OPPORTUNITYFINANCE NETWORK

May 7, 2007

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 1-5
Washington, DC 20219
Attention: Docket Number OCC-2007-0005
regs.comments@occ.treas.gov

Office of Thrift Supervision
Regulation Comments
Chief Counsel's Office
1700 G Street, NW
Washington, DC 20552
Attention: Docket Number 2007-09
regs.comments@ots.treas.gov

Jennifer J. Johnson, Secretary
Board of Governors of the
Federal Reserve System
20th and Constitution Avenue, NW Washington,
DC 20551
Attention: Docket Number OP-1278
regs.comments@federalreserve.gov

National Credit Union Administration
Mary Rupp, Secretary of the Board
1775 Duke Street
Alexandria, VA 22314-3428
Attention: Comments on Statement on Subprime
Mortgage Lending
regcomments@ncua.gov

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments on Statement on Subprime
Mortgage Lending
Comments@fdic.gov

Re: Opportunity Finance Network comments on *Statement on Subprime Mortgage Lending* (Statement) submitted to the Office of the Comptroller of the Currency, Office of Thrift Supervision, Board of Governors of the Federal Reserve System, National Credit Union Administration, and the Federal Deposit Insurance Corporation, collectively, the "Agencies."

To Whom It May Concern:

Opportunity Finance Network[1] appreciates the chance to comment on the Agencies' Statement on Subprime Mortgage Lending proposal to address emerging issues and questions relating to certain subprime mortgage lending practices.

Opportunity Finance Network commends the Agencies for their continued efforts to combat predatory lending practices and ensure a responsible mortgage system. We support strong legislative and regulatory solutions that facilitate affordable, responsible credit for all Americans.

Opportunity Finance Network is pleased that the Agencies are addressing problems with nontraditional mortgages and generally supports the proposed guidance. We urge the Agencies to implement these proposed changes as soon as possible. This letter highlights concerns with nontraditional mortgages in the subprime market, addresses specific questions asked in the comment notice, and provides

[1] Opportunity Finance Network, the national network of more than 160 financial institutions creates growth that is good for communities, investors, individuals, and the economy. Its members include Community Development Financial Institutions (CDFIs) and other opportunity finance institutions that work just outside the margins of conventional finance to bring those markets into the economic mainstream and to help the economic mainstream flow into those markets. CDFI financing has resulted in significant numbers of new jobs, jobs preserved, quality, affordable housing units, and new commercial and community facility space in all 50 states. Over the past 30 years, the Opportunity Finance industry has provided more than $23 billion in financing that would not otherwise have happened in markets that conventional finance would not otherwise reach.

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information about Opportunity Finance Network's origination and servicing platform and products to serve the subprime market.

To preserve homeownership for American families, we need real, systemic change in policies that protect homeownership. The explosion of the largely unregulated subprime lending industry has contributed to an increase in abusive lending practices that threaten to undo many of the community reinvestment gains of the last decade and changed the face of the financial services industry. Predatory lending, in all its forms, strips billions of dollars from consumers and communities in the United States. A rigorous predatory lending standard will protect new homeowners created by the Administration's initiatives to increase minority and low-income homeowners, as these populations are among those most vulnerable to predatory lending.

As defined in the 2001 *Expanded Guidance for Subprime Lending Programs*, subprime lending "applies specifically to those institutions that have subprime lending programs with an aggregate credit exposure greater than or equal to 25% of tier 1 capital. Aggregate exposure includes principal outstanding and committed, accrued, and unpaid interest and any retained residual assets relating to securitized subprime loans." Opportunity Finance Network agrees with the Agencies statement, "The term subprime is often misused to refer to certain 'predatory' or 'abusive' lending practices. The Agencies have previously expressed their support for lending practices designed to responsibly service customers and enhance credit access for borrowers with special credit needs. Subprime lending that is appropriately underwritten, priced, and administered can serve these goals."[2] It is important to note that the Agencies' do not intend to address these types of loans in their Statement on Subprime Mortgage Lending, but rather those predatory in nature that can lure unsuspecting borrowers into a web of debt.

Adjustable-Rate Mortgage Products

Opportunity Finance Network shares the Agencies' concerns about certain adjustable-rate mortgage (ARM) products with low initial payments based on a fixed introductory or "teaser" rate that expires after a short initial period then adjusts to a variable index rate plus a margin for the remaining terms of the loan.

Too many lenders focused on the minority and low-income market have abandoned prudent lending standards to make ARM loans that borrowers cannot repay without refinancing or selling their home. Because of this irresponsible underwriting, an increasing number of homeowners cannot make their mortgage payments, making them vulnerable to foreclosure. As of September 2005, ARMs accounted for roughly 70% of the prime mortgage products originated and securitized and 80% of the subprime sector.[3] Studies show that these types of subprime mortgages typically include features that increase the chance of foreclosure regardless of the borrower's credit. Responsible lending demands a realistic analysis of the borrower's ability to repay the loan based on all its terms.

When originating subprime loans that permit borrowers to make payments in amounts less than full principal and accrued interest, lenders should analyze each borrower's ability to repay the loan assuming the borrower makes only minimum payments. UBS AG has estimated that approximately 70% of borrowers with option ARMs are currently making the minimum payment.[4]

Significant increases in the amount of the monthly payment that a borrower incurs when the interest rate adjusts to a fully indexed basis is know as "payment shock" and is of particular concern to Opportunity Finance Network. Subprime borrowers with a nontraditional loan are likely candidates for payment shock because of the expiration of a teaser rate due to negative amortization on an option ARM.

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[2] *Supervisory Policy on Predatory Lending*, FDIC, (Washington, DC) FIL-6-2007, January 31, 2001.

[3] *2006 Global Structured Finance Outlook: Economic and Sector-by-Sector Analysis*, Fitch Ratings Credit Policy, (New York, NY), January 17, 2006, at 12.

[4] Simon, Ruth, "A trendy mortgage falls from favor – Demand for option ARMs, which helped fuel boom, wanes amid rising rates, growing risk," *The Wall Street Journal*, November 29, 2005, at D1.

As the Agencies note in the proposed Statement, the consequences of teaser-rate ARMs to uninformed borrowers can be devastating, and include not being able to afford the adjusted monthly payments on their homes, elevating the risk of foreclosure. Immediately foreclosing on the mortgage of a borrower surprised by an increase in monthly payments on a subprime loan does not serve either the lender or borrower. If the borrower's credit history has improved over time, or if the borrower was sold a subprime loan but had a strong credit history all along, allowing the borrower time to refinance into a more advantageous loan often will yield a better result for both borrower and lender, and should be encouraged by the Agencies.

Risk Management Practices

Opportunity Finance Network agrees with the Agencies' description of elements that constitute predatory lending, which involve *at least* one of the following: 1) making mortgage loans based predominately on the foreclosure or liquidation value of a borrower's collateral rather than on the borrower's ability to repay the mortgage according to its terms; 2) inducing a borrower to repeatedly refinance a loan in order to charge high points and fees each time the loan is refinanced (loan flipping); and 3) engaging in fraud or deception to conceal the true nature of the mortgage loan obligation, or ancillary products, from an unsuspecting, uninformed, or unsophisticated borrower.

Opportunity Finance Network reminds the Agencies that people with *bad* credit are not the only victims of predatory lending. People in low-income neighborhoods with *no* credit history are also susceptible, according to a study released by the Center for African American Policy at the University of Denver. The study found that because many people who live in low-income, minority areas have no credit history, they pay more interest on mortgages, even if they can qualify for a lower priced mortgage. The study made its conclusions based on the examination of the lending practices at banks in 14 cities across the country.

Underwriting Standards

Opportunity Finance Network generally agrees with the Agencies that an institution's analysis of a borrower's repayment capacity should include an evaluation and disclosure to the borrower of the borrower's ability to repay the debt by its final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule. The Agencies should declare any practice contrary to this an unfair and deceptive underwriting practice under the Federal Trade Commission (FTC) Act.

Opportunity Finance Network urges the Agencies to use their authority under 15 USC § 57a(f) to declare it to be an unfair and deceptive act or practice for a lender to fail to adequately disclose the terms of a loan using the fully indexed rate or to exclude from the repayment analysis of a loan the cost of hazard insurance and property tax escrows at the time of loan application. Such declarations, made through regulation, would ensure that non-depository institutions would be subject to at least some of the same underwriting standards as depository institutions.

Regarding risk-layering features in a subprime mortgage loan, Opportunity Finance Network agrees that these may significantly increase the risks to both the institution and the borrower. However, we do not believe that risk layering in and of itself should be an area of concern if responsibly administered, and under some circumstances may benefit certain borrowers. For example, with one of Opportunity Finance Network's mortgage products (see additional information below), the second-lien loan actually reduces the cost to the borrower when compared to other 105% products. The borrower pays a higher interest rate on the second lien, but given the fact that the second lien constitutes 25% of the total loan, it has the effect of eliminating the need for the borrower to pay any mortgage insurance premiums. The blended rate impact of the second lien on the combined first and second loans is more cost effective to the borrower than if the borrower had to pay private mortgage insurance. It would be more effective if the Statement instead says that institutions should have clear policies in place to administer the

governing of use for a second lien on a subprime loan, including proper documentation that supports the underwriting decision.

Opportunity Finance Network agrees with the Agencies when they express concern about the approval of borrowers without considering appropriate documentation of income. Verification of the borrower's income, assets, and liabilities is essential to our efforts to protect the public interest. Opportunity Finance Network largely agrees with the Agencies' statement regarding reduced documentation loans, especially when made to subprime borrowers. If a lender makes a nontraditional subprime loan, the Agencies should not permit reduced documentation. Documentation, after all, serves as a check on the risk of the loan. However, in some cases this could have the effect of preventing borrowers who anticipate their income increasing over the adjustable rate period from purchasing higher priced homes. In such circumstances where the borrower is clearly able to demonstrate that income will increase over a specified period, there should be some allowance for the underwriter to use a portion of that incremental income for qualifying purposes.

Consumer Protection Principles

According to the Mortgage Bankers Association, 223,000 households with subprime loans lost their homes to foreclosure and 725,000 missed mortgage payments in the third quarter of 2006. Defaults at the end of 2006 exceeded the rate in the last recession of 2001. According to the FDIC, more than 14% of the $1.28 trillion in outstanding subprime loans were delinquent by the end of 2006.

In order to protect consumers from delinquency and foreclosures, they must understand the material terms, costs, and risks of loan products at the time of product selection, not when they submit an application or at closing, allowing them to choose among payment options. Not only for ARMs as the Agencies reference in the proposed Statement, but proper disclosure should apply to *all* mortgage product communications.

The Agencies state that consumers should be informed of any prepayment penalties associated with a loan. While prepayment penalties are common on interest-only ARMs, it appears that few subprime lenders currently impose prepayment penalties where the term outlasts the interest-only period. The Center for Responsible Lending found that 53.1% of interest-only ARMs had a prepayment penalty at origination; on only 0.9% of these loans was the prepayment penalty term greater than the interest-only period.

Many subprime mortgages include prepayment penalties, which can cost families thousands of dollars when they refinance or pay off their loans early. Too often, the borrower does not receive a lower interest rate in exchange for the prepayment penalty. In the inefficient subprime lending industry, prepayment penalties are simply another method of stripping home equity or trapping borrowers in costly loans. These fees are only appropriate when they are in exchange for a real benefit to the borrower.

Opportunity Finance Network encourages the Agencies to follow the lead of the Federal credit unions, which prohibit charging prepayment penalties[5] and apply this to all subprime ARM loans. By acting now to prohibit prepayment penalties on subprime loans, the Agencies can protect borrowers from being trapped in unaffordable loans without causing a major disruption to the market.

The Agencies also call for notification to consumers of the existence of balloon payments, pricing premiums associated with reduced documentation, and the tax and insurance obligations not held in escrow. At the least, lender's underwriting should take into account charges that borrowers certainly will incur. Opportunity Finance Network urges the Agencies to declare it an unfair and deceptive practice to exclude from the repayment analysis the cost of hazard insurance and property tax escrows in connection with subprime loans.

[5] 12 CFR 701.21

Control Systems

Opportunity Finance Network agrees with the Agencies for the need for control systems for safety and soundness. Institutions should be accountable, not only for their personnel, but also for applicable third parties, including mortgage brokers or correspondents. As Sheila Bair, FDIC Chair stated recently, "The most visible problems are among independent mortgage lenders, which we don't regulate, and this is where coordinated action is needed most."[6]

A Center for Responsible Lending analysis of 2004 Home Mortgage Disclosure Act (HMDA) data shows that 58% of first-lien subprime home loans were made by non-supervised lenders that reported their data to the U.S. Department of Housing and Urban Development (HUD). In other words, a majority of subprime loans are made by lenders that are not subject to safety and soundness oversight by the Agencies. When a reporting institution makes loans through a mortgage broker, the institution rather than the broker reports the HMDA data. Mortgage brokers accounted for 59.3% of subprime originations in 2005.[7] Opportunity Finance Network strongly recommends that at least some of the underwriting standards apply to all mortgage lenders and brokers, not just depository institutions. To accomplish this goal, the Agencies should work with the FTC to begin rulemaking proceedings to declare certain acts and practices related to underwriting of nontraditional mortgages to be unfair or deceptive acts or practices under Sections 18(a) & 18(f) of the FTC Act and 15 USC §§ 57a(a) & (f).

The Agencies say the institutions should *avoid* providing incentives for originations inconsistent with sound underwriting and consumer protection principles. The subprime industry now rewards lenders and brokers who charge borrowers excessive points and fees or channel them toward riskier loan products. Unknown to most borrowers, brokers receive payments known as "yield spread premiums" for selling loans at a higher interest rate than the lender requires. Opportunity Finance Network believes that these practices should not just be avoided, but prohibited through regulation.

Response to Specific Questions Posed

In the notice with request for comment, the Agencies ask: *Do the subprime loans addressed in this Statement always present inappropriate risk to lenders or borrowers that should be discouraged, or alternatively, when and under what circumstances are they appropriate?*

The Statement says, "An institution's analysis of a borrower's repayment capacity should include an evaluation of the borrower's ability to repay the debt by its final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule," but does not address flexibility in certain situations. For example, in some cases, this could have the effect of preventing borrowers who anticipate their income increasing over the adjustable rate period from purchasing higher priced homes. In such circumstances where the borrower is *clearly* able to demonstrate that income will increase over a specified period, there should be some allowance for the underwriter to use a portion of that incremental income for qualifying purposes.

The Agencies ask: *Will the proposed Statement unduly restrict the ability of existing subprime borrowers to refinance their loans and avoid payment shock?*

The identification of a second-lien loan as a risk-layering feature in itself will negatively affect efforts to refinance certain borrowers out of existing subprime loans. There are currently subprime borrowers that are in homes that were over valued at the time of initial purchase. These borrowers lack the home equity necessary to refinance into most conventional mortgage products, regardless of credit history. These

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[6] Remarks by Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation to the Greenlining Institute's 14th Annual Minority Economic Development & Homeownership Conference (Los Angeles, CA), April 19. 2007, http://www.fdic.gov/news/news/speeches/chairman/spapr1907.html

[7] "Brokers Flex Their Muscle in 2005, Powering Record Subprime Year," *Inside B&C Lending,* (Bethesda, MD), March 17, 2006. See also, "A Guide to HMDA Reporting: Getting It Right!," Federal Financial Institutions Examination Council, January 1, 2004.

borrowers have a need to refinance into a better loan, but may have no other choice than to refinance into a loan that has a second mortgage to cover the additional debt of the home.

The Agencies ask: *Should the principles of this proposed Statement apply beyond the subprime ARM market?*

Absolutely. Not only for teaser-rate ARMs as the Agencies reference in the proposed Statement, but this Statement should apply to *all* mortgage products.

The Agencies ask: *Should institutions limit prepayment penalties to the initial fixed rate period?*

Opportunity Finance Network encourages the Agencies to follow the lead of the Federal credit unions, and prohibit prepayment penalties[8] for all subprime ARM loans.

Effective Lending in the Subprime Market

The Agencies are specifically interested in the availability of mortgage products that do not present the risk of payment shock. Opportunity Finance Network has such a product in its residential mortgage platform, which is a competitive response to predatory and other high-cost lenders by offering alternative residential mortgage products. The mortgage platform operates under the banner of Opportunity Mortgage Network.

Our platform will offer multiple products, and one such product is particularly beneficial to borrowers that lack the savings assets to be approved for a mortgage without mortgage insurance premiums. Under the Opportunity Mortgage Network platform, Community Development Financial Institutions (CDFIs) and other nonprofits originate and broker the products into a specially designed centralized processing, fulfillment, closing, financial literacy, and servicing infrastructure. Opportunity Finance Network is offering turnkey operating systems, technology, training, certification, marketing, and lead generation to make it easy for CDFIs and nonprofits to be part of the solution to predatory lending by serving as originators of fair and competitive mortgage products. Each of the CDFIs and nonprofits under the platform must complete a certain number of hours of training in order to be certified to originate under the platform.

The aforementioned Opportunity Mortgage Network mortgage product has a five percent down payment assistance feature secured with a first and second mortgage, and supported with an 80-/20-/5-percent investor split. The 20-percent portion is credit enhanced with cash reserves and/or third party insurance, and the wholesale lender retains recourse on the 80 percent portion.

Key product features include:

- 105% LTV;
- 30-year fixed rate;
- Minimum 580 FICO;
- Maximum outstanding $5,000 in medical collection;
- National pre- and post-closing financial literacy with foreclosure intervention;
- Designed to serve low- and moderate-income, minority, and immigrant borrowers;
- First-time homebuyer friendly but not exclusive to first-time homebuyers;
- Prohibits any adjustable rate or "no/limited documentation" mortgage;
- Originators are prohibited from charging any fees beyond the fee structures delineated for the product and will be terminated if found charging fees outside the fee structure;
- All loans under the platform are serviced with the establishment of borrower escrows for taxes and insurance;

[8] 12 CFR 701.21

- No prepayment penalty;
- Three different levels of review for credit underwriting and compliance involving three separate, highly experienced, and well regarded parties; and
- A centralized processing system, owned by Neighbor Works America (JustPriceSystems, Inc.), manages all mortgage application processing, credit verification, and appraisal services.

Conclusion

Opportunity Finance Network applauds the Agencies for addressing problems with nontraditional mortgages. We support the proposed guidance and urge the Agencies to implement these proposed changes as soon as possible with consideration for the following:

- In such circumstances where the borrower is clearly able to demonstrate that income will increase over a specified period, there should be some allowance for the underwriter to use a portion of that incremental income for qualifying purposes.
- The identification of a second-lien loan as a risk-layering feature in itself, will negatively affect efforts to refinance borrowers out of certain existing subprime loans.
- The Statement should apply to all subprime loans, not just ARMs.
- The Agencies should follow the lead of the Federal credit unions and prohibit prepayment penalties and apply this to all subprime ARM loans.
- The Agencies should declare it an unfair and deceptive practice to exclude from the repayment analysis the cost of hazard insurance and property tax escrows in connection with subprime loans.
- Institutions should be accountable, not only for their personnel, but also for applicable third parties, including mortgage brokers or correspondents.
- The Agencies should prohibit institutions from providing incentives for originations inconsistent with sound underwriting and consumer protection principles.

Opportunity Finance Network thanks you for the opportunity to comment and we look forward to working in partnership with the Agencies to reduce unscrupulous lending practices. If you have questions or concerns about these comments, please do not hesitate to contact me at 215.320.4304 or mpinsky@opportunityfinance.net.

Sincerely,

Mark Pinsky
President and CEO