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NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

700 Eleventh Street, NW
Washington, DC 20001-4507
202.383.1194 fax 202.383.7580
nar.realtor.com/gov

Dennis R. Cronk, President
Terrence M. McDermott, Executive Vice President

GOVERNMENT AFFAIRS
Lee L. Verstandig, Senior Vice President
Jerry Giovaniello, Vice President
Walter J. Witek, Jr., Vice President

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Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

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DISSEMINATION BRANCH
OFFICE OF THRIFT SUPERVISION

Attention: Docket No. 2000-34

Dear Sir or Madam:

On behalf of the NATIONAL ASSOCIATION OF REALTORS® I am pleased to offer our comments on the Agency's Advanced Notice of Proposed Rulemaking regarding Responsible Alternative Mortgage Lending. The NATIONAL ASSOCIATION OF REALTORS® is a trade association of real estate professionals engaged in all aspects of the real estate transaction. More than 760,000 members of the Association represent commercial and residential buyers and sellers. The Association also represents other professionals associated with the real estate transaction, including appraisers, home ownership counselors, and property managers. Our membership is vitally concerned about changes in the regulation of mortgage products and lender business practices in the primary and secondary mortgage markets. This is especially so given the dramatic increase in mortgage products and expansion of markets since the Alternative Mortgage Transactions Parity Act of 1982 (the Parity Act) became effective.

The NATIONAL ASSOCIATION OF REALTORS® is pleased that the Office of Thrift Supervision is considering rulemaking to curtail abusive and predatory lending and to encourage more responsible lending by savings and loan associations and, by extension of the Parity Act, non-depository lenders such as finance companies. The Association offers comments in the context of the REALTOR®-client relationship. REALTORS® are especially sensitive to the effects on all participants in the real estate transaction where abusive or predatory practices may taint the relationship. Lenders offer an array of mortgage products to borrowers, but oftentimes REALTORS® must explain what actually occurs, especially in purchase money mortgage transactions.

REALTORS® believe strongly that mortgage credit should be available to as many creditworthy borrowers as possible at reasonable costs. The growth of the subprime mortgage market is important in bringing mortgage credit to borrowers who do not meet the credit standards for the prime mortgage market. Predominately, though, subprime loans are a primary vehicle for a record number of homeowners to refinance their homes for consumer credit purposes. Though there is general agreement and mounting evidence that abusive and predatory



REALTORS® support the OTS in its efforts to effectively modernize regulations implementing the Parity Act and address predatory lending. We note that instances of abusive and predatory lending practices and efforts to combat them are receiving considerably more attention. The House Banking and Financial Services Committee convened hearings on May 25, 2000 to consider the incidence, severity, and activities of the regulatory agencies to address predatory lending. Though it became clear that legislation was unlikely in the 106th Congress, House Banking Committee Chairman Representative Jim Leach laid out basic precepts to combat predatory lending.¹

REALTORS®, like all other responsible professionals involved in the real estate transaction, do not condone abusive and predatory lending practices. Indeed, Rep. Jim Leach's "Anti-Predatory Lending Precepts" summarize generally most REALTOR® views on the subject. Though the Association has not adopted formal policy endorsing these principals, Rep. Leach's precepts are commonsense and practical business principals that strongly reinforce using existing federal consumer protection laws and regulations to combat abusive and predatory lending practices.

Recently the Treasury Department and the Department of Housing and Urban Development released the National Predatory Lending Task Force report.² The two agencies' joint task force report documents instances of abusive and predatory lending practices and recommends legislative and regulatory actions to curb predatory lending. The joint task force is an exhaustive study of predatory lending in Atlanta, Baltimore, Chicago, New York, and Los Angeles. The report recommends legislative and regulatory actions keyed to current consumer protection laws that affect abusive mortgage lending practices. Though these recommendations would amend the Home Ownership and Equity Protection Act (HOEPA), the Truth in Lending Act (TILA), and the Real Estate Settlement Procedures Act (RESPA), there is no mention of the Alternative Mortgage Transactions Parity Act.

The NATIONAL ASSOCIATION OF REALTORS® believes that OTS is appropriately considering Parity Act regulatory revisions. REALTORS® note also that OTS seeks comment on how the Parity Act may permit mortgage transactions of state-licensed and regulated non-depository lenders to rely on OTS's regulations, resulting at times in abuses in markets where there are fewer competitive pressures and no regular state oversight.

The comment that follow are offered in the context of real estate professionals concerned about the credibility of the mortgage lending and real estate transaction where abusive and

¹ See U.S. House of Representatives Committee Banking and Financial Services Committee Press Release "Leach Anti-Predatory Lending Precepts," May 24, 2000.

² U.S. Department of Housing and Urban Development and the U.S. Department of Treasury, *Report of the National Predatory Lending Task Force*. Washington, D.C., July 2000.

predatory practices are now appropriately coming under increased scrutiny. Our comments do not presuppose that all subprime lending is predatory or that the actions of some unscrupulous lenders characterize an entire industry.

Potential Regulatory Approaches

The Agency's ANPR is a welcomed initiative aimed at addressing a growing problem in the mortgage marketplace. OTS solicits public comment on a range of potential regulatory approaches that would encourage responsible lending and discourage potential predatory lending practices. REALTORS® are pleased to respond to specific questions on which the Agency seeks comments.

What loans should be covered? The Home Ownership and Equity Protection Act (HOEPA) is currently restricted to closed-end second mortgages and first mortgage refinancing of an existing mortgage. HOEPA specifically excludes mortgages used to purchase or construct a home, reverse mortgages, and open-ended home equity loans, generally called Home Equity Lines of Credit or HELOC. Specifically, a HOEPA mortgage is a refinancing or a closed-end second mortgage and either the APR of the loan is more than 10 percentage points above the US Treasury of comparable maturity, or points and fees on the mortgage exceeds the greater of 8 percent of the loan amount or \$451, in calendar year 2000.

OTS asks whether senior (first mortgages) or junior mortgage liens should be treated differently with respect to the HOEPA APR trigger. The Association notes that the Federal Reserve Board has the ability to change the APR trigger for HOEPA loans from the current 10 percent to as low as 8 percent. Testimony at the HUD-Treasury Task Force's regional forums indicates the primary areas of abuse was in the refinance first mortgage although there was ample evidence that the closed-end second home equity loan has had its share of abusive lending practices.³ The HUD analysis indicated that home refinancings accounted for more than 80 percent of subprime loans. The high incidence of refinancings that resulted in loan flipping in Baltimore, Maryland was a particularly egregious concentration of a predatory lending practice that resulted in more than 5,000 foreclosures in 1999.⁴

The Association believes that high-cost refinance first mortgages should have a lower APR trigger than closed-end second mortgages. The Association is undecided whether Congress should lower the APR trigger below the current 8 percent floor. Our concern is that exposing significantly more mortgage loans to regulatory scrutiny may have an unintended effect of restricting credit to the underserved segments of the population. The Association does not believe that HOEPA coverage should be extended to reverse mortgages or purchase money first mortgages.

³ U.S. Department of Housing and Urban Development and the U.S. Department of Treasury, *Report of the National Predatory Lending Task Force*. Washington, D.C., July 2000, pp. 21, 23, 26-52, *passim*.

⁴ *Ibid*, p. 24.

The National Association of REALTORS[®] believes that there is one loophole in the above HOEPA definition that needs addressing. That loophole is the exclusion of HELOCs from HOEPA coverage. One reported predatory abuse is the extension of an “open-ended” home-equity line-of-credit, where all or nearly all of the credit line is extended at loan origination. Since this is technically a HELOC, HOEPA does not cover this transaction. It has been reported that many of these transactions include prepayment penalties, high origination costs as well as negative amortization features and balloon payment features. These loans would have triggered HOEPA coverage if they had been classified as a closed-end home equity loan.

Should OTS impose limits on financing of certain fees or charges? The Association does not believe that OTS should impose limits on financing fees and other charges, since there are other mechanisms available to federal regulators to address problems in this area of mortgage lending. The Federal Reserve Board currently has the authority to include additional fees in the HOEPA points and fees trigger. The Association strongly believes that both simple premium credit life insurance and yield spread premiums should be included in the HOEPA points and fees trigger definition. Yield spread premiums should be included since they, when fully disclosed, are an integral part of the loan transaction. By including these fees, more loans that are questionable will be subject to HOEPA disclosure and other restrictions. However, the Association does not believe that OTS regulation should not determine the price of services ancillary to the mortgage transaction. Such action by OTS could result in burdensome regulation and could undermine market discipline.

Are limits on refinancing appropriate? The OTS poses a difficult philosophical policy question. On the one hand, it is difficult for the Association to accept regulatory determination of who can and can not access the equity in their home. On the other hand, “flipping” or inducing repeated refinancing of a homeowner’s high-cost mortgage, often with prepayment penalties, quickly erodes the equity of vulnerable homeowners. The Association does not believe that non-HOEPA covered loans should be subject to any refinancing limitation. For high-cost mortgages, a time restriction of one year to 18 months on refinancing of an institution's (or its affiliate's) mortgage may be appropriate. If the OTS does not believe that limiting the ability of a lender to refinance a high-cost loan within a specific time is appropriate, the Agency could consider restricting the ability of the lender to financing points and fees and disallowing the collection of prepayment penalties on the original loan.

Are prepayment penalties appropriate for high-cost loans? The Association believes that it is in the best interests of a rational mortgage market to permit consumers a range of options when financing their home. In the conforming conventional mortgage market, loans with prepayment penalty clauses generally have lower interest rates than loans that do not. This does not appear to be the case in the subprime mortgage market.

Though the pricing of mortgage loans in the prime market is very competitive and rates are quite similar across mortgage lenders in individual housing markets, rates and terms vary widely across subprime lenders in the same housing markets. In part, subprime market pricing reflects the much broader range of credit risk represented by borrowers in the subprime market as compared to the prime market. There does seem, however, to be an extremely wide range of fees and interest rates that are charged to subprime borrowers. It is unclear whether individual subprime lenders price risk the same way, thus making it difficult to compare the price of subprime loans that contain prepayment penalties and subprime loans that do not. Stated another way, consumers have little ability to price the prepayment penalty clause across mortgage loans offered by subprime lenders.

Prepayment penalties in mortgage lending enhance the value of the lender's servicing portfolio. Lenders offer this option to consumers in order to retain a mortgage on the firm's books long enough to recapture the expense of originating the loan. In exchange, consumers are offered a lower interest rate at origination. This practice does not appear to be true in the subprime market. A high-cost loan with a prepayment penalty clause coupled with specific abusing lending practices, such as flipping, reaps the lender a much higher return than without prepayment penalties. For this reason, the Association does not believe that prepayment penalties are appropriate for high-cost loans.

Should OTS require institutions to notify applicants for high-cost loans of the availability of home loan counseling programs before closing? Yes. The Association is a strong supporter of home loan counseling programs and was a founding member of the American Homeownership Education and Counseling Institute (AHECI). The Association believes that knowledgeable consumers are the best safeguards for an efficient and orderly mortgage lending industry. Educating the vulnerable segments of the population who are most at risk to abusive lending practices must be a priority to regulators, lenders, community groups, and other real estate professionals.

Conclusion

Today's mortgage markets offer a variety of mortgages that include not only the traditional fixed rate mortgage with a 30-year term. Now there is a highly competitive range of mortgages that offer a variety of mortgage terms and are available for the purchase money, home equity, and other markets. There is an extraordinary increase in subprime lending that brings the benefits of mortgage credit to borrowers who have blemished credit histories. This new array of mortgages expands the availability mortgage products to these borrowers, many of whom have relied on the subprime market to meet their financial needs in the past. REALTORS® believe that, in many cases, these borrowers pay higher costs than necessary and may abusive and predatory lending practices.

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Currently subprime lending and predatory lending practices are subjects of considerable attention. The NATIONAL ASSOCIATION OF REALTORS® believes that this scrutiny, especially coming for the Office of Thrift Supervision using existing consumer protection laws and regulations, is fully appropriate. The Association urges OTS to move forward with its ANPR to curb predatory lending. We believe that federal regulators have the legal and regulatory tools to curb predatory lenders without removing mortgage products, provisions and terms that permit responsible lending to borrowers who need mortgage credit, but who may be unusually vulnerable to loan predators.

We hope that our comments are useful to OTS regarding the ANPR affecting alternative mortgage transactions and can advance the effort to control abusive and predatory lenders.

Sincerely,



Lee L. Verstandig
Senior Vice President