



May 16, 2011

Secretariat of the Financial Stability Board
C/O Bank for International Settlements
CH-4002, Basel, Switzerland

Shadow Banking: Scoping the Issues

Dear Sir or Madam,

The Conference of State Bank Supervisors (CSBS) appreciates the opportunity to comment on the Financial Stability Board's (FSB) Explanatory Note (report) on Shadow Banking. CSBS is the professional association of state officials responsible for chartering, supervising, and regulating the nation's over 5,600 state-chartered commercial and savings banks. For more than a century, CSBS has given state supervisors a national forum to coordinate supervision of their regulated entities, develop regulatory policy, provide training to state officials, and represent state officials before Congress and the federal financial regulatory agencies. In addition to regulating banks, most state banking departments also supervise the residential mortgage industry. As the mortgage industry has evolved over the past two decades, CSBS has expanded its mission beyond traditional commercial bank supervision and has been working closely with the American Association of Residential Mortgage Regulators (AARMR) to enhance supervision of the mortgage industry. States currently have regulatory oversight of over 15,000 mortgage company licenses, 16,000 branch licenses, and 100,000 loan officer licensees. State regulators also oversee other aspects of non-bank financial services, such as payday lenders, check cashers, and money transmitters. Our remarks on the report will focus the areas within state regulatory jurisdiction that fit the shadow banking scope outlined by the FSB, with a particular focus on non-bank mortgage entities.

We appreciate the FSB's exploration of the shadow banking system and believe this is a critical aspect of the world's financial system. Policymakers should continue to explore methods for improving oversight of the shadow banking system. Naturally, it is necessary to first define the scope of shadow banking. In our estimation, the report accurately defines shadow banking as "a system of credit intermediation that involves entities and activities outside the regular banking system." We understand the report focuses on remedying the systemic risk and regulatory arbitrage concerns associated with shadow banking. However, the report also focuses on shadow banking concerns more broadly as it discusses approaches for monitoring and regulating the shadow banking sector. We believe the application and advancement of prudential regulatory standards and supervisory oversight of such entities, coupled with strong consumer protection systems where appropriate are necessary for both the health of the industry and the economy. In the United States, state regulators have led the effort in supervising and developing monitoring mechanisms for aspects of the non-bank credit intermediation arena. As the FSB and other policymakers continue to develop non-bank regulatory strategies, we urge you to support the

CONFERENCE OF STATE BANK SUPERVISORS

1155 Connecticut Ave., NW, 5th Floor • Washington DC 20036-4306 • (202) 296-2840 • www.csbs.org

existing framework the states have both developed and continue to improve as we collectively move ahead to improve monitoring in this area.

Over the past two decades, non-bank credit intermediation has evolved tremendously. Where state supervisors have regulatory responsibility for non-bank credit intermediation, we have recognized the need for strong supervisory oversight and have continued to develop more sophisticated mechanisms for executing effective supervision. Ongoing supervision of non-depository institutions at the individual state level, through regulatory oversight and enforcement, has resulted in both improved non-depository financial stability and consumer protection. Furthermore, the states, in many cases, were the first responders to issues in the mortgage space before and during the financial crisis.

At the state system level, CSBS has coordinated with the states and AARMR to implement enhanced supervision of the non-bank sector through the CSBS-AARMR Multi-State Mortgage Committee (MMC). Additionally, in late 2003, state mortgage regulators began work on a voluntary licensing system for state licensed and state regulated mortgage loan originators, known as the Nationwide Mortgage Licensing System and Registry (NMLS). Congress subsequently codified mandatory use of the NMLS through the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). Furthermore, in order to improve data collection around shadow banking entities and in fulfillment of a mandate from the SAFE Act, CSBS has developed and launched the NMLS Mortgage Call Report, which will provide increasingly robust data on mortgage entities as these companies continue to report critical figures on a quarterly basis going forward. In its report, the FSB highlights data collection issues as a primary hindrance for developing adequate shadow banking supervision mechanisms. Thus, we believe supervisory mechanisms at the state level can not only serve as the basis for monitoring and regulating certain non-bank financial sectors but also help address some of the systemic risk and regulatory arbitrage concerns outlined in the FSB's report.

We support the FSB's suggestion that a single regulatory approach for all components of the shadow banking system is undesirable. And while it is clear that certain sectors which fall within the scope of the FSB's definition of shadow banking are unregulated and deserve a wholly new focus, states have developed supervisory structures for a portion of the non-bank credit intermediation arena, and as policymakers continue to improve monitoring of shadow banking, we believe it is important to look to the existing framework and work in cooperation with that framework in order to most effectively advance supervision in this critical area.

Below, we discuss specific aspects of state non-depository supervision, the NMLS, the Mortgage Call Report, the MMC, and state regulator cooperation with Attorneys General to enhance supervision of certain aspects of shadow banking. Further, we have included a timeline below which details some of the specific efforts the states have taken at the individual and system level to improve and advance non-bank supervision. The timeline is a sample of actions taken and is not meant to be comprehensive.

General Mortgage Supervision at the State Level

States have lead the fight to reign in abusive lending through predatory lending laws, licensing and supervision of mortgage lenders and brokers, and through enforcement of consumer protection laws. Most states have enacted subprime and predatory mortgage lending laws, which supplement the federal protections of the Home Ownership and Equity Protection Act of 1994.

The innovative actions taken by state legislatures have prompted significant changes in industry practices, as the largest multi-state lenders have adjusted their practices to comply with the strongest state laws.

State attorneys general and state regulators are also cooperatively pursuing unfair and deceptive practices in the mortgage market. Through several settlements, state regulators¹ have returned nearly one billion dollars to consumers. For example, a settlement with Household Financial resulted in \$484 million paid in restitution; a settlement with Ameriquest Mortgage Company resulted in \$295 million paid in restitution; and a settlement with First Alliance Mortgage Company resulted in \$60 million paid in restitution. These landmark settlements further contributed to changes in industry lending practices.

Success, however, is sometimes better measured by those actions that never receive media attention. States regularly exercise authority to routinely examine mortgage companies for compliance not only with state law, but with federal law as well. Unheralded in their everyday routine, examinations or investigations identify weaknesses that, if undetected, might be devastating to the company and its customers. State examinations act as a check on financial problems and sales practices gone astray. Examinations also stop a supervised entity from engaging in misleading, predatory, or fraudulent practices. Also, examinations or investigations often result in the early detection of emerging harmful practices or trends. Over the past few years, the state regulators have collectively taken thousands of enforcement actions against mortgage lenders, mortgage brokers and other state supervised financial services providers.

In October 2006, the federal financial agencies issued the *Interagency Guidance on Nontraditional Mortgage Product Risks* (Guidance) which applies to insured depository institutions. Recognizing that the interagency guidance does not apply to those mortgage providers not affiliated with a bank holding company or an insured financial institution, CSBS and AARMR developed parallel guidance in November 2006 to apply to state-supervised residential mortgage brokers and lenders, thereby ensuring all residential mortgage originators were subject to the guidance.

Additionally, the federal financial agencies issued the *Interagency Statement on Subprime Mortgage Lending* (Subprime Statement) in 2007. Like the Guidance, the Subprime Statement applies only to mortgage providers associated with an insured depository institution. Therefore, CSBS, AARMR, and the National Association of Consumer Credit Administrators (NACCA) again developed a parallel statement that is applicable to all mortgage providers. The Guidance and the Subprime Statement strike a fair balance between encouraging growth and free market innovation and draconian restrictions that will protect consumers and foster fair transactions.

Further, to promote consistency, CSBS and AARMR developed state Model Examination Guidelines (MEGs) for field implementation of the *Guidance on Nontraditional Mortgage Product Risks* and the *Statement on Subprime Mortgage Lending*. Released on July 31, 2007, the MEGs enhance consumer protection by providing state regulators with a uniform set of examination tools for conducting examinations of subprime lenders and mortgage brokers. Also, the MEGs were designed to provide consistent and uniform guidelines for use by lender and

¹ In concert with state attorneys general.

broker compliance and audit departments to enable market participants to conduct their own review of their subprime lending practices. These enhanced regulatory guidelines represent a new and evolving approach to mortgage supervision.

In July of 2007, CSBS/AARMR² and the Federal Reserve Board, the Office of Thrift Supervision and the Federal Trade Commission announced a *Pilot Project to Improve Supervision of Subprime Mortgage Lenders*. The innovative pilot project was launched in late 2007 to conduct targeted consumer-protection compliance reviews of selected non-depository lenders with significant subprime mortgage operations. As a testament to the relevance of the MEGs, the Pilot Program adopted the MEGs format as its compliance review work program.

In early 2007, the states identified predatory and fraudulent reverse mortgage lending as a potential threat facing consumers, financial institutions, and supervisory oversight. In response, the states, through CSBS and AARMR, formed the Reverse Mortgage Regulatory Council which developed the *Reverse Mortgage Examination Guidelines (RMEGs)*. In December 2008, CSBS and AARMR released the RMEGs to establish uniform standards for regulators in the examination of institutions originating and funding reverse mortgage loans. The states also encourage industry participants to adopt these standards as part of an institution's ongoing internal review process.

Training and Professional Development of Supervision Staff

The states, through CSBS, AARMR and NACCA have devoted significant resources to the development of comprehensive examiner training programs. We offer over 200 online compliance training courses through *Regulatory University* and dozens of classroom and distance learning opportunities to examiners covering a wide array of topics from mortgage origination and loan servicing to appraisal fraud and financial condition review. Through its education foundation, CSBS offers state mortgage agency accreditation and examiner certification focused on the competency and professional development of state supervisory programs.

Nationwide Mortgage Licensing System & Registry (NMLS)

The states, through CSBS and AARMR, developed and launched NMLS in January 2008 to enhance supervision of the residential mortgage market. The unique identifier granted to residential mortgage loan originators (MLOs) and companies through NMLS allows supervisors to track mortgage providers across state lines to ensure a provider will not escape regulatory action in one state, simply by crossing into another state. The use of the unique identifier results in regulators sharing information about entities in NMLS and allows consumers and industry to easily track specific originators' histories and qualifications through NMLS Consumer Access. Furthermore, the NMLS unique identifier ties institutions back to their record in NMLS which contains data about the entity including information regarding corporate ownership, subsidiaries and affiliates. Coupled with the SAFE Act, NMLS enables state and federal regulators to better coordinate efforts to create a seamless system of mortgage supervision.

² On behalf of their state regulator members.

January 1, 2011 marked the deadline for state SAFE Act compliance. The system currently holds over 180,000 SAFE Act compliant licenses³. The SAFE Act requires mortgage licensees to pass industry testing and education standards as well. By January 1, the industry had completed 181,547 national test components and 214,843 state test components. Further, to be licensed, an MLO must pass other standards, such as credit checks and criminal background checks. By January 1, the system had processed 192,049 criminal background checks and 108,132 credit report checks. Further, on January 31, 2011, NMLS began accepting federal registrations, requiring loan originators employed by banks, savings associations, credit unions, and Farm Credit System institutions to register with the registry, obtain a unique identifier from the registry, and maintain their registrations.

The development and launching of the NMLS marks not only a tremendous advancement for regulatory authorities, but it has also produced a refined group of bona fide industry professionals. Current licensees have passed rigorous mortgage testing and education standards and various background checks. The NMLS and SAFE Act have therefore gone lengths in driving the emergence of a more qualified, quality body of mortgage professionals.

Finally, NMLS plans to expand the system to accommodate other financial service providers regulated at the state level, many of which fall within the FSB's scope for shadow banking. The commitment to expand the system will further enhance the view of participants in the financial services industry and provide a platform for effective state supervision.

NMLS Mortgage Call Report

The FSB's letter highlights the need for better data systems surrounding the shadow banking sector. On May 2, 2011, CSBS and AARMR launched the NMLS Mortgage Call Report in accordance with the SAFE Act. Submission of the first NMLS Mortgage Call Report is required by May 15, 2011 for all state-licensed companies and companies employing state-licensed mortgage loan originators. The launch of the NMLS Mortgage Call Report marks the first standardized information collection for the residential mortgage industry. The NMLS Mortgage Call Report will provide timely, comprehensive and uniform information of the non-depository mortgage industry, thereby allowing state mortgage regulators to effectively monitor both licensees and mortgage activities. Data is submitted by companies on a quarterly basis covering the financial condition and mortgage loan volumes by type and state. The Mortgage Call Report will address some concerns raised in the FSB's report regarding non-bank data as companies continue to report critical figures on a quarterly basis going forward.

The CSBS-AARMR Multi-State Mortgage Committee

The Multi-State Mortgage Committee (MMC) held its first meeting in 2008, and by early 2009, 49 states plus the District of Columbia and Puerto Rico had signed the Nationwide Cooperative Protocol and Agreement for Mortgage Supervision (Agreement) outlining a basic framework for the coordination and supervision of multistate mortgage entities (MMEs). The initiative established the MMC comprised of ten state regulatory officials appointed by CSBS and AARMR as the oversight body charged with implementing and directing processes under the Agreement.

³ Number of licenses differs from the number of individual licensees (103,302) highlighted earlier due to persons holding licenses in multiple states.

The Agreement sets forth the following agreed goals: (a) protect consumers; (b) ensure the safety and soundness of MMEs; (c) identify and prevent mortgage fraud; (d) supervise and examine in a seamless, flexible and risk-focused manner; (e) minimize regulatory burden and expense; and (f) foster consistency, coordination and communication among the State Regulators. Pursuant to the Agreement, the MMC has the responsibility to “coordinate joint enforcement or supervisory action when necessary.”

Since its inception, the MMC has launched seven coordinated multi-state mortgage exams. Over thirty states have participated on these exams in each of the last two years. The MMC is also conducting ongoing examinations of eight mortgage servicers, providing the state attorneys general with a broad scope examination platform from which significant servicing standards will be drawn. Additionally, state mortgage regulators are partnering with the state attorneys general and the federal banking regulators on the enforcement order issued to the mortgage servicers in April, 2011.

In 2008, the MMC began a technology based initiative to expand and enhance its review of mortgage lender loan portfolios. Through data uploads of individual loan file information the MMC is able to analyze the entire portfolio with sophisticated compliance review software for apparent violations of certain federal and state law or regulation. The software facilitates a high speed review of thousands of loans and focuses examiner resources on specific areas exhibiting potential consumer harm. The MMC will simultaneously launch 25 such reviews of lenders by mid-2011.

Further, in order to standardize its mortgage examination procedures the MMC released a comprehensive Mortgage Examination Manual for state regulatory use in April 2011.

Although the MMC found its formal beginnings in 2008, the events that led to its creation are illustrated by numerous multistate actions dating back to 2007. Public regulatory orders, which are readily available on the state regulators’ websites, tell a story of states acting in concert to ensure companies that harm consumers are not allowed to continue in business. State regulatory actions taken against Mortgage Lenders Network, Taylor, Bean & Whittaker, Citi Financial, and Countrywide Mortgage are examples of how the states have countered varying levels of consumer harm with swift and certain action.

The MMC is a tremendous testament to state system wide cooperation in mortgage supervision, and its structure and functioning works to address the supervision concerns highlighted in the FSB’s report.

State Foreclosure Prevention Working Group and Coordination with State Attorneys General
After the July 2007 state Attorneys General (AGs) summit on foreclosures, the State Foreclosure Prevention Working Group, comprising a group of state bank regulators and state AGs, formed to work with the mortgage servicing industry to develop solutions to issues surrounding loss mitigation practices. In October 2007, the State Foreclosure Prevention Working Group became the first governmental entity—state or federal—to collect data on the servicers’ loss mitigation efforts and results. The group published five reports between February 2008 and August 2010,

which provided analysis and commentary on a variety of issues. However, efforts in this area were limited due to an OCC policy which advised national banks against providing loss mitigation data to the States. Between September and November 2007, the working group met also with the 20 largest mortgage servicers to address problems with servicing surrounding subprime mortgages.

In September 2010, all 50 AGs and the MMC formed a multistate group to address the robo-signing issues within mortgage servicing. In April 2011, the FRB, FDIC, and OCC announced a joint consent order against the nation's 14 largest mortgage servicers related to foreclosure policies and practices. The agencies expressed their full support for the separate federal and state collaboration between the State Attorneys General and federal regulators led by the U.S. Department of Justice.

Other Areas of Non-Bank State Supervision

In addition to maintaining strong supervisory structures in the mortgage arena, states regulate other areas of non-bank credit intermediation which would fall within the realm of shadow banking as defined by the FSB. For example, about forty states regulate payday lenders and check cashers; twenty-five states regulate debt collectors; and nearly all states regulate other consumer finance areas. And although payment processors and money transmitters seem not to fall within the scope of the FSB's shadow banking designation, it is worth noting the states have developed inter-state supervisory mechanisms in the money transmission area. State agencies have coordinated and conducted multi-state examinations of money transmitters that have included the examination for compliance with state and federal regulatory requirements.

In order to standardize supervision and help foster consistency across state lines in this area the states have focused resources on the development of uniform examination procedures. In 2008, the MSB BSA/AML Examination Manual was developed by the Financial Crimes Enforcement Network (FinCEN), Internal Revenue Service (IRS), and the state banking agencies through CSBS and the Money Transmitter Regulators Association (MTRA). The manual's release marks an important step forward in the effort to ensure the consistent application of the BSA to all Money Services Businesses. Furthermore, the NMLS commitment to expand to other areas of financial services, such as check cashers and payday lenders, clearly demonstrates the states' dedication to advancing supervision in these other critical areas of non-bank credit intermediation.

State- Federal Cooperation

State regulators are working collaboratively and effectively on many fronts with each other and our federal counterparts. State regulators welcome coordination with federal counterparts to promote responsible lending across the residential mortgage industry. In many instances, federal regulators are working closely with state authorities through the Federal Financial Institutions Examination Council (FFIEC) to develop processes and guidelines to protect consumers and prohibit certain acts or practices that are either systemically unsafe or harmful to consumers. Additionally, Dodd-Frank includes numerous provisions calling on federal regulatory agencies, particularly the newly formed Consumer Financial Protection Bureau (CFPB), to coordinate and collaborate with state banking and financial regulators, reflecting Congress's recognition of the important role of state regulator. Pursuant to the mandate of Dodd-Frank, on January 4, 2011,

the CFPB implementation team and CSBS signed a memorandum of understanding (MOU) to establish a foundation of state and federal coordination and cooperation for supervision of providers of consumer financial products and services. Specifically, state regulators and the CFPB will endeavor to promote consistent examination procedures and effective enforcement of state and federal consumer laws and to minimize regulatory burden and efficiently deploy supervisory resources.

Conclusion

In its investigation of the monitoring mechanisms and supervisory structures surrounding shadow banking, we believe the FSB should recognize and support the existing state supervisory structures which promote prudential supervision and enforcement of critical consumer protection standards over certain non-bank financial entities. These structures work to address many of the systemic risk, regulatory arbitrage, and shadow banking supervision concerns highlighted in the report. While improvements still must be made in these areas and new structures must be erected for sectors of shadow banking which currently receive no supervision, we encourage the FSB to note the existing supervisory mechanisms in the non-bank credit intermediation arena and advocate cooperation with these existing mechanisms in order to most effectively develop strong shadow banking supervision.

Thank you for the opportunity to comment. We look forward to working with you on this critical issue.

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

Neil Milner
President and CEO

Mortgage Timeline⁴

- 1982: Alternative Mortgage Transaction Parity Act (AMTPA)⁵
- 1987: Virginia Mortgage Lender and Broker Act of 1987
- 12/10/1997: Massachusetts Division of Banks letter to industry on subprime and predatory lending⁶
- 4/30/1999: Washington enters charges against First Alliance Mortgage Co.⁷
- 7/22/1999: North Carolina Predatory Lending Law⁸
- 11/4/1999: Presidential Executive Order 13132⁹
- 2/7/2000: GAO Study on the Role of the Office of Thrift Supervision and Office of the Comptroller of the Currency in the Preemption of State Law¹⁰
- 3/15/2000: Letter from Elizabeth McCaul, New York Superintendent of Banks, to the SEC on Due Diligence Best Practices for Broker Dealers' Underwriting of Mortgage Backed Securities¹¹
- 5/24/2000: Testimony of Tom Curry, Massachusetts Commissioner of Banks, before the House Financial Services Committee, on *High Cost Lending*
 - “As state regulators we are keenly aware of the elements that make this issue (high cost lending) so complex. These include: (1) the clear benefit to consumers nationwide from the wider availability of credit in recent years through ‘subprime’ lending, especially to low-to-moderate income citizens, and other traditionally underserved markets; (2) the abusive and predatory practices that have, at times, been associated with such lending and which can severely harm our most vulnerable citizens, causing them to lose their homes and other assets, and; (3) the frustrations of the states that pass laws and enact regulations to protect consumers and to stop clear predatory practices, but which are often hindered in their efforts by federal preemption.”
- 11/3/2000: NY Banking Department Open Letter Urging Adoption of Due Diligence Best Practices In Connection with the Securitization of Residential Mortgage Loans
- 11/14/2000: Bond Market Association Response to NY Banking Department’s Proposal of Due Diligence Best Practices In Connection with the Securitization of Residential Mortgage Loans¹²
- 11/22/2000: New York Banking Board High Cost Loans General Regulation¹³
- 8/15/2001: OCC memorandum on the processing of referrals received from state Attorneys General and other state officials of potential violations of consumer laws by national banks.¹⁴

⁴ All Testimonies listed on timeline were given on behalf of CSBS unless otherwise indicated. They can be accessed at the following link: <http://www.csbs.org/legislative/testimony/Pages/MortgageIndustryIssues.aspx>.

⁵ <http://www.fdic.gov/regulations/laws/rules/8000-4100.html>

⁶ http://www.mass.gov/?pageID=ocaterminal&L=4&L0=Home&L1=Business&L2=Banking+Industry+Services&L3=Industry+Letters&sid=Eoca&b=terminalcontent&f=dob_subprime&csid=Eoca

⁷ Final order revoking license entered 10/30/2000.

⁸ <http://www.responsiblelending.org/north-carolina/nc-mortgage/policy-legislation/shortsumm.pdf>

⁹ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=fr10au99-133.pdf

¹⁰ <http://www.gao.gov/archive/2000/g800051r.pdf>

¹¹ Exhibit A

¹² <http://www.sifma.net/story.asp?id=1302>

¹³ <http://www.banking.state.ny.us/legal/rgmb41.htm> - This regulation is in its amended format, dated after 11/2000.

- 3/21/2002: FTC and Multistate settlement with First Alliance Mortgage Company (FAMCO) in the amount of \$60 million¹⁵
- 4/22/2002: Georgia Fair Lending Act¹⁶
- 6/21/2002: New York High Cost Predatory Lending Law¹⁷
- 7/31/2003: Statement of Comptroller of the Currency John D. Hawke, regarding National City Preemption Determination and Order¹⁸
- 12/16/2002: Multistate settlement with Household International, Inc. in the amount of \$454 million
- 3/2003: *Wells Fargo Bank, N.A. v. Boutris*¹⁹
- 1/7/2004: OCC Final Rules on National Bank Preemption²⁰
- 1/28/2004: Testimony of Diana Taylor, Superintendent of Banks for New York, before the House Financial Services Committee Subcommittee on Oversight and Investigations on *Preemption and Predatory Lending*
 - CSBS believes that the OCC’s *de facto* “field preemption” is a dangerous move toward centralization that could rob our dual banking system of one of its greatest attributes.
- 4/7/2004: Testimony of Gavin Gee, Director of Finance in Idaho, before the Senate Banking Committee, on *Preemption and Predatory Lending*
 - The OCC’s new regulations usurp the powers of Congress, stifle states’ efforts to protect their citizens, and threaten not only the dual banking system but also public confidence in our financial services industry.
- 4/20/2004: Testimony of Kevin Lavender, Commissioner of Tennessee Department of Financial Institutions before the Senate Banking Committee
 - “The explosion of the mortgage industry created a new class of lenders for non prime borrowers, and in some cases, these lenders engaged in predatory and fraudulent practices. Many states sought remedies through enforcement of existing state laws, new legislation, and financial education campaigns. Our efforts have reached thousands of borrowers and potential borrowers, punished and discouraged predatory lenders, and brought a national spotlight to this problem.”
 - “These regulations (OCC preemption) seem to encourage consolidation among our largest institutions, concentrating financial risk in a handful of gigantic institutions that may become—if they are not already—not only too big to fail, but also too big to supervise effectively.”
- 12/31/2004: Year-end state enforcement actions against mortgage lenders and brokers total 3,612²¹

¹⁴ Exhibit B

¹⁵ <http://www.ftc.gov/os/caselist/X010029/index.shtm>

¹⁶ http://www.georgia.gov/vgn/images/portal/cit_1210/24/60/105315173GAFLA_Title7Chapter6A.pdf

¹⁷ <http://www.banking.state.ny.us/legal/41ch626.pdf>

¹⁸ <http://www.occ.gov/static/news-issuances/news-releases/2003/nr-occ-2003-59-statement.pdf>

¹⁹ <http://www.financialinstitutionlawblog.com/Boutris%20081505.PDF>

²⁰ <http://www.occ.treas.gov/news-issuances/federal-register/69fr1904.pdf>

²¹ Mortgage Asset Research Institute (MARI), A LexisNexis Service

- 9/29/2005: Testimony of Joe Smith, North Carolina Commissioner of Banks, before the House Financial Services Committee Subcommittee on Housing and Community Opportunity
 - “CSBS plans to create a robust, web-based system to draw from publicly available adjudicated information regarding the criminal history, credit history, consumer complaints, and enforcement actions for mortgage brokers, loan officers, mortgage appraisers, underwriters, and mortgage companies. This would allow states, depending on their laws, to identify fraudulent and abusive lenders and brokers when they leave one state and seek licenses in another.”
- 3/15/2005: “Losing the American Dream: A Report on Residential Mortgage Foreclosures and Abusive Lending Practices in Pennsylvania.” Presented to the Pennsylvania House of Representatives by the Pennsylvania Department of Banking.
- 12/31/2005: Year-end state enforcement actions against mortgage lenders and brokers total 2,759²²
- 1/2006: Arizona creates Regulatory Enforcement Unit to assist state examiners with their increased enforcement actions
- 1/23/2006: Multi-State Settlement with Ameriquest in the amount of \$295 million
- 3/9/2006: Treasury Launches Consumer Financial Protection Forum²³
- 9/8/2006: Massachusetts DOB Industry Letter on Reduced Documentation Mortgage Loans²⁴
- 9/20/2006: Testimony of Felicia Rotellini, Arizona Superintendent of Financial Institutions, before the Senate Banking Committee, Housing and Urban Affairs Economic Policy Subcommittee
 - “If properly managed and offered to borrowers in the right situation, non-traditional mortgages may promote homeownership...However, we have seen signs that some underwriting criteria may be inadequate, and some lenders offer these loans in cases where they do not match borrowers’ needs. If these are systemic trends, the recent run-up in housing appreciation may be unsupportable.”
 - “current disclosure documents are too complex, and fail to provide consumers with the information they need to protect their interests. CSBS believes that an entirely new disclosure process is necessary to help consumers keep pace with the ever-expanding array of mortgage products.”
 - “As a large number of non-traditional mortgage loans re-price and the residential real estate market continues to cool, we fear borrowers may face significant payment shock, or that these mortgages may be unsustainable at fully-indexed rates. These scenarios will likely lead to increased home foreclosures.”
- 7/26/2006: New York Home Equity Theft Prevention Act²⁵
- 11/2006: Massachusetts DOB holds Mortgage Summit on Foreclosure Prevention²⁶
- 11/2006: Arizona Mortgage Fraud Task Force²⁷

²² Mortgage Asset Research Institute (MARI), A LexisNexis Service

²³ <http://www.treasury.gov/press-center/press-releases/Pages/js4101.aspx>

²⁴ http://www.mass.gov/?pageID=ocaterminal&L=4&L0=Home&L1=Business&L2=Banking+Industry+Services&L3=Industry+Letters&sid=Eoca&b=terminalcontent&f=dob_indltr090806&csid=Eoca

²⁵ <http://www.nedap.org/programs/documents/HomeEquityTheftPreventionAct.pdf>

²⁶ http://www.mass.gov/Eoca/docs/dob/Mortgage_Summit_Final_20070409.pdf

²⁷ <http://www.azdfi.gov/FraudLine/Intro.htm>

- 11/17/2006: OCC, CSBS MOU on Consumer Complaint Information-Sharing Plan²⁸
- 11/14/2006: CSBS-AARMR *Guidance on Nontraditional Mortgage Product Risk*²⁹
- 12/15/2006: Pennsylvania Department of Banks Policy Statement on Mortgage Loan Business Practices³⁰
- 12/31/2006: Year-end state enforcement actions against mortgage lenders and brokers total 3,694³¹
- 1/2007: Multi-State Consent Agreement with Mortgage Lenders Network³²
- 2007: CSBS-AARMR Mortgage Industry National Uniform Testing and Education Standards (MINUTES)
- 2007: 36 states plus DC have enacted subprime and predatory lending laws
- 3/16/2007: California Department of Corporations issues an Order to Discontinue Violations and Unsafe and Injurious Practices to New Century Mortgage Corporation and Home 123 Corporation³³
- 3/22/2007: Testimony of Joe Smith, North Carolina Commissioner of Banks, before the Senate Banking Committee
 - “The mortgage revolution has brought with it...moral hazard, as the allocation of risk of a mortgage loan default became dispersed through complex contractual arrangements that began with the local mortgage broker, and ultimately ended with a Wall Street investor.”
 - “I strongly encourage Congress to avoid using taxpayer funds to bail out the subprime lenders, brokers and investors that generated our current problem.”
 - Resist the temptation to create a “super regulator.”
- 3/27/2007: Testimony of Steve Antonakes, Massachusetts Commissioner of Banks, before the House Financial Services Committee Subcommittee on Financial Institutions and Consumer Credit
 - “Instead of tightening underwriting controls, subprime brokers and lenders loosened their underwriting and controls to maintain volume in the intensely and brutally competitive residential mortgage marketplace.”
 - “Congress should update the federal predatory lending law to incorporate the time-tested consumer protections implemented by the various states over the last decade, as embodied by legislation proposed last session in the House of Representatives by Reps. Miller, Watt and Frank.”
- 4/11/2007: New York Banking Department “Halt Abusive Lending Tactics and Mortgage Fraud” Campaign
- 6/2007: CSBS-AARMR Consumer Alert on Impact of Interest Rate Resets on ARMs³⁴

²⁸ <http://www.csbs.org/news/press-releases/pr2006/Pages/OCCCSBSAagreeonConsumerComplaintInformation-SharingPlan.aspx>

²⁹ http://www.csbs.org/regulatory/policy/policy-guidelines/Documents/CSBS-AARMR_FINAL_GUIDANCE.pdf

³⁰ <http://www.pacode.com/secure/data/010/chapter48/chap48toc.html>

³¹ Mortgage Asset Research Institute (MARI), A LexisNexis Service

³²

http://www.mass.gov/?pageID=ocaterminal&L=6&L0=Home&L1=Business&L2=Banking+Industry+Services&L3=Banking+Legal+Resources&L4=Enforcement+Actions&L5=2008+Enforcement+Actions&sid=Eoca&b=terminalcontent&f=dob_mortgagelenders&csid=Eoca

³³ http://www.corp.ca.gov/ENF/pdf/n/newcentury_discontinue.pdf

³⁴ <http://finance.idaho.gov/PR/2007/CSBS-AARMR%20ConsumerAlert6-07.pdf>

- 6/2007: CSBS-AARMR Industry Letter on Mortgage Payment Increases³⁵
- 7/2007: Chicago Summit on Subprime Mortgage Foreclosure Crisis
 - State regulators and representatives from 37 state attorney general offices
- 7/16/2007: CSBS-AARMR-NACCA *Statement on Subprime Lending*³⁶
- 7/31/2007: CSBS-AARMR Model Examination Guidelines (MEGs) for field implementation of the *Guidance on Nontraditional Mortgage Product Risks* and the *Statement on Subprime Mortgage Lending*³⁷
- 9/2007: Formation of the State Foreclosure Prevention Working Group
- 9/10/2007: Massachusetts Division of Banks Guidance on Subprime Mortgages³⁸
- 9/18/2007: Speech by John Ryan, Executive Vice President of CSBS, before the Securities Industry and Financial Markets Association (SIFMA), on Restoring Confidence and Public Trust in Mortgage Finance
 - “It now seems clear that both brokers and financiers—urged on by a commission-driven origination system and a securitization machine built for volume—found ways to circumvent, override, or simply ignore whatever controls were in place to enforce loan underwriting standards.”
 - “The answer, CSBS believes, is a coordinated federal and state supervisory framework that will provide both transparency and protection, and will restore the public trust in the mortgage market.”
 - “Ultimately, it is in everyone’s best interest—consumer, lender, servicer, investor, and regulator—to prevent foreclosure.”
 - “State regulators hear again and again from our citizens that they do not understand the information lenders give them, or do not receive this information in the format they need or at the time that they need it. Recognizing this need, we proposed at the Federal Reserve’s HOEPA hearing a simplified one-page disclosure intended to provide the most critical information a borrower needs in order to make an informed decision.”
- 11/2/2007: Testimony of Tom Miller, Attorney General for the state of Iowa, before the House Financial Services Committee on Progress in Preventing Mortgage Foreclosures³⁹
 - “Mortgage lending is an inherently local transaction. While mortgage lending may involve the largest financial institutions on Wall Street, it begins and ends with a home on Main Street. Accordingly, the States have been at the forefront of the fight against predatory lending.”
 - “Much of this damage (foreclosures) can be avoided with common sense loan modifications and other loss mitigation efforts.”
 - “I am here to tell you today that foreclosure relief is an effort that will require participation from every stakeholder in this process, from homeowner to lender to servicer to secondary market investor to regulator.”
- 11/31/2007: Massachusetts Foreclosure Prevention Law⁴⁰

³⁵ <http://finance.idaho.gov/PR/2007/CSBS-AARMR%20IndustryLtr6-07.pdf>

³⁶ http://www.csbs.org/regulatory/policy/policy-guidelines/Documents/Final_CSBS-AARMR-NACCA_StatementonSubprimeLending.pdf

³⁷ <http://www.csbs.org/regulatory/policy/policy-guidelines/Documents/MEGs-Version1.pdf>

³⁸ http://www.mass.gov/Eoca/docs/dob/5_1-104.pdf

³⁹ Testimony not given on behalf of CSBS.

⁴⁰ <http://www.mass.gov/legis/laws/seslaw07/sl070206.htm>

- 12/2007: CSBS-AARMR Nationwide Cooperative Protocol and Agreement for Mortgage Supervision.
- 12/6/2007: Testimony of Mark Pearce, North Carolina Deputy Commissioner of Banks, before the House Financial Services Committee
 - “We must find creative loss mitigation techniques to deal with struggling homeowners who are “under water” due to home price declines.”
 - “The Treasury Department and the Federal Reserve should be required to provide a plan for how to unwind the various programs established to provide liquidity and prevent systemic failure.”
 - “There is a need for improved coordination and cooperation among functional regulators.”
- 12/12/2007: Testimony of Richard Neiman, New York Superintendent of Banks, before the House Financial Services Committee Subcommittee on Financial Institutions and Consumer Credit
 - “State bank regulators strongly believe that any national hotline number linking the federal regulatory agencies includes the capability to refer consumer inquiries to the states, which the House proposal does.”
- 12/31/2007: Year-end state enforcement actions against mortgage lenders and brokers total 5,896⁴¹
- 1/2/2008: CSBS-AARMR Nationwide Mortgage Licensing System (NMLS)⁴²
 - Maintains a single record for every state-licensed mortgage company, branch, and individual that is shared by all participating states.
 - Allows companies and individuals to be definitively tracked across state lines and over time as entities migrate among companies, industries, and federal and state jurisdictions.
 - Allows consumers and industry to check on the license status and history of the companies and individuals with which they wish to do business.
- 1/30/2008: Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the S.A.F.E. Act)⁴³
 - Increases uniformity, reduces regulatory burden, enhances consumer protection, and reduces fraud by requiring all mortgage loan originators to be licensed or registered through NMLS.
- 2/2008: State Foreclosure Prevention Working Group Report #1⁴⁴
- 4/2008: State Foreclosure Prevention Working Group Report #2⁴⁵
- 5/2008: CSBS/AARMR establish private contract for the use of sophisticated software to analyze 100% of mortgage institution portfolios for compliance with consumer protection laws.
- 7/2008: California Department of Real Estate Mortgage Loan Broker Compliance Evaluation Manual⁴⁶
- 9/2008: State Foreclosure Prevention Working Group Report #3⁴⁷

⁴¹ Mortgage Asset Research Institute (MARI), A LexisNexis Service

⁴² <http://www.nmlsconsumeraccess.org/>

⁴³ <http://mortgage.nationwidelicencingsystem.org/SAFE/NMLS%20Document%20Library/SAFE-Act.pdf>

⁴⁴ <http://www.csbs.org/regulatory/Documents/SFPWG/DataReportFeb2008.pdf>

⁴⁵ <http://www.csbs.org/regulatory/Documents/SFPWG/DataReportApr2008.pdf>

⁴⁶ http://www.dre.ca.gov/pdf_docs/re_7.pdf

- 10/6/2008: Multistate settlement with Countrywide Financial Corp. for \$220 million and injunctive relief for consumers.
- 10/9/2008: *Business Week*: “They Warned us About the Mortgage Crisis.”⁴⁸
 - “State whistle blowers tried to curtail greedy lending—and were thwarted by the Bush Administration and the financial industry.”
- 12/2008: Formation of the Multistate Mortgage Committee to oversee uniform examination processes, schedule and conduct multistate examinations and enforcement actions.
- 12/2008: CSBS- AARMR *Reverse Mortgage Examiner Guidelines (RMEGs)*⁴⁹
- 12/9/2008: Pennsylvania Department of Banking Policy Regulation on the Proper Conduct of Lending and Brokering in the Mortgage Loan Business⁵⁰
- 2/2009: National Governors Association Report on State Foreclosure Action⁵¹
- 3/11/2009: Testimony of Steve Antonakes, Massachusetts Commissioner of Banks, before the House Financial Services Committee Subcommittee on Financial Institutions and Consumer Credit
 - “Consolidation of the industry and supervision and preemption of applicable state law does not address the cause of this crisis, and has in fact exacerbated the problem.”
 - “Our top priority for reform must be a better understanding of systemic risks.”
 - “The FDIC, in the case of insured depositories, and the Federal Reserve, for non-depository systemic risk institutions, must have the authority and resources to manage the failure of these institutions in an orderly manner.”
- 3/11/2009: Massachusetts DOB provided \$3 million in grants to fund regional foreclosure education centers and statewide foreclosure prevention efforts
- 4/2009: Multistate Mortgage Committee initiates first multistate mortgage exam.
- 10/5/2009: “State Anti-Predatory Lending Laws: Impact and Federal Preemption Phase I Descriptive Analysis.”⁵² *Center for Community Capital*. University of North Carolina.
- 5/1/2009: CSBS- AAMR Nationwide Cooperative Protocol and Agreement for Mortgage Supervision creates the CSBS-AARMR Multi-State Mortgage Committee (MMC)
- 6/22/2009: 14 states announce \$9 million settlement with Taylor Bean and Whittaker Mortgage Corporation for failure to comply with consumer protection requirements in the origination of nontraditional mortgage products in 2006.
- 10/15/2009: State of Pennsylvania begins pilot examination initiative for the Multistate Mortgage Committee by notifying 250 lenders that they will be examined through CSBS/AARMR examination software contract.
- 11/2009: Multistate Mortgage Committee initiates second multistate mortgage exam.
- 12/7/2009: CSBS launches Mortgage Testing and Education Board (MTEB) as required by SAFE⁵³

⁴⁷ <http://www.csbs.org/regulatory/Documents/SFPWG/DataReportSep2008.pdf>

⁴⁸ http://www.businessweek.com/magazine/content/08_42/b4104036827981.htm

⁴⁹ <http://www.csbs.org/regulatory/policy/policy-guidelines/Pages/default.aspx>

⁵⁰ <http://www.pacode.com/secure/data/010/chapter46/chap46toc.html>

⁵¹ <http://www.nga.org/Files/pdf/0902FORECLOSUREREPORT.PDF>

⁵² http://www.ccc.unc.edu/documents/Phase_I_report_Final_Oct5,2009_Clean.pdf

⁵³ <http://www.csbs.org/news/press-releases/pr2009/Pages/StateRegulatoryRegistryAnnouncesCreationoftheMortgageTestingandEducationBoard.aspx>

- 1/2010: State Foreclosure Prevention Working Group Report #4
- 1/25/2010: NMLS launches criminal background checks for state licensed MLOs
- 1/25/2010: NMLS Consumer Access launched⁵⁴
- 3/23/2010: “The Preemption Effect: The Impact of Federal Preemption of State Anti-Predatory Lending Laws on the Foreclosure Crisis.”⁵⁵ *Center for Community Capital*. University of North Carolina, Chapel Hill.
- 3/23/2010: Multi-state settlement with CitiFinancial⁵⁶
- 8/2010: State Foreclosure Prevention Working Group Report #5⁵⁷
- 9/2010: 50 State Attorneys General and MMC begin coordinated effort of examination and investigation of large mortgage servicers’ foreclosure practices.
- 10/15/2010: All 50 states, including District of Columbia, Puerto Rico, Virgin Islands, and Guam registered with the NMLS.
- 11/1/2011: NMLS begins processing credit reports on state licensed MLOs
- 1/1/2011: SAFE Act compliance deadline
 - System contains 153,464 fully licensed MLOs meeting SAFE Act requirements
 - 181,547 national test components taken
 - 214,843 state tests taken
 - 192,049 criminal background checks completed
 - 108,132 credit report checks completed
- 1/4/2011: CSBS and CFPB Implementation Team Sign Information Sharing Memorandum of Understanding⁵⁸
- 1/31/2011: NMLS Federal Registry opens⁵⁹
- 4/14/2011: Enforcement order against 14 largest mortgage servicers⁶⁰
- 4/19/2011: MMC released CSBS-AARMR Multi-State Mortgage Committee Examination Manual for state regulatory use
- 5/2/2011: CSBS and AARMR launch NMLS Quarterly Call Report⁶¹
- 5/11/2011: MMC Activity by May, 2011
 - Launched 7 multi-state mortgage exams
 - Conducting ongoing exam of 8 mortgage servicers

⁵⁴ <http://www.nmlsconsumeraccess.org/>

⁵⁵ <http://www.ccc.unc.edu/documents/Preemption.Effect.RELEASE.3.23.10.pdf>

⁵⁶ <http://admin.csbs.org/news/press-releases/pr2010/Documents/pr-032410.pdf>

⁵⁷ <http://www.csbs.org/regulatory/Documents/SFPWG/DataReportAug2010.pdf>

⁵⁸ <http://www.csbs.org/news/press-releases/pr2011/Pages/pr-010411.aspx>

⁵⁹ <http://www.fdic.gov/news/news/press/2011/pr11019.html>

⁶⁰ <http://www.csbs.org/news/newsbytes/Pages/apr14a.aspx>

⁶¹ <http://www.csbs.org/news/press-releases/pr2011/Pages/pr050211.aspx>

Exhibit A:



STATE OF NEW YORK
BANKING DEPARTMENT
TWO RECTOR STREET
NEW YORK, NY 10006

ELIZABETH McCAUL
Acting Superintendent of Banks

March 15, 2000

Mr. Arthur Levitt, Chairman
United States Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Dear Mr. Levitt:

I am writing as a follow-up to our discussion on the Shuttle regarding the underwriting of mortgage-backed securitizations. The front page story of today's New York Times makes clear that this is an exceptionally important and timely issue. As the regulator for numerous originators of sub-prime loans, the Banking Department has found that such lenders provide a valuable service to many people that, for one reason or another, cannot qualify for credit from mainstream lenders. Moreover, securitizations involving loans that are properly underwritten and in compliance with all applicable laws and regulations, can create depth in a market that provides much needed credit access to low and moderate income borrowers.

While the majority of sub-prime lenders conduct business in accordance with the law and consistent with fair and reasonable business practices, this is not always the case. Recent examinations by the Banking Department have revealed the existence of certain abusive, or "predatory" lending practices, among some of these lenders. These include: "flipping," the frequent making of new loans to refinance existing ones; "packing," the selling of additional products in a loan agreement without informed consent; and, making loans without regard to the borrowers' ability to repay.

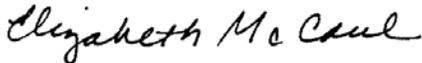
The Banking Department has launched a multi-faceted initiative designed to address and prevent predatory lending. Our efforts include enhanced regulation and more comprehensive examinations of lenders and brokers that make high cost home loans; more aggressive criminal investigations, where appropriate; and, a statewide

public outreach campaign. As I indicated when we spoke, we would like to collaborate with the SEC on developing regulatory guidance for broker-dealers involved in packaging and underwriting securities for sale on the secondary market. As I am sure you'll agree, a high standard of due diligence by each of the parties involved, is necessary to ensure that the "reps and warranties" contained in the typical prospectus does not serve to perpetuate abusive practices of certain lenders.

Enclosed for your review is a draft "best practices" letter, for discussion. It is my hope that we can work together to issue a joint document that will ensure the highest possible standard of due diligence in connection with mortgage loan securitizations. An appropriate due diligence will minimize not only the legal, but also the reputational risk for underwriters involved in these activities.

I look forward to meeting with you and members of your staff to discuss these issues further. Please contact me at your earliest convenience, at (212) 618-6548, to set up a mutually convenient time.

Sincerely,



Elizabeth McCaul
Acting Superintendent of Banks

Cc: David Becker, General Counsel

Cc: Annette Nazareth, Director,
Market Regulation Division

**LETTER CONCERNING DUE DILIGENCE FOR BROKER-DEALERS'
UNDERWRITING OF MORTGAGE-BACKED SECURITIZATIONS**

Dear []:

Increasingly, lenders are packaging and securitizing loans for sale on the secondary market. When these securitizations involve loans that are properly underwritten and in compliance with all applicable laws and regulations, they can create depth in a market that provides much needed credit access to low and moderate income borrowers.

While the majority of sub-prime lenders conduct business in accordance with the law and consistent with fair and reasonable business practices, this is not always the case. Of significant concern are lenders' compliance with the various Federal and New York State consumer protection laws.

Typically, an underwriting prospectus contains a representation that the loans to be included in a particular offering are in compliance with all applicable federal and state law. However, underwriters may vary with respect to the due diligence that they perform concerning the underlying loans and originator of the loans. Without a genuinely high standard of due diligence by each of the parties involved, the "reps and warranties" contained in the typical prospectus may serve to perpetuate abusive practices of lenders.

This following is a set of recommendations for underwriters that pool sub-prime loans for securitization or purchase pools of such loans. Underwriters are urged to familiarize themselves with the laws and issues discussed herein, and to implement the recommended "best practices" to ensure a high standard of due diligence in connection with these activities. An appropriate due diligence will minimize not only the legal, but also the reputational risk for underwriters involved in sub-prime securitizations.

Scope of Recommendations

The recommendations included below are intended for underwriters engaged in the securitization of first or junior sub-prime mortgages secured by 1-4 family owner-occupied residential properties located in New York State.

As set forth below, underwriters should ensure that all loans are made consistent with sound underwriting and appraisal practices, and should include a review of compliance with all applicable federal and state consumer protection laws, including:

Federal:

Truth in Lending Act, especially Section 32, referred to as the Home Ownership and Equity Protection Act;
Regulation Z of the Board of Governors of the Federal Reserve System;
Real Estate Settlement Procedures Act, especially Section 8;
Equal Credit Opportunity Act;
Regulation B of the Board of Governors of the Federal Reserve System.

New York State:

Banking Law Article 12-D;
Parts 38, 80 and 82 of the General Regulations of the Banking Board;
Section 296-a of the Executive Law;
Part 41 of the General Regulations of the Banking Board upon adoption.

Recommended Due Diligence

Prior to purchasing a pool of residential mortgage loans or underwriting securities issued in a securitization of loans, an underwriter should choose a statistically relevant sample of loans that will provide a 95% confidence level based both on random sampling and adverse selection (i.e., HOEPA and/or Part 41 loans). For each loan in the sample, the underwriter should perform the following "due diligence" steps:

- *Conduct a credit review of a sample of loans included in the pool.*

Each loan selected for the sample should be re-underwritten for consideration of the following:

- ◆ *Loan-to-value ratio* to ensure adequate collateral to support the loan;
- ◆ *Ability to repay*, based on current and expected income, current obligations, employment status and other financial resources. Review front-end and back-end ratios; Ensure legal and verifiable sources of income (i.e., VOs, tax returns, W2s, or other reasonable means).
- ◆ *Credit history*: Ensure that credit documents come from a nationally recognized credit reporting agency and are up-to-date.

- *Conduct a compliance review of a sample of loans (see above) included in the pool.*

Each loan selected for the sample should be reviewed for the following:

- ◆ Review note, mortgage, title, appraisal, settlement and compliance documentation to assure all documents have been completed properly and reveal no obvious irregularities;
- ◆ Ensure that all disclosures required by law reflect the relevant transaction and have been properly and timely provided by brokers and lenders and signed by applicant (if applicable). For relevant disclosures, see: Parts 38, 41(when adopted), 80 and 82 of the General Regulations of the Banking Board; HOEPA; RESPA, TILA
- ◆ Carefully review HUD-1 Disclosure statement concerning all charges assessed in connection with closing of loan. Pay careful attention to any substantial variations in fees for standard services (i.e., application or credit report fees), and compare with those listed in Good Faith Estimate; additionally, where broker(s) are involved, note whether multiple fees for same or similar services have been charged by more than one party.
- ◆ Ensure that terms and conditions (including but not limited to: term of loan, APR, points, fees, penalties and charges) reflect nature of credit and/or work involved and do not reflect discrimination on a prohibited basis, redlining or reverse redlining. Pay special attention to brokered loans with a high number of points.

➤ *Conduct due diligence regarding originator(s) and broker(s) of loans included in the pool:*

Each originator and broker involved in the loans included in the pool should be reviewed for the following:

- ◆ Ensure that all mortgage licenses and registrations are up to date.
- ◆ Check regulatory/consumer complaint record of originator with state licensing authorities.
- ◆ Check for issues/complaints with independent agencies such as Better Business Bureau, MARI public database and recognized local community/housing groups.
- ◆ Conduct on-site visit of originator's operation to review files, policies and procedures, interview key employees and determine customer satisfaction by randomly selecting files.
- ◆ Review originator's fair lending policies, procedures and training program.
- ◆ Review originator's policies regarding payment of overages, setting and/or payment of broker fees.
- ◆ Review originator's marketing materials with particular attention to policies and procedures regarding the use of "cold calling" by door-to-door salesman, home improvement contractors as a source of referral, and mass marketing materials aimed at lower income and minority areas.

Exhibit B



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

August 15, 2001

VIA FIRST CLASS MAIL

Susan Henrichsen
Assistant Attorney General
Office of Attorney General
State of California
110 W. A Street, #1100
San Diego, California 92101

Dear Ms. Henrichsen:

Enclosed please find a memorandum issued by the Office of the Comptroller of the Currency ("OCC") on the processing of referrals received from state Attorneys General and other state officials ("State Officials") of potential violations of consumer laws by national banks. The OCC developed these internal procedures in response to matters raised at a meeting with you and other Assistant Attorneys General on May 9, 2001. The policy set forth in the memorandum will facilitate effective communication between State Officials and the OCC concerning national bank compliance with consumer laws. We appreciate you bringing these matters to our attention and encourage you to bring any other concerns regarding national banks to our attention.

Please feel free to share this memorandum with your colleagues and other State Attorneys General. Should you have questions, please do not hesitate to call me at (202) 874-5200.

Sincerely,

Daniel P. Stipano
Deputy Chief Counsel

cc: Assistant Attorneys General:
Julie Brill, Vermont
Linda Conti, Maine
Prentiss Cox, Minnesota
Deborah Hagan, Illinois
Shirley Stark, New York

Attachment



MEMORANDUM

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

To: Distribution

From: Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel 

Date: August 13, 2001

Subject: Referrals from State Attorneys General and Other State Officials

PURPOSE

This memorandum establishes a policy for the OCC's processing of referrals received from state Attorneys General and other state officials (hereinafter collectively referred to as "State Officials") of potential violations of consumer laws by national banks. For purposes of this memorandum, a "referral" means any written or telephonic communication regarding a complaint or series of complaints against a national bank alleging a violation of state and/or federal consumer laws, where: (1) a State Official has expressed an intention to bring an action, or (2) a State Official has requested information or assistance from the OCC in resolving the alleged violation. Contacts with, or correspondence received from State Officials that do not meet this definition, such as the transmittal of individual or isolated consumer complaints, should be forwarded to the Customer Assistance Group in Houston, Texas ("CAG").

The policy set forth in this memorandum is intended to recognize the necessity for greater communication between State Officials and the OCC in situations of mutual concern regarding national bank compliance with consumer laws. The policy also recognizes the importance of notification of the initiation of an action. Clarifying the procedures to be followed regarding these referrals will ensure effective communication between the State Officials and the OCC. All information provided to the OCC by the State Officials should be accorded confidential treatment.

PROCEDURES

District Office Responsibilities

The District Counsel serve as a primary contact for State Officials making referrals to the OCC. Set forth below are the procedures that District Counsel should follow upon receiving referrals from State Officials.

- ◆ Review originator's loans for extent of first payment defaults, excessive delinquency ratios, and frequent attempt at right of rescission by customers.
- ◆ Obtain certification from lender that all loans are in compliance with state and federal law.
- ◆ Obtain evidence that lender requires its appraisers to abide by USPAP (Uniform Standards for Professional Appraisal Practices).
- ◆ Obtain description of threatened or pending litigation and/or settlement with any regulatory agency concerning violations of consumer protection laws, or if none exist, a certification indicating as such.

It goes without saying that a failure to conduct appropriate due diligence in connection with sub-prime securitizations may result in substantial reputational and legal risks for the parties involved. All broker-dealers are strongly urged to follow the guidelines set forth above to ensure that these risks are minimized.

Sincerely,

Delegated Banks

District Counsel are responsible for receiving referrals from State Officials, conducting a review of the referrals to determine whether additional information is needed to process the referral, contacting the referring State Official to obtain such information, and in accordance with the procedures listed below, notifying and providing information to the appropriate District and Washington offices.

Within ten (10) calendar days of receipt of a State Official referral in a District office, the District Counsel shall notify the Deputy Comptroller responsible for the oversight or supervision of the bank (hereinafter, the "appropriate Deputy Comptroller"), the appropriate Compliance Assistant Deputy Comptroller, the Deputy Comptroller for Community and Consumer Policy ("DCCCP") and the Deputy Comptroller for Compliance Operations ("DCCO") (hereinafter collectively referred to as "appropriate OCC personnel") of the referral. In addition, the District Counsel shall notify the CAG of the referral within ten (10) calendar days of receipt of a State Official referral in a District office and provide all relevant documentation.

For written referrals, within ten (10) calendar days of receipt of the referral, the District Counsel shall provide a copy of the State Official's letter and all relevant documentation to the Director of the Enforcement and Compliance Division ("E&C Director") and Director of the Community and Consumer Law Division ("CCL Director").

For telephonic referrals, within ten (10) calendar days of receipt of the referral, the District Counsel shall provide the following information to the appropriate OCC personnel and the E&C and CCL Directors:

- name, charter number, address, telephone and fax number of institution;
- name and position of a contact person at the State Official's office; and
- concise, specific description of the matter being referred, or information or assistance being requested.

In consultation with the offices listed below, District Counsel are responsible for recommending the type of enforcement action, if any, the OCC should take to resolve or respond to the referral. In accordance with District office and agency-wide policies and procedures, District Counsel are also responsible for making a written recommendation to the District Supervision Review Committee or Credit Card Supervisory Review Committee, as appropriate. District Counsel and the E&C Director will coordinate on the review and staffing of State Official referrals and in the case of recommended enforcement actions, the presentation of these matters to the Washington Supervision Review Committee ("WSRC").

Non-Delegated and Large Banks

Within ten (10) calendar days of receipt of a referral from a State Official concerning a non-delegated or large bank, District Counsel shall notify the E&C and CCL Directors of the referral and provide any relevant documentation received to the E&C Director.

Washington Office Responsibilities

Delegated Banks

For delegated banks, the E&C Director is responsible for coordinating with the District Counsel and CCL Director on the review of State Official referrals. Within ten (10) calendar days of receipt from a District Counsel of any relevant documentation relating to a State Official's referral, the E&C Director will forward copies to the DCCCP and the DCCO. Within ten (10) calendar days of receipt of a written referral *directly* from a State Official concerning a delegated bank, the E&C Director shall notify the appropriate District Counsel of the referral and forward copies of any information or materials received to the District Counsel, the DCCCP, the DCCO, the CAG and the CCL Director.

Non-Delegated and Large Banks

For non-delegated and Large Banks, the E&C Director is responsible for receiving State Official referrals, reviewing such referrals to determine whether additional information is needed, contacting the referring State Official to obtain such information, and notifying and providing the information listed below to appropriate District and Washington offices.

For written and telephonic referrals, within ten (10) calendar days of receipt of the referral from a State Official, the E&C Director shall notify the appropriate Deputy Comptroller (and the Examiner in Charge in the case of a Large Bank), the DCCCP, the DCCO, the CAG, and the CCL Director of the referral. In addition, the E&C Director shall forward copies of any information or materials received from a State Official or District Counsel in connection with a referral or request to each of the above-referenced offices.

For telephonic referrals, the E&C Director or the CCL Director shall provide the following information to the appropriate Deputy Comptroller (and the Examiner in Charge in the case of a Large Bank), the DCCCP, and the DCCO:

- name, charter number, address, telephone and fax number of institution;
- name and position of a contact person at the State Official's office; and
- concise, specific description of the matter being referred, or information or assistance being requested.

In consultation with appropriate OCC personnel, the E&C and CCL Directors shall recommend the type of action, if any, the OCC should take to resolve or respond to the referral. In the case of a resolution involving a proposed enforcement action, the E&C and CCL Directors, in consultation with appropriate OCC personnel, shall make a written recommendation to the WSRC. On matters raising privacy issues, consultation in both of the foregoing instances shall include the appropriate Assistant Chief Counsel. Thereafter, recommended actions will be presented to, as appropriate, the Senior Deputy Comptroller for Mid-Size and Community Banks or the Senior Deputy Comptroller for Large Banks for approval.

The E&C Director is also responsible for notifying the appropriate State Official upon the initiation of an enforcement action pertaining to a national bank for which a referral was made. The procedures outlined in this memorandum do not supersede and are intended to be consistent with the procedures for bringing enforcement actions set forth in the Policies and Procedures Manual 5310-3 (Rev), Enforcement Action Policy, and other relevant policy issuances.

Distribution:

District Deputy Comptrollers
District Counsel
Compliance Assistant Deputy Comptrollers
Britton
Roeder
Rushton
Jee
Long
Jaedicke
Schneck
Hammaker
McCormally
Bylsma
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[| Customer Assistance Brochure |](#)
[| Customer Assistance Group |](#)

Who is the OCC?

The Office of the Comptroller of the Currency (OCC) is an agency of the United States Department of the Treasury. The OCC charters, regulates, and supervises over 2,500 national banks to ensure a safe, sound and competitive national banking system that supports the citizens, communities and economy of the United States. The Comptroller's Office also supervises federally licensed branches and agencies of foreign banks. The national banks fund the agency through assessments paid by the banks based on their assets and fees they pay for special services.

What Is a National Bank?

A national bank is a financial institution chartered by the Office of the Comptroller of the Currency. National banks can usually be identified because they have the words "national" or "national association" in their titles or the letters N.A. or NT&SA following their titles. National banks represent about 28 percent of all insured commercial banks in the United States, holding 57 percent of the total assets of the banking system.

If You Have a Problem With a National Bank

It is best to try to resolve a complaint directly with your bank before involving an outside agency. If you are unable to do so or are uncertain about whether your complaint falls under our jurisdiction, the OCC Customer Assistance Group can help you.

General inquiries about banking laws or practices often can be answered on the phone by a customer assistance specialist. The specialist may also be able to suggest other ways for you to try to resolve your problem directly with the bank.

When resolution seems impossible, you may file a formal complaint with the OCC.

The OCC Customer Assistance Group

The OCC Customer Assistance Group was created to answer questions, offer guidance, and assist consumers in resolving complaints about national banks.

Contacting a Customer Assistance Specialist

You can reach one of the Office of the Comptroller of the Currency's customer assistance specialists by:

- Telephoning 1-800-613-6743, toll-free (business days 9:00 a.m. to 3:30 p.m. CST);
- E-mailing - E-mail to Customer.Assistance@occ.treas.gov;
- Fax - Faxing to - 1-713-336-4301 or;
- Sending mail to -

Customer Assistance Group
1301 McKinney Street
Suite 3710
Houston, TX 77010

Filing a Formal Complaint

You may file a formal complaint about a national bank with the OCC by writing and sending (or faxing) a letter -- no special forms are required -- to the Customer Assistance Group at the above address.

Your fax or letter should identify the national bank about which you have the complaint by providing the bank's full name and address. Explain the nature of your problem and tell us what resolution you are seeking. ***Do not forget to give us YOUR name, address, and a telephone number where you can be reached during the day, as well.***

When You Contact the OCC

When we receive your call about a complaint, a customer assistance specialist will request certain information from you about your complaint. He or she will evaluate your information and attempt to resolve your problem while on the phone. Should the specialist not be able to resolve your complaint immediately, he or she may request that you send additional information to assist in their research. The specialist will assign you a case number and tell you exactly what they require you to provide, so that your case research can continue.

When we receive your written complaint or additional documentation that was requested by one of our customer assistance specialists, we will send you an acknowledgment and assign your case to a customer assistance specialist. They will research your complaint and contact the bank for an explanation of

what happened. The specialist may request that you provide additional documentation and will identify exactly what it is that they might require. The OCC will notify you after the bank responds. Complaints caused by bank error or misunderstanding are often resolved voluntarily by the bank.

When You Need Other Help

Many complaints stem from factual or contract disputes between the bank and the customer. Only a court of law can resolve those disputes and award damages. If we find that your case involves such a dispute, we will suggest that you consult an attorney for assistance.

The OCC regulates only NATIONAL BANKS, not all types of financial institutions. If your complaint involves a bank or other institution not regulated by the OCC, we may refer it to another agency. We will notify you if we do so. You should not have to resubmit your complaint or accompanying documentation. However, you may be contacted if the other agency needs additional information.

Consumer Help Is Available From These Agencies:

Office of the Comptroller of the Currency

(Regulates national banks)

Customer Assistance Group
1301 McKinney Street
Suite 3710
Houston, TX 77010
1-800-613-6743

E-mail: Customer.Assistance@occ.treas.gov

Internet: <http://www.occ.treas.gov>

The Office of Thrift Supervision

(Regulates federal savings and loans (S&Ls) and federally chartered savings banks (F.S.B.s))

Office of Consumer Programs
1700 G Street, NW
Washington, DC 20552
(202) 906-6237
1-800-842-6929

E-mail: consumer.complaint@ots.treas.gov

Internet: <http://www.ots.treas.gov>

The Federal Reserve Board

(Regulates state banks that are members of the Federal Reserve System)

Division of Consumer and Community Affairs
Federal Reserve Board
Washington, DC 20551
(202) 452-3946
Internet: <http://www.bog.frb.fed.us>

The Federal Deposit Insurance Corporation
(Regulates Federally insured state banks that are not members of the
Federal Reserve System)

Division of Compliance and Consumer Affairs
550 17th Street, NW
Washington, DC 20429
(202) 942-3100
1-800-934-FDIC
Email: consumer@fdic.gov
Internet: <http://www.fdic.gov>

The National Credit Union Administration
(Regulates federal credit unions)

1775 Duke Street
Alexandria, VA 22314-3428
(703) 518-6300
Internet: <http://www.ncua.gov>

Federal Trade Commission
(Regulates other lenders)

Consumer Response Center
6th and Pennsylvania Avenue, N.W.
Washington, DC 20580
(202) 326-2222
Email: consumerline@ftc.gov
Internet: <http://www.ftc.gov>

Department of Housing and Urban Development (HUD)
(Enforces Fair Housing Act)

Office of Fair Housing and Equal Opportunity
451 Seventh Street, S.W., Room 5100
Washington, DC 20410
(202) 708-4252
1-800-669-9777
Internet: <http://www.hud.gov>