Capital One Financial Corporation
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December 4, 2006

Office of the Comptroller of the Currency
Mail Stop 1-5
250 E Street, S.W.
Washington, DC 20219
Attn: Docket No. 06-12
regs.comments@occ.treas.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2006-36
regs.comments.ots.treas.gov

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

Ms. 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-1267
regs.comments@federalreserve.gov

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428
regcomments@ncua.gov

Re: Proposed Illustrations of Consumer Information for Nontraditional Mortgage Products

Ladies and Gentlemen:

Capital One Financial Corporation ("Capital One") is pleased to submit comments on the federal financial regulatory agencies' (the "Agencies") Proposed Illustrations of Consumer Information for Nontraditional Mortgage Products, published at 71 Fed. Reg. 58672 (Oct. 4, 2006) ("the Proposed Illustrations"), which the agencies have proposed as a means of implementing the disclosure practices described in their Interagency Guidance on Nontraditional Mortgage Product Risks, 71 Fed. Reg. 58609 (Oct. 4, 2006) (the "Interagency Guidance").

Capital One Financial Corporation is a financial holding company whose subsidiaries, Capital One Bank, Capital One, F.S.B., Capital One Auto Finance, Inc., and Capital One, N.A. (formerly Hibernia National Bank), offer a broad spectrum of financial products and services to consumers, small businesses, and commercial clients. As of September 30, 2006, Capital One's subsidiaries collectively had $48.2 billion in deposits and $112.2 billion in managed loans outstanding, and operated more than 300 retail bank branches. In addition, on December 1, 2006, Capital One acquired North Fork Bancorporation, Inc., which operates over 300 bank branches throughout New York, New Jersey, and Connecticut, and is the third-largest depository institution in the greater New York City region. As part of that acquisition, which makes Capital One one of the ten largest banking institutions in the country by deposits, Capital One has acquired GreenPoint Mortgage Funding Inc., a major nationwide originator of residential mortgages, including mortgages that would be considered nontraditional under the Interagency Guidance.

Capital One Supports Adoption of the Proposed Illustrations

The Proposed Illustrations will be helpful to many institutions as they attempt to implement the disclosure practices described in the Interagency Guidance. As a general matter, forms, illustrations, and model clauses are helpful in demonstrating regulators' expectations with respect to guidance and regulations that they issue. This is especially true here, where the Agencies' expectations with respect to nontraditional mortgage products have been issued in the form of guidance rather than regulation. Guidance does not state with specificity what is to be said when and in what form. The Proposed Illustrations will go a significant way toward closing that gap. For example, a reader of the Interagency Guidance might come away with some uncertainty as to whether disclosures could be made in the form of prose narrative or whether numerical examples are required, and if so, what. By providing narrative in Illustration 1 and a numerical example in tabular form in Illustration 2, the Agencies clearly demonstrate that a choice can be made, as long as the content of the disclosures is sufficiently near that shown in the Illustrations. There is great value to the industry and to the consuming public in showing this.

The availability of a choice between Illustration 1 and Illustration 2 (of course, they may be combined, as well) is especially valuable inasmuch as there is disagreement among business managers as to which is likely to be more effective in conveying the information meaningfully. To some extent these disagreements reflect different experiences with different customer populations and products. Business managers should be able to make those informed judgments, and with the availability of the Proposed Illustrations, they now can.

In our comments on the Proposed Interagency Guidance, Capital One urged that the Agencies' disclosure recommendations with respect to nontraditional mortgages be implemented through revisions to Regulation Z rather than through the medium of guidance. We continue to believe that the reasons for preferring that course are sound.[1] And we hope that, at some time in the near future, the closed-end provisions of Regulation Z will, in fact, be amended to include such disclosures as are necessary with respect to nontraditional mortgages, so that the disclosure aspects of the Interagency Guidance will be superseded. However, until the disclosure aspects of the Interagency Guidance are superseded by Regulation Z, the industry needs the additional clarity and certainty that the Proposed Illustrations provide, and we applaud the Agencies for offering them.

A Few Suggestions

Capital One makes the following specific suggestions with respect to the Proposed Illustrations.

1. Illustration 1 refers to "No Doc/Low Doc Loans." Such loans are sometimes referred to as "stated income" loans. We suggest that Illustration 1 include that term, to facilitate the use of the illustration by institutions using that terminology.

2. We suggest that the principal loan amount of the sample mortgage featured in Illustration 2 be reduced to $100,000. That round number would provide two advantages:

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[1] We offered the following reasons:

- Implementing appropriate disclosure requirements through Regulation Z will ensure that the disclosures are made by all mortgage lenders, not just those regulated by the Agencies.

- Implementing appropriate disclosure requirements through Regulation Z will facilitate coordinating the nontraditional mortgage disclosures with the disclosures already required by Regulation Z, offering a chance to minimize disclosure-overload and dilution while making all the disclosures work meaningfully together.

- Clear disclosure requirements set out in Regulation Z will channel the discretion of examiners, who in applying the Guidance institution by institution might not apply it consistently.

- Regulation Z will give clear direction not only to examiners but to lenders, so that they need not be left to their own judgment of what the Agencies would consider "clear, balanced and timely" and what constitutes "information important to the consumer."

- Implementing disclosure requirements through Regulation Z would enable the Agencies to craft those disclosures within the well-defined timing framework that Regulation Z provides.

- The numbers in the table would be more easily scaled to the prospective borrower's actual loan, for the benefit of borrowers who would wish to undertake that exercise.

- The smaller and rounder number would reduce any residual confusion for some consumers about whether the table was intended to represent the borrower's actual loan.

3. We understand that the principal risks that the Agencies are concerned about, and wishing to illustrate in Illustration 2, are the risk of negative amortization and the risk of payment shock. The Agencies might consider whether those two concepts can be brought forward more vividly by an illustration including two tables, each of which emphasizes one of those concepts. An example of what such an illustration might look like is attached hereto as Attachment A.

4. One of the major challenges posed by the Interagency Guidance to mortgage lenders is deciding what disclosures they must make in forms of advertising in which conciseness is essential. The Interagency Guidance recognizes this challenge: "Institutions may not be able to incorporate all of the practices recommended in this Guidance when advertising nontraditional mortgages through certain forms of media."[2] We suggest that an additional illustration would be helpful to show what disclosures will meet their expectations in those confined media. We have developed a small set of bullets that the Agencies might consider for that purpose (Attachment B).

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Capital One appreciates the opportunity to comment on the Notice of Proposed Illustrations. If you have any questions about this matter and our comments, please call me at (703) 720-2255.

Sincerely,

/s/

Christopher T. Curtis
Associate General Counsel
Policy Affairs

[2] 71 Fed. Reg. 58617 n.19.

<u>Attachment A.</u>

COMPARISON OF SAMPLE MORTGAGE FEATURES

(For illustrative and educational purposes only - does not represent actual terms of loans available from any particular lender.)

A Typical Mortgage Transaction

Loan Amount $100,000 - 30-Year Term

		Mortgage with a Fixed Interest Rate		Mortgage with an Adjustable Interest Rate (ARM)		
		Principal and Interest Fixed Rate (7.0%)	**Interest Only** Fixed Rate (7.0%) Interest Only for First 5 Years.	**5/1 ARM** Fixed Rate for First 5 Years; Adjustable Each Year After First 5 Years (Initial Rate for years 1 to 5 is 7.0%; Maximum Rate is 12.0%)	**Interest Only** Interest Only and Fixed Rate for First 5 Years; Adjustable Rate Each Year First 5 Years (Initial rate for years 1 to 5 is 7.0%; Maximum Rate is 12.0%)	**Option Payment** Adjustable Rate for Entire Term of the Mortgage (Rate in month 1 is 1.25%; Rate in month 2 through year 1 is 7.0%; Maximum Rate is 12.0%)
How Your Monthly Payment May Change	**Minimum Monthly Payment Years 1-5, except as noted**	**$666***	**$584**	**$666**	**$584**	**$334*** (1st year only)**
	Minimum Monthly Payment Year 6 - no change in rates	**$666**	**$707****	**$666**	**$707**	**$804**
	Minimum Monthly Payment Year 6 - 2% rise in rates	**$666**	**$707**	**$790**	**$840**	**$945**
	Minimum Monthly Payment Year 8 - 5% rise in rates	**$666**	**$707**	**$986**	**$1,048**	**$1,191**
How Your Outstanding Balance May Change	**How Much Will You Owe after 5 Years?**	**$94,132**	**$100,000**	**$94,132**	**$100,000**	**$113,650**
	Have You Reduced Your Loan Balance after 5 Years of Payments?	**Yes Your Loan balance was reduced by $5,868**	**No You did not reduce your loan balnce**	**Yes Your loan balance was reduced by $5,868**	**No You did not reduce your loan balance**	**No Your loan balance increased by $13,650**

* This illustrates an interest rate and payments that are fixed for the life of the loan.

** This illustrates payments that are fixed after the first 5 years of the loan at a higher amount because they cover both principal and interest.

*** This illustrates minimum monthly payments that are based on an interest rate that is in effect during the first month only. The payments required during the first year will not be suffucient to cover all of the interest that's due when the rate increases in the second month of the loan. Any unpaid interest amount will be added to the loan balance. Minimum payments for years 2-5 are based on the higher interest rate in effect at the time, subject to an contract limits on payment increases. Minimum payments will be recast (recalculated) after 5 years, or when the loan balance reaches a certain limit, to cover both principal and interest at the applicable rate.

<u>IMPORTANT NOTE</u>: Please use this chart to discuss possible loans with your lender.

Attachment B

Nontraditional Mortgage Products:
Short-form disclosure bullets for advertising

- These are not traditional mortgage loans. They allow the borrower to make smaller monthly payments in the early years of the loan.

- Smaller monthly payments may not reduce the loan balance. [If the advertising includes payment-option ARMs:] The loan balance may increase when smaller payments are made.

- Monthly payments may later increase in order to pay down the loan.

- See your mortgage loan originator for more information.