



Capital One Financial Corporation
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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

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2007-09
regs.comments@ots.treas.gov

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. OP-1278
regs.comment@federalreserve.gov

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 223414-3428
regscomments@ncua.gov

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

Re: Proposed Statement on Subprime Mortgage Lending

Ladies and Gentlemen:

Capital One Financial Corporation ("Capital One") is pleased to submit comments on the Federal Banking Agencies' (the "Agencies") Proposed Statement on Subprime

Mortgage Lending (the “Statement”).¹ Capital One commends the Agencies for focusing their attention on this important subject.

Capital One Financial Corporation is a financial holding company whose principal subsidiaries, Capital One Bank, Capital One, F.S.B., Capital One Auto Finance, Inc., Capital One, N.A., North Fork Bank, and GreenPoint Mortgage Funding, Inc., (“GreenPoint”) offer a broad spectrum of financial products and services to consumers, small businesses, and commercial clients. As of March 31, 2007, Capital One’s subsidiaries collectively had \$87.7 billion in deposits and \$142 billion in managed loans outstanding, and operated more than 720 retail bank branches. Capital One is a Fortune 500 company and is included in the S&P 100 Index. Through its subsidiary GreenPoint, Capital One is a major mortgage lender. Over 40% of GreenPoint’s mortgage originations are “Alt A” mortgages; GreenPoint is the eighth largest originator of such mortgages.

It may be useful to state our understanding of the scope of the proposed Statement. We understand the Statement to apply to adjustable rate mortgages with the characteristics enumerated in the Statement,² that are marketed to subprime borrowers, as those borrowers are defined in the 2001 Subprime Lending Guidance.³ If the scope that

¹ 72 Fed. Reg. 10533 (March 8, 2007).

² Those characteristics are:

- (a) fixed introductory rate with a short initial period,
- (b) approval decisions made without documentation of income,
- (c) high or no limits on how much the payment amount or interest rate may increase,
- (d) product features likely to result in frequent refinancing to maintain an affordable monthly payment,
- (e) prepayment penalties that are substantial or extend beyond the introductory-rate period, or
- (f) insufficient disclosure of relevant terms and risks.

72 Fed. Reg. at 10534.

³ Under that Guidance, subprime borrowers are borrowers having one or more of the following characteristics:

- (a) at least two 30-day delinquencies in the last twelve months, or at least one 60-day delinquency in the last 24 months,
- (b) judgment, foreclosure, repossession, or charge-off in the last 24 months,
- (c) bankruptcy in the last 5 years,
- (d) credit score of FICO 660 or below, or equivalent,
- (e) debt-service-to-income ratio of 50% or more, or otherwise limited ability to cover living expenses after servicing the debt.

Expanded Guidance for Subprime Lending Programs, p. 3 (Jan. 31, 2001).

We note that the Subprime Lending Guidance identifies high default probability by reference to a credit score of FICO 660 or below “depending on the product/collateral.” Residential mortgage lending is traditionally the lowest-risk form of consumer lending, and mortgage lenders traditionally consider subprime borrowers to correspond to FICO 620 or below. To avoid unduly restricting the mortgage lending market at a time of stress, the Agencies might wish to consider using that industry standard – FICO

the Agencies intend for the Statement is something different, we submit that the final Statement should be clarified on that point.

The impact of the proposed Statement on GreenPoint's mortgage lending operations would be modest. While GreenPoint originates substantial volumes of interest-only and payment-option ARMs, those loans are already covered by the Nontraditional Mortgage Guidance that the Agencies adopted last year, and GreenPoint is implementing the recommendations of that Guidance. GreenPoint is not a subprime mortgage lender: The number of subprime borrowers, as defined in the 2001 Subprime Guidance, who obtain stated-income or introductory-rate mortgages from GreenPoint, to which the Statement would apply, is small. Implementing the Statement will not be difficult: GreenPoint will ensure that applicable aspects of the final Statement are implemented, and in particular that the loans are underwritten at their fully indexed and amortizing rate, and that disclosures of the matters recommended by the Statement, at the time recommended by the Statement, are made. Implementing those disclosures will not be difficult, as we are already in the process of implementing them as recommended in the Nontraditional Mortgage Guidance.

The Agencies ask whether the principles of the proposed Statement should be applied beyond the subprime ARM market.⁴ We recommend that the Agencies not, at this time, extend the Statement to prime mortgage lending (including prime Alt A lending). As the Agencies note, the Statement's proposed qualification standards are likely to result in fewer borrowers qualifying for the types of loans covered by the Statement.⁵ In consequence, it is at least plausible that this year's concerns over excessive lending will be replaced by next year's mortgage credit crunch, in which borrowers protest that loans they can responsibly handle, that would enable them to buy the houses they desire, are not available to them, as a result of unnecessarily stringent restrictions placed on lenders by their regulators. Therefore, we urge the Agencies to steer a responsible middle course and to attack only the problems that need to be attacked. Alt A lending, for example, according to a recent study, has less than one-quarter the industry-wide default rate of subprime mortgage lending – not surprising, because Alt A borrowers are mainly prime borrowers.

The Agencies also ask: "Will the proposed Statement unduly restrict the ability of existing subprime borrowers to refinance their loans and avoid payment shock?"⁶ We believe that that is possible. We think that this risk can be mitigated if the Agencies except refinancings from the underwriting requirements of the Statement, when the

620 rather than 660 – when adopting the proposed Statement in final form. However, for purposes of assessing the likely impact of the Statement on GreenPoint, we have assumed a subprime cut-off of FICO 660.

⁴ 72 Fed. Reg. at 10536.

⁵ *Id.*

⁶ *Id.*

refinancing is necessary to mitigate payment shock associated with a prior nontraditional or hybrid loan.

In our comment on last year's Nontraditional Mortgage Guidance, we argued that designing appropriate disclosure requirements for those loans should ideally be done through revisions to Regulation Z. We submit that the same is true for the disclosures recommended in the proposed Statement, and for the same reasons:

1. Regulation Z requirements will apply to all mortgage lenders, not just those regulated by the Agencies. (We understand that the Agencies are working with associations of state regulators to apply the principles of the Guidance more generally. Incorporating those requirements in Regulation Z would spare the delays and gaps associated with that project.)
2. Incorporating the necessary disclosures in Regulation Z will facilitate a regime in which all disclosures work meaningfully together, without overlap, overload or confusion.
3. Clear disclosure requirements set out in Regulation Z will productively channel the discretion of examiners.
4. An amended Regulation Z will also give clear direction to lenders, ensuring that their disclosures meet the Agencies' expectations as well as providing them a necessary safe harbor from litigation.
5. Incorporating the disclosures in Regulation Z will enable the Agencies to locate them clearly within the well-defined timing framework that Regulation Z provides, removing some of the ambiguities as to timing that the Statement currently raises.

We are implementing the disclosure recommendations of the Nontraditional Mortgage Guidance, and will implement those of the proposed Subprime Mortgage Statement with the small number of our loans that will be subject to it, but we urge the Federal Reserve Board to move ahead quickly with revisions to the closed-end parts of Regulation Z to address the disclosure needs set out in the Guidance and the proposed Statement.

We commend the Agencies for approaching the problems of subprime mortgage lending by addressing underwriting standards, proposing guardrails around specifically identified terms, and recommending superior disclosure practices, rather than by attempting to create a "suitability" standard such as exists in the securities field. Mortgage lending, unlike investment advisory services, requires that a lender advance its own money and assume credit risk, rather than receiving fees for services rendered with no risk of loss if the recommended investments turn out to have been unwise. The investment advisor may need a suitability standard to ensure that he remains mindful of the customer's best interests; but in mortgage lending, the lender and the borrower have a

shared interest in assuring that the loan will be repaid. Therefore the correct approach is not “suitability,” with its problems of vagueness and subjectivity, but rather to focus on the development and application of sound underwriting standards and disclosures.

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Capital One appreciates the opportunity to comment on the Proposed Statement on Subprime Mortgage Lending. If you have any questions about this matter and our comments, please call me at 703-720-2255.

Sincerely,

/s/

Christopher T. Curtis
Associate General Counsel
Policy Affairs Group