ASTORIA FEDERAL SAVINGS

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Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552
Attention Docket No. 2000-34

Re: Advance Notice of Proposed Rulemaking
<u>Predatory Lending and Responsible Alternative Mortgage Lending</u>

Dear Sir or Madam:

Astoria Federal Savings and Loan Association ("Astoria"), a federally chartered savings association, with assets of $22.6 billion, is the second largest publicly traded thrift in New York, and the sixth largest in the United States. Astoria, through its eighty-seven banking offices, provides retail banking, mortgage, consumer and small business loan services to over 700,000 customers. Astoria originates mortgage loans through an extensive broker network and/or loan production offices in fourteen states: New York, New Jersey, Connecticut, Pennsylvania, Ohio, Illinois, Massachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida.

Accordingly, Astoria would be directly impacted by any changes made by the Office of Thrift Supervision ("OTS") to its mortgage lending regulations, as outlined in the above-referenced Advance Notice of Proposed Rulemaking ("ANPR"). Astoria believes that the current mortgage lending regulations do, in fact, encourage the safe and sound, efficient delivery of low-cost credit to the public free from undue regulatory duplication and burden. However, this belief is qualified by the notion that in order for the regulations to have the desired effect, OTS must have the power and authority to properly enforce such regulations. Astoria acknowledges the possibility that certain state-regulated institutions are engaging in predatory lending activities under the protection of the Alternative Mortgage Transaction Parity Act ("Parity Act"). Therefore, if OTS perceives that these institutions are engaged in predatory lending, we urge OTS to limit the changes to its lending regulations to the availability of protection the Parity Act affords those institutions. Additionally, OTS might consider the issuance of supervisory guidance or industry best practices as an alternative to changing the regulatory framework currently in place.

Astoria agrees with OTS that its lending regulations promulgate the concept that most components of a loan contract should, within the bounds of safety and soundness, be a matter of negotiation between the borrower and the lender. We feel strongly that this concept applies in both the purchase money mortgage and home equity contexts. Since most thrifts, including Astoria, are not significantly engaged in subprime lending, it is difficult to comment on what effect the regulations have on that market. However, Astoria recognizes the benefits subprime lending housing creditors confer on consumers, as well as the potential for predatory practices that may result therefrom. Therefore, we welcome the opportunity to comment on the various approaches outlined in the ANPR.

I. Should OTS Modify Its Regulations Implementing the Alternative Mortgage Transactions Parity Act?

As noted in the ANPR, the Parity Act allows state-regulated housing creditors to offer loans with alternative payment features such as variable rates, balloon payments or call features, notwithstanding state law, so long as they comply with the regulations on alternative rate mortgage transactions that apply to federally chartered depository institutions. If state-regulated housing creditors utilizing the Parity Act are engaging in predatory lending practices, it is likely that the differences in examination, supervision and enforcement by applicable regulators are a major contributing factor. Astoria believes that the lending regulations offer a healthy balance, whereby thrifts may offer loan products in a manner which allows them to remain competitive with peers, while remaining under the watchful eye of OTS. In this manner, the consumer is in a win-win situation. The inability of OTS to examine state-housing creditors who, under the Parity Act, are simultaneously shielded from state regulation, creates an atmosphere which can encourage predatory lending practices.

The ANPR suggests revising the scope of "appropriate and applicable" regulations designated under the Parity Act. One idea is to exclude from the list of appropriate and applicable regulations any OTS regulations that do not apply exclusively to alternative mortgage transactions. Astoria is in favor of such a proposal. Since OTS' statutorily assigned role is solely to designate which OTS lending regulations affecting alternative mortgage transactions are appropriate and applicable to housing creditors when they make such loans under the Parity Act, this is seemingly the only opportunity OTS has to effectively regulate those state-regulated creditors. In addition, Astoria believes that the issuance of supervisory guidance materials to those state-regulated housing creditors could be an effective way to educate such creditors as to the proper application of the lending regulations. It is important to note that Astoria favors limiting state-regulated creditors' ability to utilize the Parity Act only if it is clear to OTS that predatory lending practices thereunder are prevalent. As stated earlier, Astoria recognizes the benefit conferred on consumers by the competitive nature of the lending industry and does not wish to undermine that objective.

II. Should OTS Adopt Regulations on High-Cost Mortgage Loans?

A second approach would be to follow the lead of such states as New York and North Carolina to enact specific regulations targeting high-cost mortgage loans. Astoria is against such a proposal. Astoria maintains that the lending regulations currently provide affected lenders with the necessary means to safely and effectively make loans. At the same time, various disclosure requirements currently in place ensure that consumers are aware of any inherent risks associated with the loan.

III. Is Differential Regulation Appropriate?

A third approach would be for OTS to take into account a thrift's capital, safety and soundness rating, and compliance ratings in determining whether the agency should receive advance notice regarding certain lending activities, including subprime and high-cost lending. Astoria is opposed to such a proposal. As stated earlier, thrifts, including Astoria, are not significantly engaged in subprime or high-cost lending. Some state-regulated housing creditors, however, are engaged in such lending markets. To impose such burdensome and costly measures against thrifts, who have shown no history of abusing the privileges bestowed upon them by OTS, seems patently unfair. This is especially true in light of the fact that those very same state-regulated housing creditors would not be subject to such strict requirements.

IV. How Should OTS Deal With Potential Lending Issues Raised by Thrift Subsidiaries or Affiliates?

Astoria does not believe that subsidiaries and affiliates pose different or higher risks than their parent thrifts in this area. As stated earlier, Astoria is not significantly involved in subprime or high-cost lending. However, it is foreseeable that this market could be pursued at some future point, given Astoria's recognition of the important part such offerings play in today's society. We feel that the current subordinate organizations regulations are sufficiently organized to allow such subordinate organizations to conduct business in a manner beneficial to all parties. To place increased restrictions and limitations on the ability to conduct business may discourage the expansion into such areas. This would not be in the best interests of either party. Rather, subordinate organizations should be permitted to apply the regulations just as they have done in areas currently affected before a presumption of negativity is conferred upon them.

V. Should OTS impose certain due diligence requirements?

Astoria does not believe that OTS should require federal thrifts to conduct a due diligence review of potential loan purchases to determine whether the loans meet applicable federal or state rules relating to predatory practices. Such increased scrutiny would effectively create barriers to thrifts' attempts to utilize the secondary market, resulting in a more costly and less efficient process. In addition, it would require additional training of employees and/or the use of third parties in order to complete such reviews. Inevitably, the costs incurred by lenders as a result of such an endeavor would be passed to the consumer.

Nor should thrifts be required to inquire of securitizers from whom they purchase interests in loan pools whether such securitizers have conducted due diligence efforts with regard to the underlying loans. Astoria does not feel that this would have the desired effect of minimizing the inclusion of predatory loans in their securitized pools. The difficulty in identifying troublesome loans on an effective and consistent basis coupled with the fact that thrifts and securitizers have ongoing agreements which currently do not address predatory lending issues would certainly result in various disputes. The costs to resolve such disputes would again inevitably be passed to the consumer.

CONCLUSION

Astoria recognizes the dangers inherent in subprime and high-cost lending. We also recognize that there are creditors who bring those dangers to reality. However, we do not believe that the thrift industry, whose regulations provide for a safe and sound lending environment, should sustain increased scrutiny based on the actions of creditors who utilize OTS regulations, yet are beyond the regulatory reach of both OTS and their own regulators. Therefore, we urge OTS to continue to support thrifts in their efforts to safely and effectively provide low-cost credit to the public. By limiting the reach of state-regulated housing creditors under the Parity Act and issuing guidance materials to those creditors, Astoria believes that the goals of the ANPR can be met – and without additional cost to the consumer.

Thank you and if you have any questions, please feel free to contact me at (516) 327-7876.

Very Truly Yours,

Alan P. Eggleston
Executive Vice President &
General Counsel