



**Mortgage
Insurance
Companies
of America**

Suzanne C. Hutchinson
Executive Vice President

December 4, 2006

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 1-5
Washington, DC 20219
RE: Docket No. 06-12

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
RE: Docket No. OP-1267

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

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attention: No. 2006-36

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

Ladies and Gentlemen:

The Mortgage Insurance Companies of America (MICA) is pleased to comment on the proposed "illustrations" to enhance consumer understanding of non-traditional mortgages [71 FR 58672]. MICA has in the past supported the agencies' efforts to ensure prudential underwriting of non-traditional mortgages (NTMs), as well as disclosures to increase the likelihood that consumers will make informed choices among the array of increasingly complex mortgage offerings. MICA members provide private mortgage insurance (MI), with over \$635 billion of insurance now in force. In general, MI takes a first-loss position - that is, mortgage insurers take risk before the mortgage investor. This means we have a critical interest in ensuring a safe and sound mortgage market over the long term that promotes home ownership.

Our principal comments on the proposal are as follows:

- Because of the proposed flexibility, lenders will be allowed to vary the illustrations or even not to use them at all. Further, borrowers may not be given these illustrations at critical points in the mortgage product-choice decision process. Thus, it is unclear the degree to which these illustrations will be used, when they would be offered and how well they will assist consumers. MICA suggests the regulators propose model forms and provide lenders with a safe harbor when these model forms are used. The Federal Reserve should then prescribe these forms for all lenders under its Truth-in-Lending Act (TILA) authority, doing so in conjunction with the additional NTM TILA disclosures now under review. This would ensure far more widespread industry use of helpful NTM disclosures.

- The proposed first illustration details some, but not all, of the factors that increase NTM risk. MICA suggests the agencies add a specific disclosure related to simultaneous second liens that addresses the risks correctly noted in the recently completed NTM guidance [71 FR 58609].
- The proposed second illustration appears confusing and thus may not be of significant customer assistance. It too also addresses only some of the risk layers discussed in the NTM guidance. MICA thus suggests reliance on more clear, qualitative language built on the disclosures proposed in the first illustration. Because of the complexity of applicable quantitative information, the agencies should consider establishing an interactive information source that builds on the recent fact booklet for NTMs.¹ In such a website, consumers could input their own particular information into different mortgage structures and get more accurate, easy-to-understand cost alternatives. Model forms should include clear links to this website and the NTM guidance should clarify that lenders should ensure customers are directed to it and assisted with it during the mortgage decision-making process.

Specific comments follow.

I. Model Forms

As noted, MICA urges the agencies to go beyond proposed illustrations to suggested model forms. We thus recommend that the agencies consider all of the comments on these

¹ *Interest-Only Mortgage Payments and Payment-Option ARMs – Are They for You?*
Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision, October 18, 2006

illustrations and then re-submit for public comment specific model forms governing all NTMs. During this comment period, the agencies should make clear that lenders are still required to comply with the disclosure provisions in the NTM guidance, discussing any questions regarding the suitability of their disclosures with appropriate supervisory personnel. It is critical that there be no gap during which consumers do not receive essential information while these illustrations and model forms are considered.

When in doubt as to whether a mortgage product is or is not an NTM, the illustrations and model form rules should urge lenders to give consumers the disclosures and not attempt to detail with specificity each and every type of mortgage product to which they apply. This will ensure a principles-based approach that will promote ongoing consumer awareness even as the types of mortgage products evolve and costs associated with them vary.

To further ensure that the disclosures remain useful over time, MICA suggests that the agencies issue model forms that emphasize qualitative information about factors consumers should consider in evaluating different mortgage alternatives. Some of this is reflected, as discussed below, in the proposed first illustration, but MICA believes these options should be better elucidated to address current products and their potential impact on long-term home ownership.

MICA urges the agencies quickly to finalize these model forms to promote consumer awareness of NTM risk. However, it is vital that this action be pursued in conjunction with Federal Reserve rulemaking to issue comparable model forms that govern all mortgage lenders, not just those subject to the banking agencies. Banks and savings associations have rightly worried about the uneven impact of the current NTM guidance, with this potentially worsened by similarly uneven imposition of new disclosure

standards. Consumers could also be put at risk because some lenders could go beyond non-disclosure to actual obfuscation of NTM terms and conditions to increase their market share, a classic case of regulatory arbitrage in which the mortgage borrower would be the ultimate loser.

II. First Illustration

As noted, MICA generally commends the qualitative nature of the proposed first illustration. However, while it addresses many of the risk layers covered by the NTM guidance, it omits simultaneous second liens. As a result, consumers would not be made aware that loans with simultaneous seconds can carry significantly higher cost in comparison with high loan-to-value first liens backed by mortgage insurance or other credit enhancements.

Specifically, MICA would suggest an illustration along the following lines that also could be included in the model form noted above if the agencies pursue that option:

Simultaneous Second Liens. If you do not have enough ready funds for a downpayment, the lender may suggest that, instead of making the required downpayment, you take out two loans: a first mortgage with a loan-to-value (LTV) ratio of 80% and a second mortgage at a different interest rate which can cover all or a substantial portion of the remaining amount needed to complete the purchase or refinancing. An alternative to two loans for the same home purchase or refinancing is a single mortgage for the desired total loan amount. With a single mortgage, the lender may require mortgage insurance - either private mortgage insurance or government insurance. The cost of the single loan, including mortgage insurance, may be less because the

interest rates and fees are lower than would be the case with two loans. Mortgage insurance can also be cancelled after a loan is paid down or amortized to certain LTV levels, in contrast to the higher cost of the second loan (which you must pay for as long as the loan is in effect). You should ask the lender to provide full rate and fee disclosures for each option so that you can compare taking out a single mortgage for the desired amount versus taking out two loans. Be sure the lender explains when and how you can cancel any mortgage insurance that may be required.

III. Second Illustration

As noted, MICA thinks the proposed second illustration and its quantitative table may prove very confusing. We note that the agencies indicate this table has not been presented to consumer focus groups or otherwise subjected to rigorous analysis and we would recommend doing so before anything along these lines is implemented as an illustration, model form or Federal Reserve TILA rule.

The quantitative disclosure also does not address all NTM risks. It does not, for example, provide a clear illustration of the relative cost of a low- or no-documentation loan versus that with necessary documentation, although the first proposed illustration rightly makes clear that these low or no documentation loans can carry higher costs which a consumer should ensure he or she understands. Similarly, the proposed quantitative illustration does not permit comparison of first liens to loans structured with simultaneous seconds, even though the single first lien may well be far more cost effective for the borrower over the life of the loan than the simultaneous second structure.

However, MICA does believe quantitative information may be of considerable use to

borrowers as they evaluate the increasingly complex array of mortgage options. Therefore, as noted, we suggest the agencies consider establishing a public service website in which consumers can insert their own information e.g., anticipated mortgage amount - that then compares the cost of different mortgage structures under various interest rate and fee options. Since a website can be quickly updated by the agencies as mortgage products evolve, the website is not subject to the risk of being out-of-date. Since it would be offered by the agencies, its objectivity would be assured.

Any such website should, at the outset, insure it provides comparisons for all of the products now available in the market, including low no-documentation and simultaneous-second mortgage structures. It should also supplement the calculations with appropriate consumer information on various mortgage features, perhaps using the information in a revised version of the proposed first illustration and/or model form.

In conclusion, MICA strongly endorses the regulators' efforts to ensure consumers fully understand the risks posed by NTMs. We urge the agencies to ensure that disclosures are provided to all mortgage customers by all lenders in a clear, easy-to-understand format that addresses the key features of all of the risks posed by NTMs now in the market and those likely to be offered over time. We would be pleased to provide additional information on our views.

Sincerely,

Suzanne C. Hutchinson