

**From:** Reinhart, Mary Ann on behalf of Public Info  
**Sent:** Wednesday, July 05, 2000 2:56 PM  
**To:** Gottlieb, Mary H  
**Subject:** FW: Docket No. 2000-34



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-----Original Message-----

From: Barbara Fillion Lynne Weaver) (Barbara Fillion)  
[mailto:BFILLION@mail.jus.state.nc.us]  
Sent: Wednesday, July 05, 2000 11:39 AM  
To: public.info@ots.treas.gov  
Cc: LWEAVER@mail.jus.state.nc.us; plehman@mail.jus.state.nc.us  
Subject: Docket No. 2000-34

Letter and copy of N.C. Predatory Lending Bill attached.  
From: M. Lynne Weaver and Philip A. Lehman  
North Carolina Attorney General's Office  
919-716-6000

July 5, 2000

Manager, Dissemination Branch  
Information Management and Services Division  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, D.C. 20552

**Attn: Docket No. 2000-34**

*By Facsimile & Express Mail*

Dear Sir or Madam:

This letter is submitted in response to the Office of Thrift Supervision's advance notice of proposed rulemaking on Responsible Alternative Mortgage Lending, issued on April 5, 2000. The notice invited comments from states that had enacted regulatory initiatives on the problem of predatory lending. In July, 1999, North Carolina became the first state to enact comprehensive legislation to address the abuses of predatory home mortgage lending. We believe that the experience in this State in developing the new law should be useful to the OTS as it considers a regulatory approach to this issue.

The North Carolina legislation was the result of a process of collaboration, negotiation and compromise over a period of several months. Mortgage lenders, mortgage brokers, the Attorney General's Office and representatives of consumer groups were involved in the process and shared a common goal of identifying and attacking the major consumer abuses in the mortgage lending marketplace. Members of the working group began with consensus on several basic premises: 1) Competition in the mortgage lending market is effective, for the most part, in keeping rates and fees reasonable. 2) There is a sector of the market, typically involving lower income and less sophisticated consumers, where most of the abuses have occurred and where competition is not as effective. 3) Regulatory approaches should be carefully focused on abusive practices without interfering with the mainstream lending market. 4) Mortgage loan closings are already heavily encumbered with paper disclosures and disclosures, by themselves, are ineffective in addressing predatory lending abuses. 5) Excessive loan fees and oppressive loan terms are more significant abusive practices than high interest rates which can be potentially reduced through refinancing.

The basic approach of the legislation was to create a separate statutory provision to define and regulate a new category of high cost home loans. Following a modified version of the HOEPA structure, three threshold tests were created (for interest rates, points and fees, and prepayment penalties) to trigger high cost loan coverage. If any of the thresholds are met, a number of restrictions apply, the most significant of which are that fees and closing costs cannot be financed and the borrower must undergo credit counseling before closing. Balloon payments

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are prohibited for high cost loans, as is asset-based lending without regard to the borrower's ability to repay. The Act also adds specific new consumer protections to all consumer home loans, including a prohibition on the financing of prepaid single premium credit insurance and a general prohibition on loan "flipping." The Act also clarifies what fees and closing costs are permissible, and is intended to curtail the spread of "junk" fees. A copy of the legislation is attached to this letter for your reference.

The high cost home loan provisions of the new Act took effect on July 1, 2000. It is therefore too early to report on any experience with implementation or compliance. We anticipate that the Act will curtail the worst abuses of mortgage lending without burdening responsible lenders and without significantly affecting the flow of home mortgage credit in this State.

We believe that the North Carolina legislation is a useful model for other states and federal agencies to follow. In approaching the issue of predatory lending, we ask that the OTS give due deference to state initiatives in this area and to avoid preemption of basic consumer protections enacted by the states. As is more fully addressed in a separate letter from the National Association of Attorneys General, some OTS regulations and opinions have contributed to predatory lending by aggressively preempting state consumer protection laws without substituting any equivalent federal protections.

We are gratified by the OTS' interest in addressing predatory lending. We would be pleased to share further information about North Carolina's experience with your staff.

Sincerely,

Philip A. Lehman  
Assistant Attorney General

M. Lynne Weaver  
Assistant Attorney General

Enclosure