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Washington, DC 20036

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Christopher M. Paridon
Counsel
Phone: 202 663-5056
Fax: 202 828-5052
cparidon@aba.com

By electronic delivery

December 4, 2006

Office of the Comptroller of
the Currency
250 E Street, SW
Public Reference Room, Mail Stop 1-5
Washington, DC 20219
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

Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th St. & Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

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

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

Re: **OCC** Docket No. 06-12; **FRB** Docket No. OP-1267; **FDIC** (No Docket Number); **OTS** No. 2006-36; **NCUA** (No Docket Number); Proposed Illustrations of Consumer Information for Nontraditional Mortgage Products; 71 Federal Register 58672 October 4, 2006

Ladies and Gentlemen:

The Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (the Agencies) have proposed Illustrations of Consumer Information for Nontraditional Mortgage Products (the Illustrations) to be used in connection with the Agencies' recently issued Guidance on Nontraditional Mortgage Products (the Guidance). The American Bankers

Association (ABA) appreciates the opportunity to comment on behalf of the more than two million men and women who work in the nation's banks. ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, savings banks, and bankers banks--makes ABA the largest banking trade association in the country.

Summary of Comments

- The current proposal is appropriate as it allows that use of the proposed illustrations is entirely voluntary for financial institutions.
- The proposed illustrations serve an important function by providing financial institutions a template from which to draft their own documents.
- We appreciate that the agencies have specified the disclosures necessary to meet the requirements of the Nontraditional Mortgage Product guidance.
- The ABA continues to advocate that the appropriate vehicle to institute such consumer safeguards is through amendment to the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z.

Discussion

ABA supports the Agencies' approach of providing consumers with important information about financial products in order to enable them to prudently consider the costs, terms, features, and risks of these products. However, the Agencies' proposed Guidance would have had each bank or affiliate of a bank prepare its own version of consumer disclosures. ABA objected to this, arguing that for many banks that might make just a few of these loans, the proposed Guidance created an unnecessary regulatory burden by not providing a standard disclosure form. In response, the Agencies issued the proposed Illustrations to aid banks and their affiliates in meeting the requirements of the Guidance.

ABA commends the Agencies for their efforts in reducing regulatory burden by providing the proposed Illustrations, while at the same time making the use of these Illustrations completely voluntary to the institution. Such flexibility for an institution to use the Illustrations or to prepare its own consumer disclosures (based on the information in the Illustrations) is valuable and strikes an appropriate balance that enables financial institutions to provide meaningful disclosures while avoiding unnecessary burden.

In particular, ABA appreciates that the Agencies have provided the industry with an indication of the level of detail that will suffice under the Guidance. The proposed Illustrations, when final, will reduce uncertainty over the adequacy of any self-prepared disclosures and thus also reducing potential, frivolous litigation. Discussions with member bankers indicate that many financial institutions intend to develop their own documents for their products, but nonetheless find the Illustrations helpful in that development process. The final Illustrations will serve an important function by providing financial institutions a template from which to draft their own documents.

Despite this value to financial institutions, ABA continues to note that a large segment of lenders and brokers that market nontraditional mortgage products will not be covered by the Guidance.¹ Accordingly, ABA continues to believe that the Agencies should amend Regulation Z in order to implement these disclosures. Requiring financial institutions and their affiliates to follow the Guidance, while simultaneously allowing other lenders to avoid these requirements, is likely to lead to significant confusion on the part of consumers. We fear that consumers may well conclude that the loan product with less disclosure is a different and preferable loan product. Thus, the Agencies' approach of uneven application and enforcement of consumer disclosures potentially drives consumers to lenders not subject to the same consumer protections. As a result, a document intended to enhance consumer awareness may have the unintended but ironic effect of greater consumer confusion. The Agencies may avoid this by amending Regulation Z to extend the protections of the Guidance to customers of all lenders.

Conclusion

ABA supports the issuance of the proposed Illustrations. We believe that the Illustrations provide a useful and flexible tool to reduce regulatory burden imposed by the Guidance on financial institutions while providing a template for compliance with this Guidance. While ABA supports adoption of the Illustrations, ABA reiterates that the proper vehicle to provide for such measures is in amendments to Regulation Z, applicable to all lenders. If the Agencies have any questions about these comments, please call Paul Smith at 202-663-5331 or the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Paridon', with a stylized, cursive script.

Christopher M. Paridon
Counsel

¹ ABA recognizes that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators have launched an initiative to apply elements of the Agencies' Guidance, including most of the consumer protections, to nonbank regulated and examined lenders. However, even if, after a year, most states have adopted a version of the Agencies' Guidance, most state regulators simply do not have the examination authority or resources to enforce the consumer protections on nonbank lenders equal to how the Agencies are already enforcing them on banks.