



American Financial Services Association

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The Market Funded Lending Industry

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THE OFFICE OF  
THE COMMISSIONER OF BANKS

JAN 29 2007

January 26, 2007

The Honorable Joseph A. Smith  
The Honorable Mark Pearce  
North Carolina Office of the Commissioner of Banks  
4309 Mail Service Center  
Raleigh, NC 27699-4309

Re: Non-traditional mortgage guidance comment

Dear Mr. Smith and Mr. Pearce:

The American Financial Services Association ("AFSA") appreciates the opportunity to provide comments on the Proposed Guidance on Nontraditional Mortgage Product Risks ("Proposed Guidance"). Thank you for your request.

Generally speaking, there is significant market pressure on lenders to lend money only to consumers who can repay the loan and manage their credit. For example, a lender that routinely packages bad loans for sale on the secondary market will find itself unable to sell them profitably. Neither securities investors nor lenders are particularly pleased to foreclose on collateral, as neither is in the real estate business. Indeed, lenders attempting to recover losses through foreclosure actions face the same difficulties consumers do in today's real estate market.

Many borrowers have benefited enormously from innovative new mortgage products that have allowed them to become homeowners. There are a relatively small number of such consumers who have had difficulties in connection with such products. Without question, AFSA members would prefer that 100% of their loans perform. Furthermore, we would like to preserve the continuous innovation in the marketplace that benefits consumers. We firmly believe consumers—not lenders—are in the best position to determine the best loan for them. Therefore, we urge that the Proposed Guidance focus on approaches that allow borrowers to decide whether a particular mortgage is right for them. The goal should be to encourage all borrowers to understand fully the terms and conditions of their loans—and increase homeownership rates even further.

AFSA believes that the Proposed Guidance does not apply to traditional ARM loans. We urge that the Proposed Guidance retain this concept. Furthermore, we ask that it more clearly indicate its inapplicability to traditional ARM products in the text of the guidance itself in order to avoid confusion or inconsistent interpretations. This is only appropriate as traditional ARMs do not present the general issues raised in the Proposed Guidance. For example, a borrower's principal amortization schedule is identical for a 30-year fixed rate mortgage loan and a 30-year

traditional ARM. Principal is also repaid at the same rate under to both loans. Moreover, we believe that application of the Interagency Guidance to traditional ARM loans is inadvisable because it will have the effect of diminishing consumer choice and access to credit in the mortgage loan market place by restricting the availability to consumers of safe and sound lending products.

The Proposed Guidance states that when a provider "offers nontraditional mortgage loan products, underwriting standards should address the effect of a substantial payment increase on the borrower's capacity to repay when loan amortization begins." The Proposed Guidance then provides several issues for consideration. We ask that the Proposed Guidance provide more flexibility to mortgage lenders with respect to the assessment of a borrower's repayment capacity. For example, the Proposed Guidance states that for nontraditional mortgages, the analysis of a borrower's ability to repay "should include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule." We believe there are other effective approaches that a lender might apply to manage the credit risk. We request that lenders have the flexibility to take other legitimate factors into consideration.

Again, AFSA appreciates the invitation to provide comments on the Proposed Guidance. We would welcome the opportunity to discuss our concerns with you in greater detail.

Sincerely,

A handwritten signature in black ink that reads "Chris Stinebert". The signature is written in a cursive, flowing style.

Chris Stinebert  
President and CEO  
American Financial Services Association