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VIA E-MAIL – regcomments@ncua.gov

May 7, 2007

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

Re: Comments on Subprime Mortgage Lending Statement

Dear Ms. Rupp:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the proposed Statement on Subprime Mortgage Lending (Statement) that the National Credit Union Administration (NCUA) and the other financial institution regulators have recently issued, which addresses risks and other issues relating to subprime mortgage lending practices, specifically for adjustable-rate mortgages (ARMs). CUNA represents approximately 90 percent of our nation's 8,600 state and federal credit unions, which serve 87 million members.

Summary of CUNA's Comments

- Credit unions offer a variety of mortgage loan products beyond the traditional 30-year fixed rate mortgages in order to reach out and serve disadvantaged and lower income individuals. Although subprime loans may be appropriate for certain borrowers, credit unions generally do not offer the riskier loans that are the subject of this Statement.
- Even though credit unions want to do more to reach out to underserved areas, including providing responsible mortgage loan products for those who have no alternative other than riskier loans, NCUA has been forced to limit credit unions' ability to reach out to these areas as a result of litigation from the American Bankers Association.
- The current hallmark example of credit union efforts to provide these types of responsible mortgage loan products is the Home Loan Payment Relief (HLPR) Program initiated by CUNA in 2005. Under this program, credit unions commit to offering a number of mortgage products to borrowers who earn no more than 100% of the median income for the area, with somewhat higher limits for "high-cost" areas.

- CUNA supports appropriate consumer protections in the subprime market. However, we are concerned that this Statement will only apply to financial institutions and not to other types of financial service providers that are also involved in mortgage lending, such as finance companies and mortgage brokers. We believe these types of financial service providers should be subject to the guidance outlined in this Statement.
- CUNA agrees that the institution's analysis of the borrower's creditworthiness should include an evaluation of the borrower's ability to repay the loan by its final maturity at the fully indexed rate. CUNA also agrees that institutions should have clear policies for loans that rely on reduced documentation or include other forms of risk-layering and does not believe the principles outlined in the Statement will unduly restrict the ability of existing borrowers to refinance into more traditional loans.
- CUNA supports the consumer protection principles outlined in the Statement, but suggests a clarification indicating that providing this information within three days of the application should be sufficient, as required for disclosures under the Truth in Lending Act (TILA).

Discussion

Credit unions offer a variety of mortgage loan products beyond the traditional 30-year fixed rate mortgages, allowing credit unions to reach out to disadvantaged and lower income individuals. However, the riskier exotic and hybrid loans that are the subject of the Statement are not widespread within credit union portfolios, and credit unions have not been involved in the unscrupulous, predatory, and irresponsible practices that have been associated with these types of subprime ARM and other nontraditional loans.

Credit unions have historically reached out to underserved areas, including providing responsible mortgage loan products for those individuals who have few alternatives other than the types of subprime loans that are the focus of this Statement. Unfortunately, the American Bankers Association pursued litigation that challenged NCUA's field of membership (FOM) policy that permitted all federal credit unions to add underserved areas. As a result, NCUA was forced to change this policy and prohibit single-bond and community chartered credit unions from adding underserved areas. This change was truly regrettable and illustrates the continuing practice of banking trade groups to criticize credit unions consistently for not providing even more services for underserved individuals, while at the same time taking actions to further restrict credit unions' abilities to provide these services.

Provisions that will allow all credit unions to serve underserved areas, regardless of charter type, are currently included in the Credit Union Regulatory Improvements Act of 2007 (CURIA). Passage of these provisions of CURIA will further enhance credit union efforts to provide responsible mortgage loan products to those individuals who need them the most and will alleviate the current problems associated with subprime ARM mortgages, especially the unfair, deceptive, and predatory practices that have been associated with these types of loans.

An important example of credit union efforts to address subprime lending is the HLPR loan program initiated by CUNA in 2005. Under this program, credit unions commit to offering a number of mortgage products to borrowers who earn no more than 100% of the median income for the area, with somewhat higher limits for "high-cost" areas.

The primary loan product offered under this program is a three-year ARM, with an interest rate discount of 1% off the nationwide average rate offered for three-year ARMs. The HLPR three-year ARM will have its rate fixed for three years, and then adjust annually to the 1-Year Constant Maturity Treasury Index, with a 2.75% margin. Annual adjustments are capped at 1% with a lifetime cap of 5%. Five and seven-year ARMs are also available, as well as fixed and 40-year loan terms.

Although designed for first-time home buyers, credit unions have the option of offering HLPR loans to any credit union member who qualifies. It is estimated that approximately 20% of our nation's 87 million members belong to the over 120 credit unions that currently offer this program, which provides a very affordable option, as compared to the current subprime mortgage market. The HLPR loan product is a clear example of a properly priced, structured, and underwritten loan product that benefits borrowers who would otherwise be subject to the subprime ARM loans that are the focus of this Statement. More information about this HLPR program, including sample disclosures, is available on the CUNA website at http://www.cuna.org/initiatives/hlpr/index.html.

CUNA strongly supports appropriate consumer protections in the subprime market and generally supports the Statement. However, we are concerned that the Statement will only apply to financial institutions and not to other types of financial service providers that are also involved in mortgage lending, such as finance companies and mortgage brokers. We believe these other providers should be subject to the guidance outlined in this Statement, as they have been subject to significant criticism for providing subprime ARM mortgages to borrowers who may not be qualified or may not understand the risks of these loans.

This is a similar concern that CUNA expressed in our comment letter in response to the nontraditional loan guidance that NCUA and the other financial institution regulators issued last year. We were pleased that the Conference of State Bank Supervisors (CSBS) and individual States have since been active in efforts to impose the guidance on these other types of financial service providers, and are also pleased that the CSBS has recently announced it will take similar actions with regard to the guidance that is outlined in the proposed Statement.

The proposed Statement indicates that the institution's analysis of the borrower's ability to repay the loan should include an evaluation of the ability to repay the loan by its final maturity at the fully indexed rate. We agree with this approach and also agree that institutions should have clear policies for loans that rely on reduced documentation or include other forms of risk-layering. Clear policy is essential and, in fact, reduced documentation would generally be inappropriate for subprime borrowers. Risk-layering features, such as simultaneous second-lien mortgages, would also generally be inappropriate for subprime borrowers. A possible exception may be in situations in which the borrower will continue to have substantial equity in the property.

With these and other safe and sound underwriting guidelines, subprime loans should not present inappropriate risks. In addition to debt-to-income analysis, financial institutions should take into account the overall level of debt, the terms and condition of the borrower's employment, as well as the potential for increased earnings.

Understanding the needs and intent of the borrower is also important. For example, a borrower may not need a 30-year fixed rate loan and may benefit from a lower rate ARM, such as when the borrower is a member of the military and is likely to relocate after a short period of time. A subprime loan may be an acceptable option in certain situations, such as when the borrower expects significant increases in salary and can use the loan to establish a favorable payment history in order to reestablish sound credit, or if the borrower is likely to repay or refinance the loan within a few years. In these situations, it is important that financial institutions understand the borrower's needs in order provide information and advice as to the mortgage options that are available.

The consumer protection principles described in the Statement include approving these mortgage loans based on the borrower's ability to repay and providing information that enables consumers to understand the material terms of the loan at a time that will help the consumer choose among loan products. We generally support this approach, but suggest a clarification indicating that providing this information within three days of the application, as required for disclosures under TILA, should be sufficient and should give consumers time to seek alternatives if they then decide that these types of loans are inappropriate.

Although we support adequate disclosures for consumers considering these types of loans, we do not believe additional advertising disclosures for traditional lenders are needed at this time, beyond those that are already required under Regulation Z, the Truth in Lending Act. Any additional advertising disclosures would be burdensome for lenders and the additional information on these advertisements regarding potential payment increases, new payment calculations, the cost of reduced documentation loans, and tax and insurance responsibilities would be too lengthy and confusing for consumers. Nontraditional lenders that provide subprime loans should be subject to fair advertising disclosures, consistent with the requirements for financial institutions.

We recognize that external factors, such as lower property values, may restrict the ability of existing subprime borrowers to refinance into more traditional loans in order to avoid sharp increases in payments. However, we do not believe the principles outlined in the Statement will curb this ability to refinance these loans, provided these loans were originally based on prudent underwriting standards. Any such loans originated within the last six months should already incorporate sound guidelines as they would have been subject to the Interagency Guidance on Nontraditional Mortgage Product Risks that was issued in October 2006.

Thank you for the opportunity to comment on the proposed Statement. If you or other Board staff have questions about our comments, please give Senior Vice President and Deputy General Counsel Mary Dunn or me a call at (202) 638-5777.

Sincerely,

Jeffrey Bloch
Senior Assistant General Counsel