

From: Reinhart, Mary Ann on behalf of Public Info
Sent: Wednesday, July 05, 2000 2:58 PM
To: Gottlieb, Mary H
Subject: FW: Parity Act Opinion Letter

Importance: High



parity act letter (short ver)....

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

From: Alisa Corfield [mailto:Alisa.Corfield@abnamro.com]
Sent: Wednesday, July 05, 2000 2:52 PM
To: public.info
Subject: Parity Act Opinion Letter
Importance: High

Attached please find a submission of views concerning the Advanced Notice of Proposed Rulemaking (ANPR) which the Office of Thrift Supervision (OTS) published in the Federal Register on April 5, 2000. This letter has also been sent to you via facsimile and Federal Express. Thank you.

July 5, 2000

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

Attention: Docket No. 2000-34

Re: Advanced Notice of Proposed Rulemaking
Responsible Alternative Mortgage Lending

Dear Sir or Madam:

ABN AMRO North America, Inc., ("AANA") its subsidiary Standard Federal Bank ("Standard Federal") and Standard Federal's operating subsidiary ABN AMRO Mortgage Group, Inc. ("AAMG"), appreciate the opportunity to submit their views concerning the Advanced Notice of Proposed Rulemaking ("ANPR") which the Office of Thrift Supervision ("OTS") published in the Federal Register on April 5, 2000 (65 Fed. Reg. 17811-17818). The ANPR, entitled "Responsible Alternative Mortgage Lending," gives notice that OTS is reviewing its mortgage lending regulations, both as they apply directly to federal thrifts and as they apply to non-federally-chartered housing creditors through the Alternative Mortgage Transactions Parity Act (the "Parity Act"), 12 U.S.C. §§ 3801 *et seq.*

AANA is a subsidiary of ABN AMRO Bank N.V. ("Bank") which is headquartered in Amsterdam, the Netherlands. As of December 31, 1999, the Bank had over 460 billion in assets, approximately 105,000 employees and a network of approximately 3,590 locations in 76 countries and territories. The Bank maintains 10 Branch or Representative offices in the U.S. In addition, ABN AMRO Incorporated, an investment banking, brokerage and securities firm, headquartered in Chicago, Illinois is a subsidiary of the Bank.

AANA is the holding company for the U.S. operations of Bank and is also headquartered in Chicago. AANA is among the largest foreign bank holding companies in North America with \$167 billion in assets and more than 19,000 employees. The U.S. operations of the Bank include, but are not limited to, LaSalle Bank National Association located in Chicago; Standard Federal Bank, a federal savings bank, located in Troy, Michigan; and European American Bank, a state member bank located in Uniondale, New York. These banks maintain approximately 390 offices in Illinois, Michigan, Indiana, Ohio and New York.

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Standard Federal is the Midwest's largest thrift institution with total assets for Standard Federal and its subsidiaries, as of December 31, 1999, of approximately \$19 billion. Standard Federal, through its operating subsidiary, AAMG, is the leading single family home mortgage lender in the Midwest, and one of the largest wholesale lenders in the country. In 1999, AAMG originated or purchased over 207,000 single family home loans totaling over \$28 billion.

We applaud the initiative of the OTS in reviewing its regulations with the goal of "encouraging the safe and sound, efficient delivery of low-cost credit to the public free from undue regulatory duplication and burden." 65 Fed. Reg. 17811. In our opinion, these regulations have established highly effective alternative mortgage lending standards that have lowered the cost of credit to consumers across the nation. To retreat from these standards now by either enforcing an unduly narrow interpretation of the Parity Act, or by imposing tighter lending restrictions, will, in our opinion, do nothing to achieve the OTS's goal -- either in general or with respect to the specific need to curb predatory lending. We do not believe that reform of the OTS's Parity Act regulations should be the focus of OTS's consumer protection efforts. The OTS can best show its commitment to a safe, sound, efficient and consumer-friendly national mortgage lending system by engaging with other regulatory agencies and the mortgage-lending industry to advance comprehensive mortgage reform. Only such an approach can deal with the problem of predatory lending without incidentally damaging the broader interests of consumers and the lending industry.

Specifically, OTS has identified five broad approaches that could be taken in an effort to promote responsible mortgage lending practices by federal savings associations, their operating subsidiaries or other housing creditors subject to OTS regulations when relying on Parity Act preemption. They are:

- **Amend OTS Regulations Implementing the Parity Act.** OTS is considering whether it should revise the scope of OTS regulations designated as "appropriate and applicable" under the Parity Act. This would return the industry to the approach taken by the Federal Home Loan Bank Board in 1982. By contrast, in 1996, the OTS determined that regulations could be appropriate and applicable even if the regulation applied to a broader category of loans in addition to alternative mortgages.

- **Target High-Cost Mortgages.** 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. Any such undertaking by the OTS could drastically affect offerings made by housing creditors acting in accordance with the Parity Act. This approach would directly target those practices perceived by some to be predatory in nature such as loan flipping, balloon notes or high upfront fees.

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- **Differential Regulation.** At times, the OTS has found it to be appropriate to require some thrifts (based on capital levels or examination ratings) to file a notice or application prior to engaging in certain activities in light of the potential risk involved with the activity. The OTS is seeking comment on whether engaging in subprime lending is one such activity that should necessitate prior notice to the agency.

- **Regulations for Thrift Subsidiaries and Affiliates.** Even though a particular thrift may not be engaged in subprime lending, it may have an affiliate or subsidiary that is offering loans that are risk-based. Because thrift operating subsidiaries are subject to OTS supervision and examination, the agency is considering whether it should make comparable modifications (assuming that modifications are made to OTS regulations applicable to thrifts) or stand-alone modifications to its "subordinate organization" regulations (12 CFR Part 559) to address subprime lending issues.

- **Due diligence requirements.** Based on the proposition that the secondary market has contributed to the existence of predatory practices in the marketplace, the OTS is contemplating a requirement that thrifts conduct a due diligence review of potential loan purchases to determine whether the loans meet federal or state laws relating to predatory lending practices. This requirement could potentially be expanded to include due diligence of securitizers from whom thrifts purchase pools of loans.

As discussed above, AAMG, an operating subsidiary of Standard Federal, is a major mortgage lender, and wholesale mortgage investor. By operating on a nationwide basis under the broad federal preemption of the OTS charter, along with the benefits of the Parity Act, AAMG is able to offer uniform products throughout the country. The cost savings from this uniformity benefits our customers. We are not subprime or predatory lenders. Our mortgage business would, however, be severely impacted by the approaches discussed above. Eliminating the Parity Act could destroy our ability to purchase or fund uniform loan products across the country, driving up our costs of compliance, and therefor the cost of credit to the borrower. Restrictions on practices deemed to be "predatory" eliminates these products for those who may legitimately need them. Additional compliance requirements for operating subsidiaries add to the cost of credit, and may restrict AAMG's legitimate lending practices. Additional due diligence requirements (other than what is already required based on general "safety and soundness") for mortgage backed securities transactions may eliminate secondary markets for mortgage loans, impeding the monies available for mortgage lending.

As the ANPR points out, predatory lending practices "prey upon customers' lack of knowledge or options." 65 Fed. Reg. 17812. The home-mortgage horror stories with which the media have acquainted us tend to share two characteristics: borrowers do not fully understand the terms of the loans they are obtaining, whether through lack of education, advanced age, poor physical health or other infirmities; and borrowers obtain their loans without comparing terms and conditions with other competing loan products, whether through reluctance to shop for credit

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or for a lack of adequate competition. If every borrower understood the terms of the loan she was obtaining, and if she had access to competing products with different mixes of terms and conditions, far fewer stories would circulate of borrowers victimized by unscrupulous lenders.

If inadequate consumer education and consumer choice are the primary factors that permit predatory lending to persist, then the way to curb predatory lending is to eliminate those factors rather than placing additional restrictions on legitimate lenders. Consumers need to know, in practical, useful ways, what the terms and conditions of the loans they are considering actually mean. They need to be able to compare one loan with another according to the factors that are of real importance. They also need to have access to more than one or two lenders to obtain credit. The best protection against abuses by unscrupulous lenders is the existence of aggressive competitors who can deprive those lenders of business by offering better deals to borrowers. A so-called *predatory* loan is often really a *fraudulent* loan or one made pursuant to a deceptive practice. To the degree that spirited competition does not solve the predatory lending problem, aggressive enforcement of existing state and federal laws, rather than enactment of new substantive lending prohibitions, would be the more appropriate path to take. Attempting to solve the predatory lending problem by prohibiting certain loan terms, such as prepayment penalties in exchange for a lower rate, or balloon payments, might eliminate some lending abuses, but only at the cost of prohibiting the vast majority of borrowers from benefiting from the flexibility and savings that these terms can provide. Such a prohibition would still permit unscrupulous lenders to put undue pressure on borrowers.

We are particularly concerned about potential changes to the Parity Act. The Parity Act plays an important role in providing affordable credit to all borrowers. As you know, Congress enacted the Parity Act in 1982 permitting "housing creditors" to take advantage of favorable federal regulations permitting them to offer loans with "alternative" payment features such as variable rates, balloon payments or call features. For purposes of the Parity Act, those institutions falling into the definition of housing creditors are those institutions that are licensed according to applicable state laws but offer alternative mortgages complying with regulations issued by an appropriate federal regulator. The Parity Act dramatically opened the lending market in the 26 states that in 1981 prohibited or severely restricted such lenders from making such loans. *See* 65 Fed. Reg. 17813. This stimulated a dramatic increase in competition that directly benefitted borrowers: it lowered the cost of credit in general, and it stimulated lenders to create new products more closely tailored to the needs of various subgroups of borrowers. The Parity Act aids lenders like AAMG to operate as a wholesale lender on a nationwide basis, with uniform loan terms increasing our efficiency and lowering our costs for loans originated by mortgage brokers and bankers, and sold to, or funded by, AAMG.

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Together with the Depository Institutions Deregulation and Monetary Control Act ("DIDMCA"), 94 Stat. 132 *et seq.* (March 31, 1980), the Parity Act remains one of the cornerstones of nationwide lending standards. Limiting its preemptive reach to those state laws that explicitly deal with alternative mortgage transactions, which the OTS has suggested as a possible course of action, *see* 65 Fed. Reg. 17815, would effectively end the usefulness of the Parity Act: it would reintroduce the competitive differences between federally-chartered lenders and all others that Congress opposed in the first place and restrict the ability to offer uniform loan products nationally.

Besides using the Parity Act and leaving such initiatives up to the states, we would like to suggest another option for dealing with the roots of predatory lending: AAMG advocates comprehensive federal mortgage reform. Even the most aggressive use of its Parity Act authority can only give OTS authority over some lending by some lenders in most states. Leaving predatory lending initiatives up to the states abdicates OTS's responsibilities to protect the availability of residential mortgage credit and its ability to influence policies, jeopardizes nationwide competition in mortgage lending, and still does not guarantee that vulnerable consumers will be protected, given that many state legislatures will not enact protective legislation in a timely fashion. But comprehensive mortgage reform, if practical, substantively effective and supported by the federal banking agencies, can guarantee that all borrowers will receive adequate and appropriate information about their loans, and by stimulating head-to-head competition for all loan products, will go farther towards ensuring that all categories of consumer have adequate choice of financial services than any peremptory government order. Reforms which AAMG would endorse include:

- **Early Disclosure of Firm Closing Costs** leading to greater certainty for consumers on closing costs and to increased price competition for both loans and ancillary services required to make the loan;
- **Improved Prequalification Shopping** by providing consumers with more precise information about the loan they are likely to qualify for prior to the consumer paying an application fee;
- **Proportional Remedies** so lenders are the target of less litigation over harmless or minor errors while consumers can be compensated for actual harms;
- **Substantive Protections** to protect the most vulnerable consumers from abusive loans;
- **Foreclosure Reforms** to provide additional protections to borrowers facing the loss of their home without reducing the value of lender's security interest in the property.
- **Federal Preemption** of state laws so that lenders can comply with a uniform set of disclosure requirements which will adequately protect consumers and result in lower costs to lenders and lower rates for borrowers.

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Comprehensive reform on this scale cannot and should not be accomplished without the enthusiastic support of the federal agencies that will be enforcing the new regulatory scheme. As the agency with the most experience of preemptive nationwide regulatory issues and the greatest familiarity with residential mortgage lending, because of the breadth of the thrift charter and its Parity Act responsibilities, the OTS may be able to see most clearly the revolutionary impact such comprehensive reform can have on the American mortgage industry. With such clear vision, OTS can be invaluable in awakening its sister agencies to the benefits of this initiative.

Conclusion

With the publication of its ANPR, the OTS has made clear that it is looking for a global solution to the intertwined problems of predatory lending, conflicts between federal and state mortgage regulation, and the enhancement of competitive forces in mortgage lending. It should not limit its search for solutions to a consideration solely of changes to its Parity Act regulations and new regulations applicable only to thrifts and some housing creditors. Standard Federal Bank, and its operating subsidiary, AAMG, as a major thrift lender, urges the OTS to consider taking the lead in advocating a truly comprehensive solution applicable to all mortgage lenders in the United States.

Sincerely,

Karen Severn Jackson
Vice President and Associate Counsel
ABN AMRO Mortgage Group, Inc.

Bcc: S. Rhodes
G. Washington
M. Fowle