



August 15, 2006

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
Attention: Docket No. OP-1253

Dear Madam:

The Conference of State Bank Supervisors<sup>1</sup> is pleased the Board of Governors of the Federal Reserve System held public hearings on the home equity lending market. CSBS shares the Board's goals of protecting consumers and improving regulatory and legislative home equity lending provisions.

For many years the states have been on the front lines of the battle against deceptive and predatory lending practices. The bulk of mortgage regulation falls to the state supervisory agencies. Under state jurisdiction are 440,000 state licensees comprised of 100,000 companies, 60,000 branches, and 280,000 individuals that engage in residential mortgage lending. Mortgage lenders and brokers are increasingly subject to more regular state examinations, investigations and enforcement actions including fines, suspensions, revocation of licenses, and criminal prosecution. State mortgage regulation has been rapidly evolving and supervision has become more rigorous, therefore descriptions of the residential mortgage industry as "unregulated" do not reflect the current regulatory reality. In addition, CSBS and the state regulatory agencies have engaged in unprecedented cooperative efforts to address the challenges of an evolving mortgage lending marketplace and delivery system with the goal of protecting consumers and combating predatory lending practices.

#### **State Enforcement of Mortgage Providers**

States were also instrumental in two historic predatory lending cases. In January 2006, Ameriquest Mortgage Co. and a 49-state task force composed of Attorneys General and Banking Regulators and the District of Columbia agreed to a \$325 million settlement to resolve allegations that Ameriquest overcharged and defrauded its consumers. In 2002, state banking agencies and attorneys general returned \$484 million to consumers after

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<sup>1</sup> CSBS is the national organization of state officials responsible for chartering, regulating and supervising the nation's 6,250 state chartered commercial and savings banks and over 400 state licensed branches and agencies of foreign banks.

### **CONFERENCE OF STATE BANK SUPERVISORS**

investigations uncovered fraud and deceptive practices at Household International. These high profile cases and countless other enforcement actions would not have happened without state authorities.

### **CSBS Residential Mortgage Initiative**

To streamline the state licensing process for both regulators and the mortgage industry, increase the level of accountability and consumer protection, reduce fraud, and increase accountability of residential mortgage industry professionals, CSBS and the American Association of Residential Mortgage Regulators (AARMR) have partnered together to develop a nationwide licensing system. The system, available through a secure web site in January 2008, will provide uniform applications for residential mortgage lenders, brokers, and loan officers, as well as a central repository of licensing information and publicly adjudicated enforcement actions. CSBS contracted with the National Association of Securities Dealers (NASD) to develop and host the system.

### **Nontraditional Mortgage Product Guidance**

CSBS recognizes most mortgage lenders and brokers are not engaging in predatory practices. We also note that some mortgage products have been used in a manner harmful to consumers, and may give rise to safety and soundness issues. For these reasons, we support the proposed interagency guidance addressing innovations in mortgage lending that have surfaced in recent years. In some states, for instance, the prevalence of stated-income loans and the increasing popularity of nontraditional products have resulted in mortgage fraud. Therefore, CSBS agrees with the proposed guidance that lenders who choose to underwrite nontraditional products with less stringent income and asset verification requirements must be governed by clear policy guidelines, coupled with other mitigating factors, such as lower loan-to-value and debt-to-income ratios and higher credit scores. We are concerned, however, that while the use of more comprehensive debt service qualification standards appears prudent on the surface, these qualification standards would essentially require that borrowers qualify under the most stringent scenario with information that may not accurately reflect future circumstances. If the analyses are not meaningful, lenders risk denying credit to qualified borrowers or granting credit to unqualified borrowers. CSBS is currently working with AARMR to develop guidance for state-licensed mortgage lenders and brokers who were not covered by the proposed federal guidance issued in December 2005.

### **Home Ownership and Equity Protection Act (HOEPA)**

While CSBS supports the purpose of HOEPA to address certain unfair lending practices, we do not believe that HOEPA is completely effective in decreasing predatory lending. Therefore, we recommend:

- Lowering the thresholds to determine whether a loan is covered by HOEPA. The current thresholds are too high. This is especially true of the points threshold which is set at 8 in HOEPA. Most state legislation has the point threshold set at 5 points, which is much more realistic. The high points and APR thresholds result in HOEPA covering few, if any, loans.

- Including open-end mortgage loans as well as closed-end mortgage loans in the types of loans that should be covered. The omission of open-end mortgage loans from HOEPA creates a huge loophole.
- Including specific requirements, such as verification of income, monthly payments in amounts not more than 50% of gross monthly income, and/or compliance with the VA residual income guidelines after the monthly mortgage payment is made. Currently, HOEPA prohibits this extension of credit to a consumer based on the consumer's collateral.
- Prohibiting the financing of single premium credit insurance or other similar products that may be structured as debt cancellation. Currently, HOEPA only includes this product in its definition of points and fees.

### **Disclosures**

The disclosure process in the United States, while well-intentioned, simply does not work. The current system only protects those consumers who comprehend and accurately complete the forms. More often than not, consumers do not, or can not, read and understand the expansive disclosure forms. The current disclosures are marred by too much paper, too much legal language, too many initials, and too many signatures. For these reasons, CSBS believes an entirely new disclosure process is necessary to help consumers keep pace with an ever expanding array of mortgage related products. CSBS recommends a marketplace where disclosures:

- Are tailored to the exact characteristics of the loan in question;
- Are sufficiently detailed to permit consumers redress if there are variances in the final loan offering;
- Involve models that are standardized between institutions so consumers can compare product offerings;
- Are “front” loaded in the borrowing process and required the first time a discussion is made regarding loan terms; and
- Have only three of four key summary items highlighted to reduce the potential for information overload.

### **Preemption**

The states have many tools at their disposal to regulate the mortgage industry, yet sweeping OCC and OTS regulatory preemption of state consumer protection laws have significantly limited the ability of states to protect consumers. These regulations reach beyond the preemption of state laws for national banks. They also bar the states from licensing, examining and otherwise regulating state-chartered corporations that are subsidiaries of national banks. Preemption shields non-banking firms like title companies, finance companies, leasing companies, securities firms and mortgage brokerages owned by national banks from state licensing and examination requirements that ensure professional conduct and protect consumers.

CSBS appreciates the opportunity both to testify at the home equity lending hearings and to submit this written comment.

Best Regards,

A handwritten signature in black ink that reads "Neil Milner". The signature is written in a cursive style with a large initial 'N' and 'M'.

Neil Milner  
President & CEO