



COMMONWEALTH OF PENNSYLVANIA
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SECRETARY OF BANKING

June 30, 2000

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Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
U.S. Department of the Treasury
1700 G Street, NW
Washington, DC 20552
Attention: Docket No. 2000-34

Re: Advance Notice of Proposed Rulemaking Regarding Responsible Alternative Mortgage Lending

Dear Sir or Madam:

The Pennsylvania Department of Banking ("Department") appreciates the opportunity to provide the U.S. Department of Treasury, Office of Thrift Supervision ("OTS") with comments regarding the Advance Notice of Proposed Rulemaking Regarding Responsible Alternative Mortgage Lending ("ANPR") published in the April 5, 2000 Federal Register, Volume 65, No. 66, Pages 17811 - 17818.

First, the Department will comment on the ANPR regarding whether and the extent to which the OTS should amend existing regulations applicable to federal and state-chartered savings associations and state-regulated housing creditors under the Alternative Mortgage Transactions Parity Act ("AMTPA"). The Department is concerned that housing creditors that the Department licenses and regulates could be placed at a competitive disadvantage if OTS regulations under AMTPA would be amended to contain rules favoring subsidiaries of federal thrifts over licensed housing creditors. In that regard, the Department is not aware of any significant differences between the mortgage business activities of state-regulated housing creditor licensees as compared with those conducted by subsidiaries of federal savings associations that would warrant OTS regulations being amended to create different rules for each of those types of mortgage lender. Therefore, the Department encourages the OTS to accord state-regulated housing creditors and subsidiaries of federal thrifts with equal regulatory treatment under AMTPA in terms of rules applicable to alternative mortgage transactions. It follows that AMTPA regulations promulgated by the OTS should affect federal and state thrifts in a manner reasonably equivalent to the effect on state housing nondepository creditors in terms of those alternative mortgage transaction rules.

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Second, the Department will comment beyond the scope of AMTPA consistent with the ANPR's solicitation of input from state regulators on a wide variety of potential regulatory approaches that would encourage responsible lending and discourage predatory practices.

The Department is aware of an increasing trend in which non-depository mortgage lenders that are subsidiaries of federal thrifts are asserting federal preemption from state mortgage lender licensing laws that were designed in part to provide consumer protection in lending transactions. These subsidiaries of federal thrifts cite OTS federal preemption regulations as authorizing those subsidiaries to engage in mortgage lending without complying with state laws. In this regard, it is important to note that in Pennsylvania, there are first and secondary residential mortgage lender and broker laws which generally require non-depository entities engaging in such businesses to obtain licenses, maintain capital requirements, obtain bonds, file annual reports with the Department, be subject to examination by the Department, comply with rate and fee limitations, and be subject to Department enforcement including the imposition of fines when such action is warranted (together, "mortgage licensing laws"). Deterrence of predatory lending could be improved if nondepository mortgage lenders including subsidiaries of federal thrifts would comply with mortgage licensing laws.

While the ANPR asserts that the OTS performs safety and soundness examinations regarding depository institutions that it regulates, the Department is concerned that a regulatory void may exist in the form of nondepository mortgage lenders that are subsidiaries of federal thrifts asserting federal preemption based on OTS regulations. If such entities do not comply with state mortgage licensing laws and do not remain subject to the provisions therein, then the possibility of predatory lending is greatly increased. In addition, it is noted that safety and soundness examinations that the OTS may perform will not necessarily detect predatory lending practices unless the examination includes substantial review not only of the loan portfolio but also of the lending practices, procedures, and loan documents utilized by the institution.

An example of the positive effect of state regulation is the availability of a state regulator to promote the resolution of consumer complaints. In Pennsylvania, a consumer with a consumer complaint may contact the Department via its 1-800-PABANKS toll free telephone line. The Department then routinely works with the consumer and the housing creditor licensee to assist in mediating a reasonable resolution of the complaint. This Department consumer complaint mechanism has worked successfully for years based in part on cooperation from the entities that the Department regulates. However, entities not regulated by the Department have not exhibited the same cooperative spirit in resolving consumer complaints. As a general matter, it is the Department's experience that the mortgage lending subsidiaries of federal thrifts have not been as responsive to Department efforts to assist consumers in the resolution of consumer complaints. The resulting concern that the Department has is that entities not licensed by the Department and that would be permitted by the OTS to engage in mortgage lending without compliance with Pennsylvania law may be more likely to engage in predatory practices in Pennsylvania than entities subject to enforcement actions by the Department under Pennsylvania mortgage licensing laws.

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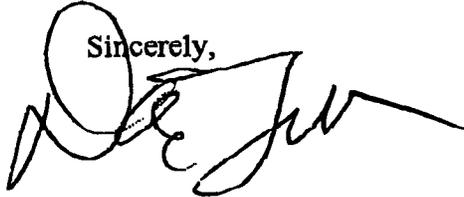
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Based on these assertions, the predatory lending referenced in the ANPR could be made less possible and subject to more enforcement from regulators if the mortgage lending subsidiaries of federal thrifts were made subject to state mortgage licensing laws to the same extent as state housing creditor licensees. In other words, the Department sees no significant difference in terms of mortgage lending operations between a non-depository mortgage lender that is a subsidiary of a federal thrift versus a housing creditor licensee that is not so affiliated. Thus, the Department finds that a regulatory approach made applicable to all non-depository housing creditors, regardless of status as a subsidiary of a federal thrift, should be applied equally and locally in order to successfully benefit and protect Pennsylvania consumers and the Pennsylvania non-depository lending industry.

Finally, it is respectfully stated to the OTS that the Department is reluctant to recognize the referenced federal preemption argument for reasons including, but not limited to, the Department's concern that such federal preemption may have a significant negative effect on Pennsylvania consumers due to a resulting lack of regulatory protection over unregulated entities. It is noted that the court decisions to date holding in effect in favor of OTS federal preemption regulations that negate state licensing laws are not binding in Pennsylvania. Therefore, at this time, the Department maintains its right to challenge assertions of federal preemption by subsidiaries of federal thrifts and to enforce Pennsylvania mortgage licensing laws in any reasonable manner it chooses or deems appropriate in the future.

Thank you for this opportunity to provide comments on the ANPR.

Sincerely,

A handwritten signature in black ink, appearing to be "Neil J. ...", written over the word "Sincerely,".