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Countrywide®

HOME LOANS

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

Dear Sir or Madam:

Thank you for affording Countrywide Home Loans, Inc. ("Countrywide") the opportunity to comment on the Advanced Notice of Proposed Rulemaking ("ANPR") entitled "Responsible Alternative Mortgage Lending." The Office of Thrift Supervision ("OTS") has clearly given much thought to whether the existing regulatory structure for alternative mortgage products has in some way fostered predatory lending. The OTS has posed many difficult questions in this ANPR in an attempt to ensure that the proper regulatory balance is maintained between supporting innovative lending to reach under-served communities while curbing abusive lending practices commonly called "predatory lending."

We believe the existing OTS regulations have done much to foster the development of risk-based pricing through innovative products which in turn has enabled more and more Americans to obtain housing credit. Predatory practices, on the other hand, are the direct result of acts of deception, or even out and out fraud, by unscrupulous brokers and lenders. Aggressive enforcement of existing state and federal laws would severely limit the offenders' ability to cause the many personal financial tragedies we have all read about in the last year. We believe that limiting the reach of the current OTS Parity Act regulations, on the other hand, will effectively stifle innovative attempts to develop new products and reach new markets.

Countrywide is one of the nation's largest residential mortgage lenders, and it is the largest independent, non-FDIC insured home mortgage lender. Based on publicly available 1998 Home Mortgage Disclosure Act data, Countrywide has been the nation's number one lender to Hispanics for three years and the nation's number three lender to African-Americans. Countrywide is number one in lending to lower-income Americans and is the largest provider of home loans in low-income communities across the country. Since the company's founding in 1969, Countrywide has focused on providing the financing needs of American homeowners, regardless of race, gender or income. The company started out serving borrowers considered "unbankable" by participating in the programs of the Federal Housing Administration and the Veterans Administration. The company now offers a full range of home loans, including government-insured loans, conventional loans which qualify for purchase by Fannie Mae and Freddie Mac and jumbo loans, which are loans that exceed the Fannie Mae/Freddie Mac conforming loan limits. But the company maintains its strong presence in serving low, moderate and middle income families, not only through federal programs but also through city and state housing bond programs throughout the country. In addition, we offer loans with more flexible underwriting criteria than the traditional Fannie Mae and Freddie Mac guidelines through our HouseAmerica program. The company has funded more than $46.5 billion in home loans as of year-end 1999 under our HouseAmerica program. Although on a significantly smaller scale, we also participate, including through an affiliate, in the subprime market, the development of which we believe has brought more reasonably priced mortgage credit to borrowers who have traditionally been overlooked.

The development of innovative products that more effectively price for risk has furthered our goal of making housing credit available to more Americans than ever before. Our ability to compete with federally chartered institutions in offering new products across state lines has done much to foster competition and drive down the overall cost of credit. Further, intense competition between the largest financial institutions in the country can now be found in the subprime market. We believe this responsible competition has and will over time lower costs and develop additional discipline in the market. Eliminating the ability of lenders like Countrywide to provide more flexibly priced product offerings will only make it more difficult for us to compete in this new market, which ultimately means less credit availability when the desired result is more credit access.

We believe much reform is needed in the regulation of mortgage lending. For example, we support efforts to achieve comprehensive reform of the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act. In addition, we support legislation if it specifically targets predatory practices. We believe that federal legislation is the most appropriate way to address these problems as no lender or group of lenders will be put at a competitive disadvantage. For example, as an industry, we are currently facing the possibility of 51 new thresholds for "high cost" mortgage, each with its own distinct product limitations. As each state adopts a different definition, lenders' compliance costs dramatically increase and, of course, these costs are passed on to consumers. We believe this is an example of exactly what the Congress was trying to avoid when it enacted the Parity Act to enable state-chartered housing creditors to have equality with federally chartered institutions. The idea of parity is to encourage competition and to foster creative financing to stimulate credit. We ask the OTS to be faithful to its original premise that the regulations be 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 consumer and the lender. To the extent enhancements must be made to the regulations, we support changes that address the issue of consumers' lack of knowledge or the perception of lack of options.

Improved disclosures

As the OTS notes in the ANPR, prepayment penalties are much more prevalent in the subprime market than in the conventional market. Especially for subprime loans, prepayment penalties are an effective pricing tool which allows consumers to get reduced pricing in exchange for agreeing to hold the loan a specified amount of time. We believe that, generally, this pricing benefit is freely negotiated at the time of the transaction. However, consumer understanding of pricing options is imperative to insure that a prepayment penalty is a freely negotiated term. Accordingly, the OTS might consider requiring that if a creditor is offering an alternative mortgage product with a prepayment penalty that the consumer must receive some benefit for having that term (such as a rate or fee reduction for accepting the prepayment penalty term). We note that in April of this year, Fannie Mae imposed a similar requirement on its lenders.

While we are not completely convinced that additional disclosures cure all problems, we acknowledge that better disclosure of important loan terms is needed to improve consumer negotiating power. Accordingly, the OTS could consider requiring a generic disclosure to be given for loans with prepayment penalties. The disclosure would serve to alert the consumer that in exchange for having a penalty term with his loan, he should be receiving an offsetting benefit (such as a rate or fee reduction). If the consumer is unsure whether he is receiving a benefit, he should discuss the loan terms with his lender or seek independent advice. Further, the disclosure should state that while there are other products available without a prepayment penalty, the costs for such products will be higher. The disclosure could be given as early as the up-front Good Faith Estimate disclosures required by the RESPA, assuming the lender knows at that time which product the consumer has chosen. If the consumer chooses a product with a prepayment penalty after that time, the disclosure could be provided as soon as possible but certainly no later than closing.

If the OTS were to consider such a generic disclosure, we would recommend similar treatment for other loan terms encompassed by the term "alternative mortgage," including for example, balloon terms. Legitimate balloon offerings are very much a part of mainstream product offerings and many borrowers take advantage of the lower rates offered on such products for their financing needs. Balloon products are widely used in both the prime and subprime markets with the balloon payments not due and payable until five (5) or even fifteen (15) years after the loan is consummated. Again, we believe that for consumers who understand the product's limitations, balloon loans offer the ability for a consumer to use the interval before the balloon is due to improve their credit standing, thus allowing them to refinance the balloon at maturity to a much improved rate and term. As with the prepayment penalty, we believe a generic disclosure explaining to the consumer how a balloon loan works would be the most useful way to address the issue of the need for a fully informed consumer able to negotiate loan terms. Use of a generic disclosure provided in the early RESPA timeframe allows the consumer to review and understand the loan options available.

For "high cost" loans or loans subject to the Home Ownership and Equity Protection Act (HOEPA), the OTS might consider recommending that the current disclosure mandated by 12 CFR 226.32(c) include a restatement of the generic terms applicable to the product. For example, if the consumer has applied for a HOEPA subject loan with a prepayment penalty, the disclosure provided three days before closing would again alert the consumer that the loan being applied for includes a prepayment penalty.

Standardizing prepayment penalties

Yet another option available to the OTS is standardizing the maximum penalty lenders can charge on alternative mortgage transactions. Most prudent lenders in both the prime and subprime markets have adopted the following standard penalty: during the first five (5) years, a penalty equal to six (6) months advance interest on the amount prepaid in excess of twenty (20) percent of the original principal balance in any twelve (12) month period as measured from the note date or anniversary thereafter. The consumer is able to prepay up to twenty percent in any of the first five years without penalty – thereafter, the full amount may be prepaid without penalty. This allows consumers the option of making significant reductions in their outstanding obligation, yet still allows lenders the ability to correctly price for the risk associated with the loan. We note that the Mortgage Bankers Association has supported such a standardization in its legislative guidelines released in early May of this year.

Counseling

Many advocates support the concept of mandatory credit counseling, especially in the context of "high cost" loans. Their strong belief is that counseling will give the consumer the opportunity to reflect on the loan terms presented without any undue pressure from interested parties. Clearly the concept of independent counseling is consistent with supporting opportunities for consumers to enter into freely negotiated contracts with a full understanding of the loan terms.

If the OTS were to consider proposing a requirement concerning credit counseling and alternative mortgages, however, we believe it should be a requirement for a disclosure that gives consumers the **option** of obtaining credit counseling especially once it is determined the loan is likely to be "high cost." We believe counseling can be a valuable tool to ensure the consumer has an opportunity to evaluate the terms and conditions offered and then decide whether to proceed with a particular transaction. We do not support, however, mandatory counseling as it has been our experience that many consumers are insulted or may even feel discriminated against when told they cannot apply for a loan unless they get counseling. In addition, there are instances in which credit counseling may be irrelevant since the reason the loan is "high cost" is not a result of the consumer's credit history (e.g., the consumer has difficulty meeting standard income documentation requirements or does not want to have to submit such documentation.) In these instances, mandating counseling would clearly not be worthwhile for the consumer.

Regardless of whether the consumer seeks counseling, there are certain basic questions each consumer should consider when applying for a "high cost" loan.

Specifically, we believe a consumer should focus on (i) whether the loan the consumer is seeking will provide a tangible benefit to the consumer, and (ii) whether the consumer's net disposable income after receiving the loan will be sufficient to support the consumer and his family. These are important questions every consumer should consider when applying for credit, but are particularly important when seeking a high cost loan. Accordingly, the OTS might propose adding such a disclosure to the existing HOEPA disclosure.

Restrictions on financing of fees or points

In the majority of refinance transactions -- in both the prime and subprime markets – consumers pay for closing costs by rolling these amounts into the new loan amount. The OTS has solicited comment on whether there should be restrictions on financing fees or charges. If the OTS proposes restrictions, we respectfully suggest that the restriction be that a lender may not require a consumer to finance any portion of the fees or charges. To do otherwise would have a severe impact on the ability of most Americans to refinance their loans.

For high cost loans, the OTS might also recommend that the required HOEPA disclosure include a notice that the financing of fees and charges is optional.

Conclusion

Again, we thank the OTS for the opportunity to comment on the ANPR and we appreciate the balanced approach the agency is taking toward these matters. We hope the OTS will, through its regulations, continue to support the development of innovative products that maximize the choices available for informed consumers.

If we can provide additional information on any of these matters, please do not hesitate to contact Mary Jane Seebach (818-225-3361), Susan Kelsey (818-225-3364) or myself.

Very truly yours,

Sandor E. Samuels