

MEMORANDUM

TO: Public File

FROM: Karen Osterloh, Assistant Chief Counsel

DATE: May 13, 2002

RE: Alternative Mortgage Transaction Parity Act; Preemption
Proposed Rule – Docket No. 2002-17
Summary of OTS meeting with members of the public

Attendees

On May 7, 2002, the following individuals met at OTS headquarters in Washington, DC:

- Members of the public – Ms. Lynn Sheri King and Mr. Josh Silver representing the National Community Reinvestment Coalition (NCRC).
- OTS – Theresa Stark, Senior Project Manager, Compliance Policy; and Karen Osterloh, Assistant Chief Counsel.

Summary of Discussion

Ms. King indicated that the NCRC recently held a telephone conference with 30-40 of its members. All of these groups support the proposed rule and many will individually comment in support of the rule. NCRC also intends to submit its own detailed comment letter strongly supporting the proposed rule. She also stated that NCRC intended to approach the OCC to determine whether they would revise their rules in a manner similar to the OTS proposal to ensure greater uniformity and reduce predatory lending.

Mr. Silver stated that NCRC believes that the proposed rule is long overdue. He opined that the Parity Act was a very narrow statute designed to address the availability of alternative mortgage transactions in a high interest rate environment. Mr. Silver indicated that NCRC's comment letter would include data detailing predatory practices permitted under the Parity Act and OTS regulations. This information would be drawn from various sources, including HMDA statistics and additional data derived from NCRC's Consumer Rescue Fund. Based on HMDA data, Mr. Silver noted state housing creditors make over 2 million loans (including alternative mortgage transactions and fixed rate, fixed term mortgage loans) every year.

Mr. Silver also indicated that NCRC would recommend an alternative to the proposed rule. NCRC would suggest that OTS revise its rules governing federal savings associations to regulate prepayment penalties on alternative mortgage loans, and then designate these restrictions as applicable to state housing creditors under the Parity Act.

Mr. Silver argued that such a rule would ensure uniform treatment of alternative mortgage transactions by lenders. Mr. Silver conceded that the Administrative Procedure Act would likely require a new round of public comment on such a proposal.

Mr. Silver indicated that NCRC would recommend a provision that would permit prepayment penalties or other restrictions on prepayment during the first two years of a loan. NCRC developed this recommendation based on Freddie Mac restrictions (3 years from origination), the emerging best practices for sub-prime lenders, and recent legislative proposals.

Ms. King added that one of their members, the Self Help Credit Union, has compiled a summary of state laws addressing predatory lending practices. Based on that summary, NCRC determined that two years was the most appropriate cut-off. Ms. King offered to provide the Self Help Credit Union summary to OTS. Ms. King further noted that NCRC has recently worked with lenders to develop best practices for sub-prime lending. NCRC initially recommended a three-year period for prepayment penalties and restrictions. But the lenders indicated that a two-year period would be sufficient.

Ms. Stark asked whether NCRC's alternative would have other benefits beyond a uniform application.

Mr. Silver noted the alternative would also reduce predatory lending generally. Ms. King stated that NCRC data, derived from its Consumer Rescue Fund, show that the top two indicia of predatory lending practices are prepayment penalties and late charges. Ms. King noted that data from their Consumer Rescue Fund have been helpful in helping NCRC to identify trends in predatory lending, including yield spread premiums and excessive closing costs.

Ms. Stark asked why the two-year prepayment provision would be preferable to leaving the issue to state law.

Ms. King noted that some states have rigorous prepayment penalty prohibitions and that some state housing creditors have sought to exempt themselves from these state provisions by consolidating their charters in one state. As a result, strong state laws often do not help when the state housing creditors can evade the restrictions.