NACCA

June 24, 2002

236

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

RE: Docket No. 2002-17

Dear Counsel:

Thank you for the opportunity to submit comments in response to the Office of Thrift Supervision Notice of Proposed Rulemaking, Docket No. 2002-17, proposing amendments to the regulations concerning the Alternative Mortgage Transaction Parity Act (Parity Act).

These comments are being offered on behalf of the National Association of Consumer Credit Administrators (NACCA). Our association membership consists of state regulators responsible for the administration of state usury and consumer credit laws. Forty-five states are represented in the association. As consumer credit administrators we are the primary regulator for state licensed non-depository lenders.

We fully support the proposal by the Office of Thrift Supervision (OTS) to limit the applicability of the prepayment penalty and late charges regulations to savings associations and restrict their applicability to state licensed housing creditors.

As correctly noted in the Notice of Proposed Rulemaking, alternative mortgages are widely available and almost every state now recognizes and allows alternative mortgages. The initial purpose of the Parity Act was fulfilled and the applicability of regulations on prepayment penalties and late charges to state licensed housing creditors do not serve to further that purpose. In the proposal, OTS solicited comments on whether the correct factors have been identified in determining whether a specific rule has been designated as applicable for state housing creditors. We believe those factors have been correctly identified and fairly applied. The rules on prepayment penalties and late charges do nothing to further the purpose of the Parity Act, yet have served as an inducement for state housing creditors to structure mortgage loans as alternative mortgages merely to gain the preemption benefits of these two regulations. Structuring alternative mortgages in this way, state housing creditors have evaded state consumer protection laws. It is doubtful that the intent of the Parity Act was to allow lenders a method to avoid state laws, but in effect that is what we are experiencing. As noted in the rule proposed, the state's laws in these areas are not directed at restricting alternative mortgage transactions but in regulating mortgage transactions in general. We agree. Restricting the regulations applicability helps to restore the accountability that should be required of state housing creditors.

As expressed in our letter of August 30, 2001, we are also supportive of OTS' view that Congress should revisit the Parity Act, possibly in the context of broader mortgage reform. We also concur that as part of a congressional review of the Parity Act, states should be offered a new opportunity to consider opting out of Parity Act preemption. Much has changed in two decades since the enactment of the Parity Act. In light of specific state's concerns and predatory lending issues, the states should be entitled to review applicability and preemption in today's context.

Thank you again for the opportunity to express our views. We commend OTS for reviewing this matter and working with the states to address predatory lending concerns. Should you desire more information from us, please contact me at (512) 936-7640 or Carl A. LaSusa the National Association of Consumer Credit Administrators' President at (312) 814-5145.

Sincerely,

Leslie L. Pettijohn
Legislative Committee Chair
NACCA

LLP:jjm

The following states responded favorably in support of NACCA's comment letter to the Office of Thrift Supervision.

Alabama
Colorado
Connecticut
Florida
Hawaii
Illinois
Indiana
Iowa
Louisiana
Kansas
Kentucky
Maine
Massachusetts
Minnesota
Mississippi
New Jersey
North Carolina
North Dakota
Pennsylvania
Oregon
South Carolina
Tennessee
Texas
Vermont
Washington, DC
West Virginia
Wisconsin
Wyoming