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June 24, 2002

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: Docket No. 2002-17

RE: Alternative Mortgage Transactions Parity Act; Advance Notice of Proposed Rulemaking

Dear Sir or Madam:

The Conference of State Bank Supervisors (CSBS) is pleased to have the opportunity to comment on the Office of Thrift Supervision's (OTS) notice of proposed rulemaking regarding proposed changes affecting state chartered and licensed housing creditors, including state chartered savings associations¹. The Alternative Mortgage Transactions Parity Act (AMTPA) adopted in 1982, authorizes state chartered and licensed housing creditors to make, purchase, and enforce alternative mortgage transactions notwithstanding prohibitions in state laws, regulations or constitutions. AMTPA provides that the OTS's authorized regulations preempt conflicting state laws in states that did not opt out of AMTPA by October 1985. Therefore, currently, AMTPA allows state licensed housing creditors that make alternative mortgages to follow rules designated by the OTS².

The OTS proposes to revise its rule that identifies the OTS regulations that apply to state licensed housing creditors. Specifically, the OTS proposes to eliminate

¹ CSBS is the national organization of state officials responsible for chartering, regulating and supervising the nation's 6,868 state chartered commercial and savings banks and 419 state licensed branches and agencies of foreign banks.

² AMTPA generally defines alternative mortgages as loans with payment features such as variable rates or balloon payments, which vary from conventional fixed-rate, fixed term mortgage loans.

regulations on prepayment penalties and late charges from the list of OTS rules that state licensed housing creditors may follow as they conduct business in one or more states. The result would be that state licensed housing creditors would no longer be permitted to follow OTS uniform mortgage rules governing late fees and prepayment penalties in the jurisdictions where they lend. The OTS has proposed no corresponding changes to affect the lending practices or operations of federal savings associations or their operating subsidiaries engaged in the mortgage business.

The OTS is also proposing to revise existing limitations on the amount of late charges that may be assessed on loans secured by first liens on residential manufactured homes. Additionally, the OTS is recommending that Congress reconsider the continued need for the Parity Act and has suggested that Congress should consider providing the states with another opportunity to opt out of the uniform lending environment provided by AMPA. In addition, the OTS suggests that Congress should require state housing creditors lending under the Parity Act to identify themselves to the states to improve the ability of state regulatory agencies to monitor the housing creditors' compliance with AMPA.

Proposed Approach

CSBS commends the OTS for its apparent efforts to address abusive lending practices that may occur through AMPA. CSBS strongly supports efforts to expand supervisory and legal tools available to combat unfair lending practices that have devastated many of our nation's communities.

Predatory lending, as the term has come to be known, is an issue and challenge that state banking departments have invested significant resources to address. States across the country have pursued a variety of approaches, including developing and participating in financial education initiatives, conducting robust examinations to uncover fraud and abusive practices, and carrying out enforcement actions including unprecedented fines and license revocations. We have attached a summary of state initiatives in these areas for your review.

The OTS proposal appears to conclude that late fees and prepayment penalties are loan terms that are "predatory" or abusive per se. As we've indicated in previous comment letters to the OTS regarding AMPA, CSBS believes that unscrupulous *practices* must also be considered when crafting approaches designed to address predatory lending.

Examples of such fraudulent and deceptive practices include: extending credit without regard for the borrower's ability to repay in an apparent effort to seize collateral; structuring loans that feature substantial negative amortization, high prepayment penalties that often prevent the borrower from terminating the loan; interest rates significantly higher than the risk profile of the borrower justifies, and financing fees for potentially unnecessary products such as single premium credit insurance. In and of themselves, some of these provisions may not constitute predatory lending behavior, but in

combination with high-pressure deceptive sales practices or fraud, the results can be devastating to financially unsophisticated consumers.

In instances in which disreputable lenders have utilized prepayment penalties as a mechanism to trap borrowers in predatory loans, the ability for states to enforce prohibitions or limitations on prepayment penalties is clearly a positive outcome. Absent a comprehensive, nationwide approach to protect consumers from abusive lending practices, a growing number of states have acted by passing anti-predatory lending laws and regulations. CSBS supports the ability of states to enact measures to protect their consumers from abusive lending practices.

However, CSBS notes that the OTS is suggesting that this methodology should apply only to state licensed housing creditors, including state depository savings institutions. CSBS suggests that sound, effective approaches to combat predatory lending should apply more broadly in order to avoid consumer confusion and to afford consumers comprehensive protections. At a minimum, CSBS is concerned about a change that eliminates parity in uniform operating rules for state savings associations as opposed to other classes of depository institutions.³

Potential Impact of the Proposal

Under the current proposal, federal thrifts would not be subject to the proposed changes affecting late fees and prepayment penalties. Similarly, the OTS has determined that state laws generally do not apply to operating subsidiaries of federal savings associations. Therefore, operating subsidiaries of federal savings associations engaged in the mortgage business would continue to be free to charge late charges and prepayment penalties without restriction. CSBS also notes that given risk focused examination procedures, operating subsidiaries of federal thrifts may not necessarily receive an examination by OTS examiners, even for compliance with federal consumer protection laws deemed to apply to their operations by the OTS, unless the operating subsidiary is considered to be a material component of the institution's overall operation and is thought to represent material risk to the overall institution.

The promotion of different standards for various types of institutions leaves gaps through which some consumers are likely to fall. CSBS would suggest that truly sound policies designed to combat predatory lending should apply broadly across the range of lenders in the marketplace.

Additionally, CSBS questions whether removing prepayment penalties and late fees from the list of loan terms that are subject to uniformity through the OTS preemptive mortgage rules is the most effective approach to combat predatory lending. Although CSBS believes that where there is no economic justification, creditors should not be able to evade state anti-predatory lending laws by asserting that loans are "alternative mortgages" simply because they contain a late fee or prepayment penalty, we note that

³Under AMTPA, state chartered banks that make alternative mortgages would continue to follow OCC designated mortgage rules; state chartered credit unions would continue to follow NCUA mortgage rules.

the ability to charge late fees and prepayment penalties is generally considered a standard business practice that legitimate lenders routinely utilize within an overall program based on sound risk management principles. The approach suggested by the OTS does not distinguish legitimate lenders from those that engage in abusive or unfair lending practices.

CSBS notes that when the Federal Reserve Board sought to address abusive lending practices governed by Regulation Z which implements the Home Owners Equity Protection Act, (HOEPA) the Board identified abusive practices such as "loan flipping" and equity-based lending without regard to the borrower's ability to repay. Similarly, the Board sought to adjust the interest rate triggers that determine coverage and to expand the fee-based triggers to include optional insurance premiums and similar credit protection products due to reported abuses in this area.⁴

CSBS supported the Board's changes because the proposal expanded the tools regulators could use in the battle to halt predatory lending practices, expanded the disclosures required by HOEPA that are intended to educate consumers regarding the terms and cost of loans, and significantly, because of the uniform application of the proposed changes to all lenders that make loans covered by HOEPA.

Conclusion

Reducing instances of predatory lending will take ongoing vigilance by regulators and demands a more informed base of consumers that are educated and aware of abusive practices in order to prevent falling prey to them. In that regard, we applaud efforts by the state banking agencies and federal banking agencies to expand consumer education initiatives while continuing to expand the scope of statutory and supervisory tools available to combat abusive lending practices.

Thank you for the opportunity to comment. Please feel free to call on us if we can provide assistance in this extremely important area.

Best Personal Regards,



Neil Milner, CAE
President and CEO

⁴ 65 Fed. Reg. 81438, (Dec. 26, 2000).