

January 18, 2007

VIA ELECTRONIC MAIL

TO: Mark Pearce, Deputy Commissioner of Banks

RE: Propose Guidance on Non-Traditional Mortgage Products Risks

I would like to thank the Office of the Commissioner of Banks for this opportunity to comment on the proposed guidance on non-traditional mortgage products (NTMP) and their willingness to provide a forum on the effects this proposal will have on the borrowing and the origination community.

It should be noted that NTMP go by other names such as innovation and choices. When I began my career in mortgage origination there were 3 choices available. They were conventional, FHA, VA, 15 and 30 fixed and a relative newcomer to the scene, ARMs. Since the 1980s a myriad of new products have come on line that have provided the borrower with choices that were tailored to unique situations. These choices have created opportunities for families to pursue the American Dream of homeownership. These choices have led us to the highest rate of homeownership in our nations history. While every product is not appropriate for every situation or borrower, the rewards for these choices far outweigh the risks associated with these products.

While I am familiar with the products described in this guidance I must acknowledge that our company has never originated an interest only ARM, payment option ARMs, or a loan that would allow for any type of negative amortization. This is not to say that there would never be a scenario when one of these products would be appropriate however, our principal lending area, Lenoir County, has stable market values and a low median income which would not generally be a target market.

While I cannot speak for the whole of the North Carolina market I am aware that in the Eastern Region cities like Greenville and Wilmington, along with the coastal markets these products have been used with great success. Market conditions coupled with informed borrowers have proven these instruments as the right loan, at the right time, for the right borrower.

If I understand the guidance provided by CSBS/AARMR its implementation will have a profound effect on the originator community. The guidance uses terms like *sound underwriting*, *significant risk factors*, and *extraordinary payment shock*. While I believe that I understand what is meant by these terms I am reasonably certain they can mean different things to different people. Their ambiguity may force a provider to face a challenge from a borrower whose loan features performed exactly as described but the borrower decides to seek redress in the legal arena in a last ditch effort to shift responsibility to the provider.

Further, the guidance seems to assume that non-traditional loans are being underwritten by providers with no regard for prudent underwriting standards or mitigating factors. It is my experience that this is not the case especially in light of the negative impact that non-performing loans and foreclosures have on a provider's loan portfolio. Defaults are a nightmare for both the borrower and provider resulting in losses on both sides of the transaction. I can think of no conceivable reason why a provider would fund a loan when a default is the likely outcome.

It seems reasonable that at the end of the day the provider should be allowed to ultimately determine the risks they are willing to assume when purchasing a loan that is originated under the current

regulatory environment and existing statutes. An arm's length transaction between a willing investor and an informed borrower within the confines of existing law should not be subjected to the burden of additional regulatory oversight.

Sadly, I am aware of isolated incidents where a borrower was not apprised of the risk associated with the NTMP or an unethical originator under-represented the features associated with the product and they found themselves in an untenable position when the provisions of the NTMP began to take effect. No amount of regulatory oversight will overcome the harm that can be perpetrated by an unethical originator who is already violating existing laws and regulations. The best defense against an unethical originator is a knowledgeable borrower. It is incumbent upon the industry and regulators to see that the borrower has all the facts as to the features of any loan product they may choose for their particular needs.

I am not aware of a current disclosure that communicates to the borrower that their payment can go up to "X". The Federal Reserve Publication on "Interest Only ARMs and Payment Option ARMs" is a well written publication but its 17 page length makes it cumbersome to present at time of application and would probably become one more book that is not read by the borrower.

I would ask that the OCOB consider a customized disclosure that communicates to the consumer the variability of their monthly payment both early in the shopping process and again at closing? This can and should be a single piece of paper that is provided to borrowers showing clearly and distinctly his or her payment variations, i.e. a minimum and maximum payment for every loan product, whether fixed-rate or a NTMP. The originator and provider should then be afforded protection from the borrower who complains that he or she was unaware their payment could increase or that negative amortization could occur.

RESPA is the appropriate venue to provide for this additional loan-specific disclosure initially because it should be given to the consumer as early in the process as possible and can accompany the estimated GFE.

TILA is the appropriate venue to provide for the final version of this loan-specific disclosure because the disclosure, once signed by the customer, will become part of the required loan package that must be delivered to the underwriter and therefore, documents receipt by the customer and this disclosure should provide a safe harbor for the industry. It is my understanding that the Federal Reserve will be reviewing TILA starting in March and this would seem an appropriate setting to consider this type of disclosure.

I would ask the OCOB to delay implementation of the CSBS/AARMR guidance at the state level and allow a solution to be resolved with the appropriate national agencies thereby avoiding a dichotomy of state and national regulatory schemes that in the past have resulted in confusion and a reduction of credit availability for those who would benefit most from the options offered by innovative products and choices currently available.

Respectfully,

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