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AFSA

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The Market Funded Lending Industry

July 5, 2000

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

Ladies and Gentlemen:

The American Financial Services Association ("AFSA") was established in 1916 and is based in Washington, D.C. AFSA is the national trade association for market funded providers of financial services to consumers and small businesses. These providers (over 500 of which are members of AFSA) offer an array of financial services, including unsecured personal loans, automobile loans, home equity loans and credit cards through specialized bank institutions.

This letter is in response to your request for comments in the Advance Notice of Proposed Rulemaking published in the Federal Register on April 5, 2000 (65 FR 17811) (the "ANPR"). The ANPR announced your intent to revisit, among other things, the scope of the federal preemption of state law restrictions on the ability of state licensed housing creditors to serve the credit needs of local communities in this country. The authority to preempt state law restrictions is found in the Alternative Mortgage Transactions Parity Act ("AMTPA"). The OTS is directed to promulgate regulations consistent with the objectives of AMTPA.

Congress enacted AMTPA to increase the amount of private investment capital that flowed into the mortgage loan industry. The new statute eliminated restrictive state laws (through the operation of federal preemption) so that state licensed mortgage creditors could develop alternative mortgage products that matched the needs of both consumers and Wall Street. Once the needs of Wall Street and consumers match, capital (in the form of mortgage credit) is allocated to local communities at a much more efficient rate. That principle has proven to be successful beyond anyone's expectation. More people, in more communities, have access to mortgage credit than ever before in the history of the world. This is true even in communities where institutions regulated by the OTS do very little lending. The range of mortgage products available though state licensed mortgage lenders, and the ability to modify those products to meet the needs of both Wall Street and consumers, has never been greater. Both AMTPA and the OTS' judicious exercise of regulatory discretion granted to it under AMTPA have been a success.

AMTPA does not cause or encourage "predatory" lending. As a result, it is our view that AMTPA should not be modified to address predatory lending. The public debate has separated the practices that comprise predatory lending into two basic categories. One is motive based and the other result based.

First, some people believe that the mortgage world is full of predators (the predators could be lenders, home improvement contractors, brokers or some other party) who seek out and prey on unsophisticated homeowners and coerce those homeowners into signing mortgage agreements that are not what the predator promised and leave the consumer with unmanageable debt and/or homeless. Modifying AMTPA will not make consumers more sophisticated or predators less predatory. We believe that these practices violate existing state and federal law. We urge the OTS to work with state and federal agencies to identify and prosecute those who commit these acts.

Second, some people identify any loan with certain credit terms, such as prepayment penalties or rates above a certain benchmark, to be an example of predatory lending. Modifying AMTPA will not decrease the cost of loans to borrowers. AMTPA enables a state licensed housing creditor to offer uniform loan products across state lines. This, in turn, lowers the creditor's costs and makes credit more widely available. Because the mortgage loan market is highly competitive, AMTPA has helped to reduce consumer's cost of borrowing. Modifying AMTPA will make loans more expensive by requiring the credit markets to adjust to state by state idiosyncrasies again.

Any OTS action that restricts the scope of federal preemption under AMTPA will decrease the amount of private investment capital available for mortgage loans. We predict that any such action will have little or no impact on predatory lenders, because predatory lenders already violate the law. Adequate legislative and regulatory tools already exist to eliminate predatory lending. Recent announcements by the FTC and the New York State Attorney General of settlements entered into with alleged predatory lenders confirms the fact that existing laws can be used to identify and take action against predatory lending practices.

In the ANPR, you assert that, while savings associations are subject to comprehensive regime of regular examination, state licensed housing creditors are not. We respectfully disagree. State licensed housing creditors are subject to licensing, regulation and routine examination in virtually every state in the country and by HUD (if the creditor participates in HUD lending programs). State licensed housing creditors devote enormous amounts of time and energy to obtain and maintain state licenses and to prepare for and respond to regular examinations and supervision from the state regulators.

The state regulators have their own trade group, the American Association of Residential Mortgage Regulators, that meets regularly to discuss more efficient and comprehensive regulatory and examination techniques. Every state prohibits fraud and unfair and deceptive acts and practices. The state regulators, including state attorneys general, have the authority to investigate claims of fraudulent or coercive lending practices and, where necessary, to prosecute bad actors. Nowhere in the public debate has any state official charged with protecting the public said ever said: "I do not have the enforcement tools to do the job."

In addition to the adequate set of existing state laws, Congress has recently addressed high cost lending. It established the additional disclosures and substantive limitations on high cost loans under HOEPA as a reasoned and balanced resolution to the need to protect consumers. HOEPA gives the Federal Reserve Board the authority to revise its rules to provide additional protections for consumers. The Federal Reserve Board is reviewing additional actions it might take under HOEPA. We do not believe it is appropriate for the OTS to take additional steps at this time.

Anecdotal evidence of people who feel that they have been taken advantage of is important and should not be minimized. But we need to be very careful when we argue for policy changes that will affect all borrowers because of the hardships experienced by a few. The reality is that any such rules are more likely to drive existing lenders out of these markets. We hope that you will continue to recognize that the best chance of increasing the flow of fairly priced credit into this market is to allow consumers and lenders to negotiate the loan terms.

We strongly urge the OTS to work with state and federal regulators to enforce existing laws that prohibit predatory lending practices. We also urge the state and federal agencies to create a joint task force to identify creditors and communities with high foreclosure rates. We do not believe that the OTS should restrict the scope of federal preemption available to state licensed housing creditors until the true extent of predatory lending has been identified.

There is much to be done and much that can be done now. AFSA wishes to cooperate with your effort to stop predatory lending.

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AFSA appreciates this opportunity to comment on this matter. If you have any additional questions or comments, do not hesitate to contact me.

Very truly yours,

Robert E. McKew

Robert E. McKew
General Counsel