
CONSUMER MORTGAGE COALITION

November 26, 2002

Ms. Carolyn J. Buck
Chief Counsel
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Re: Request for Delay of Effective Date of Amendment to 12 C.F.R. § 560.220

Dear Ms. Buck:

The Consumer Mortgage Coalition, a trade association of mortgage lenders, servicers and service providers, respectfully requests that the Office of Thrift Supervision (the "OTS") delay for a period of one year (until January 1, 2004) the effective date of its final rule revising the list of the regulations of the OTS under the Alternative Mortgage Transaction Parity Act (the "Parity Act") applicable to state-licensed or -chartered housing creditors ("Housing Creditors"). Under the final rule, OTS will no longer identify its regulations regarding late charges and prepayment penalties as preemptive of state laws for Housing Creditors making alternative mortgages such as adjustable rate mortgages (ARMs) and balloon loans. The CMC's members include some of the nation's largest originators, purchasers and servicers of mortgage loans, including alternative mortgages.

In prior submissions to the OTS in response to the advanced notice of proposed rulemaking and the proposed rule, we set forth our views regarding the Parity Act and the OTS regulations interpreting it. In summary, we believe that comprehensive mortgage reform, consumer education, and effective enforcement, and not randomly added additional regulations (such as the patchwork of state laws that will no longer be preempted with respect to alternative mortgages made by Housing Creditors), will most effectively combat the lending abuses OTS hopes to stymie with the final rule. Notwithstanding our view, of course, the OTS issued the final rule on September 26, 2002, and this letter is meant not to address the substance of the final rule, but to request its delay.

The compliance task facing mortgage brokers, lenders, purchasers, securitizers and servicers is daunting. In little over three months, all these parties will be expected to have determined and understood the law in a complex area, understood how those laws affect their operations and various loan products, revamped their promissory notes, state disclosures, fees, processes, training, and document checklists, and reprogrammed, tested and implemented changes in their origination, servicing, and quality control systems. We believe that few market participants will completely succeed at that task in time,

requiring some lenders instead to temporarily cease offering, and some loan purchasers to cease purchasing, alternative mortgage products until the systems can be tested. Moreover, because many lenders, including national banks, federal savings banks, and their operating subsidiaries will continue to enjoy federal preemption of state restrictions on prepayment penalties, Housing Creditors will not wish to place themselves at a competitive disadvantage by ceasing unnecessarily to impose prepayment penalties altogether in states where they may be permitted. Finally, unlike the federal thrifts regulated by the OTS, these Housing Creditors are subject to the increasing proliferation of state "anti-predatory lending" laws, and are facing significant programming challenges attempting to implement system changes to identify loans potentially covered by these laws in their origination or loan purchase programs.

Lenders, purchasers and servicers will have to discover what laws apply to their operations. For single state originators, this will not prove a difficult task. However, for Housing Creditors operating in many states, particularly those offering a wide spectrum of loan products, this task will mushroom into a much larger endeavor. Far worse will be the legal situation facing loan purchasers, which will have to determine the permissibility of fees for every type of loan originator from whom they purchase loans. Still, undoubtedly, mistakes will be made in the origination process, and mortgage servicers will have to capture the type of originating entity (and program their systems to accurately handle differences on that basis) in order to ensure that they do not impermissibly impose late fees or prepayment penalties in excess of those permitted to the specific entity under each state's laws. We also note that these laws are not a simple on/off switch – prepayment penalty restrictions include restrictions on the survival of the penalty as well as the amount and occasions which can trigger the penalty, and late fee laws include limits on the percentage, the part of the monthly payment against which they are assessed, and the manner in which they are charged. This is not to suggest that this will be an insurmountable task, but rather that it will require significant time and resources, particularly for larger participants that face numerous state laws or regulatory regimes.

Following the discovery of the laws, the lenders, purchasers and servicers will have to implement these laws into their origination processes. This task will include changing the form of promissory note, providing different loan disclosures, charging different fees, or, in the case of purchasers, requiring that their correspondents accomplish these tasks. For most lenders, these tasks are automated, which means that systems personnel will be required to develop, test and implement systems changes. For many lenders, especially those running complex or multiple systems, implementing a programming change for even the simplest regulatory change takes three months after the time the programming is completed. Other lenders that are dependent on "off-the-rack" software are at the mercy of their software providers for ensuring the change is accomplished.

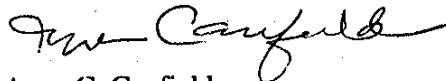
Following the implementation of the systems changes, lenders must change their training, quality control and audit functions to handle the regulatory changes that have been programmed and implemented.

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Each of these steps takes time. As a result, we believe the January 1, 2003 effective date is unrealistic, and ought to be delayed until January 1, 2004.

We appreciate your consideration of this request, and please do not hesitate to call me (202-544-3550) with any questions regarding this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne C. Canfield".

Anne C. Canfield
Executive Director