regulators to help assure a more level playing field for all lenders and to assure the practices promoted in the Proposed Statement benefit all consumers. We are encouraged that the CSBS and the AARMR have stated that they intend to develop a parallel statement for state regulators to use with state supervised entities.

D. Uniform Application.

1. In General. In order to facilitate the uniform application of the rules to all lenders, including state-regulated lenders, and benefit all consumers, we encourage the Agencies to make the rules in the Proposed Statement as "bright line" as possible, which

will facilitate uniform application, interpretation and enforcement by states that adopt parallel rules. However, we believe that to truly level the playing field and benefit all customers, the Agencies should act by rulemaking, and we encourage the Agencies to use their rulemaking authority under the Parity Act and HOEPA to adopt "bright line" regulations in this area.

2. Need For Bright Line Rules. Anytime an agency makes new rules there is a tension between whether to make the rules "bright line," which provides the benefits of greater certainty or whether to make the rules somewhat vague which provides the benefits of greater flexibility. In this circumstance, we believe that the Agencies should follow the "bright line" approach. It is essential that parallel rules apply to state-regulated lenders. For this to work, we believe that the rules must be "bright line" to facilitate uniform application, interpretation and enforcement across both federal and state-regulated entities.

3. Bright Line Rules within the Proposed Statement Itself. As described in Section G below, areas that should have bright line rules include prepayment penalties, qualifying on the fully indexed rate and amortizing payments, verification of income and the definition of "subprime."

4. Parity Act. Consistent with our views that the Agencies' rules should: (a) uniformly protect consumers, (b) be applicable to all lenders and (c) be "bright-line," the OCC, OTS and NCUA should do a rulemaking for subprime alternative mortgage transactions (i.e., subprime loans other than fixed rate equal payment loans, including ARMs, balloon loans and non-traditional mortgages as defined in the 2006 Interagency Guidance on Nontraditional Mortgage Product Risks). We recommend that the rulemaking establish the following requirements and that it make such requirements equally applicable to state housing creditors utilizing the authority of the Parity Act:

a. That subprime loans be qualified on a fully indexed rate and amortizing payment. (Balloon loans can be qualified by using the longer amortization period that would apply if the loan did not have a balloon feature.)

b. That the income verification requirements described in section G.8 below be required for subprime loans.

c. That (until the Federal Reserve amends Reg Z as discussed Section F below) the disclosures contemplated by the Proposed Statement be provided on subprime loans.

5. HOEPA. Also, in order to cause the Agencies' rules to: (a) uniformly protect consumers, (b) be applicable to all lenders and (c) be "bright-line," the Federal Reserve should implement rules through expanded regulations utilizing its authority under section 129(l)(2) of the federal Truth in Lending Act ("TILA"). We commend the Federal Reserve for scheduling a hearing on this matter to be held on June 14, 2007.

E. Limit Rules to Subprime Loans as Defined in Reg C.

1. Limit Rules to Subprime. Because the risks to borrowers addressed by the Proposed Statement are generally confined to subprime lending, we recommend that new rules apply only to "subprime" loans. Prime loans continue to show good on time payment performance across almost all lenders. Prime borrowers have a wide variety of product choices for both purchase loans and for refinances.

2. Use Reg C Definitions. Consistent with our preference for bright line tests, we recommend that the Agencies define "subprime" loans as loans with rates in excess of the HMDA APR thresholds established by Reg C.

   a. Advantages. Six significant advantages of using the HMDA thresholds are: (i) the HMDA thresholds are "bright line"; (ii) the HMDA thresholds focus on APR, which is generally regarded as the best available measure of the true cost of a loan to a consumer; (iii) the risks to borrowers have generally been confined to loans with higher APRs; (iv) the HMDA thresholds are used by the Federal Reserve for Reg C specifically because they cause Reg C to capture nearly all of the HMDA-reportable loans that are originated by subprime lenders; (v) using the HMDA thresholds would harmonize the Agencies' regulations in the subprime area with Reg C; and (vi) lenders already have systems in place to identify whether their loans are over the HMDA thresholds.

   b. Portfolios with Loans over the HMDA Thresholds. We recommend using the HMDA thresholds to define "subprime" for purposes of addressing the risks to borrowers address by the Proposed Statement. However, for other supervising purposes, e.g., capital requirements, the risk profile of each lender's portfolio should be determined based upon the actual circumstances and quality of that portfolio and should not be assumed to be higher risk simply because it may contain loans that are over the HMDA thresholds.

3. No Change to Definitions of "High Cost" Loans under HOEPA. Although we recommend that the Federal Reserve: (a) adopt expanded regulations utilizing HOEPA authority in section 129(l)(2) of TILA and (b) use the HMDA APR thresholds established by Reg C to define "subprime" for purposes of those rules, we do not recommend making any statutory changes in the thresholds for what is a "high cost" loan under section 103(aa) of TILA. Among other things, we believe that lowering the section 103(aa) thresholds would harm consumers by causing a tightening of available credit. In practice, many lenders will not make loans labeled as "high cost" under section 103(aa). Such lenders might cut off credit to subprime borrowers if the section 103(aa) thresholds were lowered.

F. Disclosure Rules Should Be Amended Only Through Changes to Reg Z.

1. In General. Although we strongly support the Agencies' objective to provide clear, accurate and timely disclosures to consumers, we respectfully urge that changes to the mortgage disclosure rules not be made through "Guidance" or "Statements," but

rather through regulatory changes or formal interpretation of Reg Z. Specifically, the Proposed Statement's additional disclosure requirements concerning potential payment shock, prepayment penalties, balloon payments, cost of reduced documentation programs, and responsibility for taxes and insurance could each be better addressed by amending Reg Z's requirements.

2. Authority. The Fed should utilize its discretion under Section 105(a) of TILA.

3. Competitive Issues and Widespread Customer Benefit. Acting through Reg Z will make the disclosure rules more uniformly applicable to all market participants and uniformly protect more consumers.

4. Not Restricted to Subprime. Although we believe that changes to the Proposed Statement to HOEPA and for alternative mortgage transactions should, in general, be limited to subprime lending, we believe that changes to disclosure rules, if made by amendments to Reg Z, should be made applicable to both prime and subprime loans.

G. Specific Comments and Concerns.

1. Risk Layering. We support the concept that is expressed both in the Proposed Statement and in the 2006 Interagency Guidance on Nontraditional Mortgage Product Risks that layering of risks demands more conservative underwriting.

a. We also agree that the added risk that may be created by risk-layering features can be balanced by features that mitigate risk, such as lower DTI and loan-to-value ratios.

b. We recognize that there is a tension between, on the one hand, our preference for bright line rules and, on the other hand, the practical application of the concept that features that mitigate risk can balance risk-layering features. In this regard, and as discussed more fully below, we do not believe that it is practical for the Agencies to try to prescribe a bright line test for ability-to-pay standards, including for a DTI ratio.

2. Prepayment Penalties on Subprime Hybrid ARMs. We would support a bright line rule that, for subprime hybrid ARM products with discounted introductory rates, the duration of any prepayment penalty should be equal to or shorter than the introductory period. In order to provide borrowers with a refinance "window period," we would also support a bright line rule that the prepayment penalty should expire some number of days prior to the expiration of the introductory period.

3. Qualifying Subprime ARMs on the Fully Indexed Rate and Amortizing Payments. We believe that if a subprime "hybrid" ARM product with a discounted introductory rate has an initial reset period of less than five years, the ability to pay should be determined using the fully indexed rate and amortizing payments. This is an area for bright line rules under both the Parity Act and HOEPA.

4. DTI Analysis. The Proposed Statement says "[a]n institution's DTI analysis should assess a borrower's total monthly housing-related payments (e.g., principal, interest, taxes, and insurance, or 'PITI') as a percentage of gross monthly income."

a. We fully agree that the analysis of the borrower's ability to pay should take into consideration the ability to pay taxes and insurance on the home.

b. However, the quoted language describes what is referred to in the industry as a "front-end ratio" analysis where monthly housing related payments are divided by the borrower's total monthly income. In general, most lenders today do their DTI analysis by calculating a "back-end ratio" instead of a "front-end ratio." The two approaches are similar, except that the back-end ratio analysis includes all recurring monthly non-housing related debt obligations in the numerator, not just PITI, in calculating the customer's DTI ratio. The Agencies should clarify that it is appropriate for a lender to use "back-end ratio" analysis to evaluate DTI. By analogy, HOEPA requirements permitting prepayment penalties on loans subject to DTI limits utilize the back-end ratio. See TILA Section 129(c)(2)(A)(i) and Reg Z Section 226.33(d)(7)(ii).

c. Although we generally favor bright line tests, we believe it would be very difficult for the Agencies to formulate bright line rules regarding ability-to-pay requirements, including, in particular, DTI requirements. This view reflects: (a) that sound underwriting can involve a wide range of factors that vary widely across different lenders and (b) that it would be very difficult to regulate with bright lines how lenders should set their DTI requirements to account for risk-layering.

5. Disclosures. Although, as discussed in Section F above, we favor making any disclosure rule changes through amendments to Reg Z, we have the following additional comments on the disclosure sections of the Proposed Statement.

a. Disclosure at the Time of Product Selection. The Proposed Statement's Consumer Protection Principles call for certain consumer disclosures (i.e., potential payment shock, prepayment penalties, balloon payments, pricing premiums for reduced documentation loans and the borrower's responsibility for escrow payments) to be provided at the time of product selection, not just at application or closing. We do not believe that this change would be practical for either lenders or consumers. Rather, we recommend that:

i. Timing. The first time these disclosures are required to be made in writing is at the same time the lender must make its variable rate disclosures to the borrower under Section 226.19(b) of Reg Z. Under this rule, a lender would be required to provide these disclosures no later than at the time an application form is provided to the borrower or at the time the customer pays a non-refundable fee. Where the application reaches the lender by telephone or through an intermediary agent or broker, the disclosures may be delivered or placed in the mail not later than three business days following receipt of the application.

ii. Pre-application Notices. In part because much of the early contact between a lender and a potential borrower is by telephone, we believe that pre-application written disclosures are not practicable.

b. Advertisements. We agree that all advertisements should be clear, accurate and balanced. However the disclosure requirements discussed in the Proposed Statement should not apply to advertisements. To the extent that the Agencies believe that there should be changes concerning how discounted initial rates and payments should be advertised, the Federal Reserve should make these changes through amendments to Reg Z.

c. Danger of Information Overload. In making any changes to the disclosure rules (whether by the Proposed Statement, statutory change, regulation or interpretation) the Agencies must be cautious not to add to the information overload already confronting borrowers during the borrowing process.

6. Control Systems. We recommend that language be added to clarify that:

a. Although lenders are expected to have effective control systems in place to monitor the activities of their brokers and correspondents, the Agencies are not expecting them to do a loan-by-loan analysis of each loan originated by their brokers and correspondents.

b. It is not practical for lenders to monitor the oral disclosures made by their brokers and correspondents. It is also not practical for lenders to monitor written disclosures made by their brokers and correspondents if the disclosure requirements are not uniform requirements made applicable to brokers and correspondents by regulation.

c. In general, it is appropriate for loan purchasers and securitizers to rely on representations and warranties made to them by loan sellers.

7. Cutting Off Credit to Subprime Borrowers. We agree with the Agencies that it is important not to cut off credit to subprime borrowers that have the apparent ability to repay loans.

a. On a related issue, the Agencies have express concern that the implementation of the Proposed Statement could impose a hardship on borrowers who took an ARM loan on the assumption that it was only a temporary loan, but subsequently find it difficult to refinance, perhaps because of changes in underwriting imposed by the Proposed Statement itself. We believe that lenders should have the flexibility to modify the terms of existing loans or to make refinance offers to customers that would be negatively affected by the Proposed Statement. Such flexibility would also promote safety and soundness by avoiding unnecessary foreclosures. We commend the Agencies for their April 17th joint statement encouraging lenders to work with borrowers who are unable to make their payments.

8. Restricted Use of Stated Income and Low Doc/No Doc Subprime Lending. When a stated income or low documentation subprime loan is made, those sources of borrower income that are readily identifiable (e.g., W-2 statements and pay stubs) should be verified and used for underwriting purposes. This is a potential area for Federal Reserve HOEPA regulation and for OCC, OTS and NCUA regulations that could extend to state housing creditors under the Parity Act.

a. Using Tax Returns. Although we agree that lenders should be permitted to use tax returns as a means of verifying income, the Proposed Statement could be read as implicitly requiring lenders to verify income through tax returns if the borrower does not document his or her income with either W-2s or pay stubs. Because it may be impractical for lenders to review loan applicants' tax returns in connection with stated income and low doc/no doc programs, we recommend that either: (i) the reference to tax returns be deleted from the Proposed Statement or (ii) the Agencies clarify that lenders are not required to review applicant tax returns to verify income.

9. Extension Beyond 2/28 and 3/27 Subprime ARMs. The Agencies asked whether the Proposed Statement should be extended to apply to products other than subprime ARMs. As discussed above:

a. We do not believe that it is necessary to expand the Proposed Statement to cover prime products. We further recommend that subprime loans be defined as loans with APRs in excess of the HMDA APR threshold established by Regulation C.

b. We believe the Proposed Statement's provisions on subprime ARM loans should reach only subprime ARM loans with initial discounted rates with initial reset periods of less than five years. ARMs with initial reset periods of five years or more give the borrower ample time to prepare for his or her need to refinance at the end of the initial fixed rate period. A five year rule also allows an extended period for either: (i) the borrower to have an increase in income driven by seniority and inflation based pay increases and/or (ii) property value appreciation. In addition, historically, many borrowers have refinanced before the fifth year.

Again, we thank the Agencies for this opportunity to comment on the Proposed Statement and look forward to working with the Agencies on its implementation. If you have questions on any aspects of this letter, please feel free to call me at (212) 559-2938 or Jeffrey Watiker at (212) 559-1864.

Sincerely,

Carl V Howard

Carl V. Howard
General Counsel - Bank Regulatory

cc: Jeffrey Watiker
Viola Spain