March 29, 2006

Office of Thrift Supervision Regulation Comments Chief Counsel's Office Office of Thrift Supervision 1700 G Street, NW Washington, D.C. 20552 Attn.: Docket No. 2005-56 Via E-mail regs.comments@ots.treas.gov	Office of the Comptroller of the Currency 250 E Street, SW Public Reference Room Docket No. 05-21 Mail Stop 1-5 Washington, D.C. 20219 Via E-mail regs.comments@occ.treas.gov
Robert E. Feldman Executive Secretary Attn: Comments/Legal ESS Federal Deposit Insurance Corporation 550 17th Street, NW Washington, D.C. 20429 Via E-mail Comments@FDIC.gov	Jennifer Johnson Secretary Board of Governors of the Federal Reserve System 10th Street and Constitution Ave., NW Washington, D.C. 20551 Attn.: Docket No. OP-1246 Via E-mail regs.comments@federalreserve.gov

Re: Proposed Interagency Guidance on Nontraditional Mortgage Products, 70 Red. Reg. 77249 (December 29, 2005) (the "Proposed Guidance")

Lehman Brothers Bank, FSB ("Lehman Bank") appreciates the opportunity to comment on the Proposed Guidance.

Lehman Bank is a subsidiary of Lehman Brothers Holdings Inc. ("Lehman Brothers"). Lehman Brothers is a leading underwriter of and market-maker in residential and commercial mortgage- and asset-backed securities and is active in all areas of secured lending, structured finance and securitized products. It is also a leader in the global market for residential and commercial mortgages (including multi-family financing) and leases, and originates commercial and residential mortgages through Lehman Bank and other subsidiaries in the U.S., Europe and Asia.

Lehman Bank is supportive of the overall intent of the Proposed Guidance: to ensure prudent underwriting of nontraditional loans, to establish strong risk management processes around new product offerings, and to ensure that credit applicants gain a meaningful understanding of the benefits and risks of the nontraditional mortgage products on the market today. However, we are concerned with certain aspects of the Proposed Guidance.

As a member of the Mortgage Bankers Association and The Bond Market Association, Lehman Bank generally supports the comment letters which are being submitted by these two associations on behalf of the industry. We offer the following additional observations and comments.

Loan Terms and Underwriting Standards

Lehman Bank believes that an institution's approach to risk layering is an appropriate subject for agency review. However, we would counsel caution in presuming that any risk factor taken alone is determinative. For example, in the Proposed Guidance, loans with CLTVs of near 100% are considered generally incompatible with nontraditional mortgage products. We would suggest that if other risks have been properly considered and limited, this generalization may not be accurate and may unnecessarily limit the consumer's loan product options.

We believe the key is risk layering by the institution. An institution's approach to risk layering should ideally be based upon historical performance data. If an institution can demonstrate that certain apparent risk factors (or combinations of risk factors), within definable parameters, do not lead to increased risk of delinquency, then the Agencies should accept that the institution is layering the risks properly. An open market will mean that different institutions will develop different methodologies for achieving this goal.

The Proposed Guidance recommends that interest-only ("IO") borrowers be qualified at the fully indexed, fully amortizing payment amount. Lehman Bank believes that this methodology is too prescriptive and does not fully consider all factors relating to payment shock. Specifically, it acknowledges the magnitude of the potential payment shock but not the likelihood it will ultimately occur. The effect of this approach is that a longer IO period, which corresponds to a shorter amortization period, results in a greater payment increase (i.e., payment shock) at the end of the IO term. The higher payment shock, however, is significantly mitigated by the reduced probability that the loan will remain outstanding at the end of the IO period.

To put this view in context, for fixed rate, Fannie Mae and Freddie Mac conforming loans made since 1990, 13% paid off during the first 12 months, 30% had paid off by month 24, 39% by month 36, 45% by month 58 and 52% had paid off by the end of the fifth year. Even with this broad time frame and conservative pool of mortgages, a majority had paid off by the end of the fifth year.

In addition, if the loan does remain outstanding until amortizing payments begin, a longer IO period would increase the probability of appreciation in the value of the home and an increase to the borrower's income and assets, enhancing the ability of the borrower to refinance under reasonable terms and conditions or to pay the loan as agreed.

If the Agencies feel that fully amortizing, fully indexed payments must be assumed in the underwriting process, then future increases in income must also be taken into account.

However, this cannot be projected with any accuracy for individual borrowers as there are too many variable to consider, most of which the institutions cannot quantify. If the Agencies do determine that it is appropriate to take future income into account, it would be desirable to establish some standard basis on which this is to be done.

Portfolio and Risk Management Practices

The Guidance relating to Third Party Originators should be modified. In most cases, wholesale and correspondent lenders are doing business at arm's-length with unrelated third parties, and are in no position to manage the day-to-day activities of a broker or correspondent or to force a state-regulated mortgage broker or lender to comply with laws and regulations applying to federally-regulated depository institutions. The responsibilities of federally regulated institutions should include appropriate underwriting controls, verification of licensing, background checks prior to approval of such third parties, and investigation of and response to consumer complaints regarding the third party; they cannot include supervision of the third party's interactions with its customers or review of the third party's marketing materials. These third parties are generally regulated by state and/or federal agencies that have authority to audit and discipline these parties, with discipline including (but not limited to) the termination of the license for the party to transact mortgage business.

Moreover, Lehman Bank would like to see clarification regarding statements in the Guidance related to secondary market activity. Selling portions (sometimes significant portions) of an institution's loan portfolio without recourse has long been an accepted risk management practice followed by many market participants and should not be undervalued.

Consumer Protection Issues

Lehman Bank fully supports enhanced consumer disclosure. However, we agree with the associations that the proper channel for regulating such disclosures is through updating of existing Regulations X and Z, which apply to all mortgage lenders making consumer loans secured by real estate, and not through Guidance which applies only to federally regulated lenders.

It should be noted that one effect of the Guidance as currently proposed may be to shift borrowers from federally-regulated lenders to state-licensed lenders in the subprime and Alt-A channels, as such lenders are not subject to the proposed Guidance. The combination of inflexible underwriting standards for federally regulated lenders and additional disclosures contained in this Guidance rather than in Reg Z (and thus applying only to federally regulated lenders) would almost certainly force volume into the state-regulated lenders and thus minimize the intended consumer protection benefits contained in the Proposed Guidance.

Lehman Bank appreciates this opportunity to provide comments to the Agencies in connection with the important topics addressed in the Proposed Guidance. We would be happy to make personnel available to meet and discuss any of the points raised in this letter.

Sincerely,

Joseph Polizzotto

Joseph Polizzotto
Managing Director and General Counsel