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July 3, 2000

Manager, Dissemination Branch
Information Management Services
Office of Thrift Supervision
Attn: **Docket No. 2000-34**
1700 G Street, NW
Washington, D.C.

VIA FACSIMILE (202) 906-7755

Re: ANPR—Responsible Alternative Mortgage Lending

Dear Sir or Madame:

This letter is in response to the Office of Thrift Supervision's solicitation for comments regarding the OTS's recently published advanced notice of proposed rulemaking ("ANPR") (see Federal Register, Vol. 65, No. 66, 17811-17818, April 5, 2000) addressing the topic of "Responsible Alternative Mortgage Lending." Before proceeding with our comments, we desire to express our appreciation to the OTS for the thoughtful manner in which the ANPR was presented and for the opportunity to provide what we believe to be insightful comments relating to responsible alternative mortgage lending practices for the markets that we serve. We also desire to convey our support of the six goals of the OTS that are identified in the ANPR.

We wholeheartedly concur with the OTS's position that the OTS's lending regulations are ". . . based in large part on the assumption 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 also take the position that such assumption should apply to new products that have been developed in both the home equity and the purchase money contexts. We take this position because we believe that the borrower is no less sophisticated or in no less of a position to bargain when presented with these products. In fact, at least in the home equity context, the borrower certainly may often find himself or herself in a better position to bargain due to the fact that the borrower owns the home and is not under the time constraints that are typically associated with the purchase contract. Accordingly, in these situations, the borrower would also appear to have a greater ability to be more diligent in the pursuit of appropriate financing terms.

Turning to the subprime market as a whole, we concede that there are brokers and lenders in the market, particularly those routinely making high-cost loans, that engage in predatory practices and/or that abuse the benefits afforded them by the Alternative Mortgage Transactions Parity Act (the "Parity Act"). It has been our experience, however, that such practices and abuses are generally not found in the thrift industry, but are more prevalent in the less regulated mortgage broker and small, non-thrift mortgage banker communities. With that in mind, we strongly encourage the OTS to refrain from promulgating any regulations or body of regulations that would impose additional restrictions or obligations on thrifts or which would place thrifts at

a competitive disadvantage to entities not subject to OTS regulations. Recognizing, however, that there is a high level of publicity and media attention currently being given to abusive and predatory practices of a what we believe to be a non-representative group of brokers and lenders, we understand the pressures placed on the OTS and other agencies to curb such abuses and practices. We, therefore, suggest that, if regulations must be implemented, they be consistent with the following:

1. With respect to the OTS's regulations implementing the Parity Act, we believe that all of the regulations that are currently designated as appropriate and applicable should continue to be so designated; however, we encourage the OTS to require that state housing creditors file an election with the OTS stating their intent to engage in transactions subject to the Parity Act. We further suggest that OTS be empowered to deny, suspend or revoke such elections in situations where such state housing creditors have been found to have routinely or flagrantly violated the provisions of the Parity Act or any federal law or regulation governing residential lending transactions. While the OTS would still not have supervisory powers over such state housing creditors, the OTS should be entitled to entertain petitions from other federal or state agencies requesting the denial, revocation or suspension of any such creditor's election.

2. With respect to high-cost mortgage loans, we do not believe regulations specifically governing such transactions are necessary in today's highly competitive lending environment; however, should the OTS deem it necessary to implement regulations relating to such loans, we encourage the OTS to refrain from implementing any thresholds or disclosure requirements that would serve to narrow the safe-harbor or to increase the disclosure requirements currently in place under the Home Ownership and Equity Protection Act of 1994 ("HOEPA") or from implementing any regulations that would impact any properties other than primary residences. We also do not believe regulations relating to high-cost junior liens should be implemented, but, to the extent the OTS deems such regulations necessary, we remind the OTS that junior liens inherently carry more risk, and, therefore, we request that the safe-harbor be broader than it may otherwise be for first mortgages.

   NOTE: To the extent "high-cost" loans are further referenced in this letter, such references are based on the assumption that the OTS's definition of such loans does not, or will not, include a safe-harbor that is narrower than that currently established by HOEPA. If the triggering events for a determination that a loan is a "high-cost" for the purpose of any new OTS regulations are to be more easily reached than the triggering events under HOEPA, then some of our comments in this letter would most likely change.

3. With respect to the financing of certain fees or charges, we do not believe credit life insurance premiums should be financed in the loan, particularly in transactions involving single payment premiums, and, therefore, we do not oppose any regulations regulating the same.

4. With respect to refinancings of high-cost or other loans, we do not believe regulations restricting such transactions are necessary or warranted. To the extent predatory practices exist within the context of refinancing products, we believe that adequate protections exist within the framework of the fair lending laws and that to impose further restrictions would unjustly hinder consumers' access to often much needed capital.

5. With respect to prepayment penalties, we strongly believe that such penalties are a necessary component of subprime mortgage loan products, including high-cost loans and their pricing, due to the higher, but manageable, risk associated with lending to credit impaired borrowers. In the subprime context, it is difficult, if not impossible, to predict the likelihood of any particular loan going into default. Likewise, it is also equally as difficult, if not impossible, to predict the likelihood of any particular borrower improving his or her credit so as to qualify for a lower rate or to predict changes in market interest rates. For the lender, the inclusion of prepayment penalties reduces the financial risks that arise from borrowers refinancing their loans, whether such refinancings are due to changes in the borrowers' credit picture or due to changes in market interest rates. Accordingly, with such risks alleviated by the inclusion of prepayment penalties, the lender is less driven to increase interest rates to account for them, which, in turn, reduces the lender's risk exposure to, and the borrowers' propensity for, default. We believe the overall benefit to all subprime borrowers (i.e., reduced interest rates and lower propensity for default) outweighs the detriment that prepayment penalties may place on some borrowers.

   For our loans, we currently do not typically require a prepayment penalty, unless the borrower desires to roll the origination or discount points into the loan, in which case we typically require a prepayment penalty of 2% for the first three years of the mortgage or a 1% penalty for the first five years of the mortgage, depending upon the loan program. We believe our practices, along with the general practices of other reputable institutions in the thrift industry, are reasonable responses to the risks associated with subprime lending. We acknowledge that there are lenders that seek, or encourage others to seek, excessive prepayment penalties; therefore, to the extent the OTS determines that further regulation of prepayment penalties is necessary, we believe such regulation should be limited to high-cost loans and to instances where such penalties are excessive when compared to what is commonplace in the market for the same level of risk.

6. With respect to balloon payments, post-default interest rates and mandatory arbitration clauses, we do not believe they should be further regulated. If the OTS determines that such regulation is necessary, we suggest that such regulations be designed to continue to allow accepted industry practices and that they only curtail the abusive practices of what we believe to be a small minority of lenders and brokers. Without a complex set of regulations that provide for a multitude of permissible exceptions, undue problems will undoubtedly be created by broad regulation of these loan terms. For example, a blanket restriction on balloon payments prior to seven years would most likely eliminate a

borrower's access to bridge loan financing. As another example, a blanket prohibition of arbitration clauses may also encourage the continued development of what be believe to already be an over-zealous plaintiff's bar.

7. With respect to suitability determinations by lenders, we believe that lenders have an inherent obligation not to offer a loan to a customer if the lender has sufficient information to determine that the customer will not be able to repay the loan. That being said, however, there is no better judge of repayment ability than the borrower. That is why many subprime products are specifically designed to assist those borrowers who have higher income streams than they are able to sufficiently document for conforming or other loan programs. If the OTS were to impose strict suitability standards, a significant amount of potential homeowners, many having high repayment abilities, would be unnecessarily prevented from obtaining residential mortgage loan financing. Under the section of the ANPR relating to the possibility of the imposition of a suitability standard for certain mortgage transactions regulated by the OTS, there is a comparison between such a standard and the suitability standard currently used by the securities industry. Please note that the suitability standard used by the securities industry is limited to certain securities transactions and only has application to securities offered in specific instances involving unique non-public offerings to a limited number of investors and where limited information (when compared to public offerings) is required to be available to the potential investor. Mortgage products, unlike the securities being offered in such transactions, are freely available in the open marketplace. Further, the potential borrower is protected by a regulatory scheme designed to promote full disclosure and fair pricing and is free to research and compare a wide array of available products and their pricing to determine which product best suits his or her needs.

8. With respect to whether or not the OTS should require institutions to notify applicants for high cost loans of the availability of home loan counseling programs before closing, we do not believe additional disclosures are necessary. However, to the extent the OTS determines such disclosures are necessary, we believe that they should be required only in the case of high-cost mortgages—again, assuming the triggering events requiring such disclosures are no more inclusive than those currently established by HOEPA.

9. With respect to whether or not differential regulation is appropriate for thrifts engaging in subprime lending, we do not believe further regulation, including, without limitation, additional reporting and notification requirements, is necessary for subprime lending. Should the OTS determine that such regulation is required, we request that the OTS limit such regulation to high-cost lending and that such regulation be on a differential basis. In the event the OTS establishes specific criteria for differential regulation of subprime lending, we strongly recommend that the OTS give more deference to subprime loan losses than to subprime loan delinquency to the extent they are both criteria. We also believe that portfolios primarily composed of purchase money loans should be more positively weighted than portfolios primarily composed of home equity loans or cash-out refinances.

10. With respect to whether or not the OTS should impose certain due diligence requirements for thrifts purchasing whole loans or investing in mortgaged backed securities, we do not support further regulation of these activities. Thrifts engaged in these activities typically have sufficient due diligence practices in place that are designed to identify non-compliance with a wide variety of state and federal laws. To further require thrifts to thoroughly review each loan for total compliance with all applicable state and federal regulations would place an undue and unnecessary hardship on such thrifts and could potentially cripple portions of the secondary market (thereby limiting consumer access to capital) depending on the complexity of the due diligence regulations. Because of the heightened media attention that has been given to the predatory practices of some lenders, we take the position that the state and federal agencies charged with establishing or enforcing the regulation of mortgage lending practices and, in some cases, the plaintiff's bar, also provide a strong deterrent to predatory practices through their on-going audit, examination, and investigative practices and their ability to impose fines, revoke licenses, seek injunctive relief, and/or pursue criminal or civil remedies.

We hope that you will find the foregoing helpful as you review possible alternatives designed to curb predatory lending practices. Additionally, to the extent further preventative measures are deemed necessary, we encourage the OTS to coordinate the development and implementation of such measures with other applicable federal agencies so as to create a level playing field for all housing creditors and so as to reduce the regulatory burden on federal savings associations.

Again, we appreciate having this opportunity to comment on the proposed rulemaking. Please let me know if you have any questions. I can be reached at (816) 347-4260.

Sincerely,

Wade M. Hall
Vice President

Cc: Mr. David Hancock - NASB
Mr. Bruce Thielen - NASB
Mr. Joe O'Flaherty - NASB