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**From:** Salinger, Frank [FSalinger@advanta.com]  
**Sent:** Wednesday, July 05, 2000 4:29 PM  
**To:** 'public.info@ots.treas.gov'  
**Subject:** Alternative Mortgage ANPR



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Attached is the comment letter from Advanta Corporation in response to  
12  
CFR Part 560/Docket No. .2000-34 RIN 1550-AB-37.

Thank you for the opportunity for being able to comment on this  
important  
issue.

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July 5, 2000

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

**RE: Docket No: 2000-34  
RIN 1550-AB37**

Dear Sir or Madam:

**Statement of Interest**

This letter is filed on behalf of Advanta Corp. ("Advanta") in response to the request for comments in the Advance Notice of Proposed Rulemaking published in the Federal Register on April 5, 2000 (*65 Federal Register 17811, April 5, 2000*) (the "ANPR").

The ANPR deals with 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 Title VIII of the Garn-St. Germain Depository Institutions Act of 1982 known as the Alternative Mortgage Transactions Parity Act (the "Parity Act"), and the Office of Thrift Supervision is directed to promulgate regulations consistent with the objectives of the Parity Act.

Advanta Corp. is a highly focused financial services company with over 2,800 employees, servicing approximately \$25 billion of assets, including \$12.5 billion in managed assets and approximately \$13 billion in assets serviced for third parties. Advanta provides consumers and small businesses with targeted financial products and services, including non-conforming mortgages, business credit cards, equipment leases, insurance and deposit products. The company is also one of the largest servicers of non-conforming mortgages for third parties in the country.

Advanta is the parent company of Advanta National Bank, a national banking association with its headquarters in Wilmington, Delaware and regulated by the OCC, and Advanta Bank Corp., an industrial loan corporation organized under the laws of the state of Utah with its principle executive offices located in Salt Lake City and insured by the FDIC. Other operating units of Advanta hold various state licenses to extend mortgage credit.

### **Purpose of the Parity Act**

Congress enacted the Parity Act to increase the amount of private investment capital into the mortgage industry by preempting restrictive state laws so that state licensed mortgage creditors could better serve consumers. Although little remembered in today's seemingly endless Bull Market era, the late 1970s and early 80s saw a "credit crunch" which prevented millions from obtaining credit at an affordable cost.

Since enactment, the variety of consumer products and consumer markets served has blossomed. Advanta sees no reason to change the current regulatory regime.

### **General Policy Comments**

We are concerned that the future of the Parity Act has been caught up in the debate over "predatory lending" -- a term that as of yet has no generally agreed upon definition. In fact, legitimate "subprime" lending has not been defined. The ANPR poses a number of questions about abusive lending practices. Absent a Congressional mandate, we believe that the Parity Act should not be caught up in this debate.

Testimony by consumer advocates on the state and federal level has largely focused on examples of unsophisticated homeowners entering into transactions that were not understood or in which their was little or no capacity of repayment. Modifying the Parity Act's regulatory regime will not change these practices.

Further, some opponents of subprime lending argue that some loans are simply too expensive and that borrowers should be able to obtain less expensive credit. While we do not accept this proposition, since it ignores the benefits and increased availability of credit to underserved markets through risk-based pricing, we fail to see how modifying the Parity Act would decrease the cost of credit. It is more likely that requiring the credit markets to adjust to state by state statutory and regulatory idiosyncrasies will raise the cost of credit -- especially in the event of another credit crunch.

The ANPR asserts that state licensed creditors are not subject to a comprehensive regime of regular examination. In fact they 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).

It is well settled that the public policy of this country is to provide for a dual banking system of state and federally chartered depository institutions. The regulatory regime for state licensed mortgage companies is merely an adjunct to this policy and, indeed, in many states the same agency that examine State banks has jurisdiction over mortgage companies.

Amending the ANPR to encompass provisions designed for consumer protection does not reflect Congressional intent. The Parity Act "does not place non-federally chartered

housing creditors under the supervision of the federal agencies, but instead merely enables them to follow a federal program as an alternative to state law.” See S. Rep. No. 97-463, 97<sup>th</sup> Cong., 2d Sess. 55. 48 *Federal Register*. 23032, 23053 (May 23, 1983).

If the states desire to modify their mortgage laws, they have the power to do so through their legislatures (as North Carolina has done) or by administrative rulemaking (as New York has done). Absent Congressional action, we suggest that the determination of the appropriateness of consumer protection found in state law is best left to the states.

\* \* \*

Thank you for the opportunity to comment on this Advanced Notice of Proposed Rulemaking.

Sincerely,

/s/

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