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From: Hubert Van Tol [mailto:hvantol@centurytel.net]
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Subject: Attention Docket No. 2000-34

July 5, 2000
Sent by email to: public.info@ots.treas.gov

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July 5, 2000

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Attention Docket No. 2000-34

To the OTS:

Bank Watchers believes the OTS should comprehensively revise its regulations to ensure that they, as Director Seidman has said, "actively discourage, rather than inadvertently allow, predatory practices." As part of such revisions, the OTS must not only modify its regulations implementing the Alternative Mortgage Transactions Parity Act, but also adopt strong regulations on all high-cost mortgage loans. Only by doing so will the OTS help prevent lending practices that are solely intended to deceive and dispossess low- and moderate-income, elderly, and minority borrowers of their property and wealth.

We urge the OTS to take affirmative steps to ensure that irresponsible creditors are not allowed to continue to use the Parity Act to skirt state laws protecting consumers and communities from predatory practices.

While the Parity Act may have once served a useful purpose, the environment has now changed significantly. Recently there has been an explosion of subprime lending, with abusive and predatory practices particularly prevalent among non-depository, independent mortgage companies. Companies are now using the Parity Act to structure their loans as alternative mortgages in order to pre-empt state protections against unfair, deceptive, and unscrupulous practices.

While the Parity Act was not meant to be a refuge for predatory lenders, it is clearly being utilized as such and it is time for the OTS to implement regulations to prevent these abuses. Specifically since it is the OTS's role under the Parity Act is to identify which thrift regulations apply specifically to mortgage loans with alternative structures, and since the provisions relating to prepayment penalties and late fees apply to all mortgage loans generally, these provisions should be removed from the list of regulations applicable to state housing creditors. Certainly, time has demonstrated that allowing unregulated, non-depository institutions to piggyback on federal thrift preemption has facilitated predatory lending practices.

In addition it is time for the OTS to effectively deal with the institutions that it regulates which are heavily involved in the subprime market. The National Community Reinvestment Coalition, of which we are a member, estimates that about 25 percent of all subprime mortgages were made by depository institutions and their affiliates in 1998 and that a significant number of those were made by OTS regulated institutions. We believe it is time for the OTS to tighten up its CRA review procedures to make sure that predatory type loans not only don't receive positive CRA credit, but in fact are considered as a negative during a CRA exam.

We agree with the NCRC recommendation that the OTS should use its authority to define high-cost loans as those with an annual percentage rate of 4-5% above current Treasury bill rates, or with points and fees greater than 3-4% of the loan amount. The definition of points and fees should include all the costs the borrower is required to pay in order to get the loan.

In addition, the OTS should prohibit prepayment penalties, balloon payments, frequent refinancing or "flipping" of loans with no benefit to the borrower, encouragement of default by the lender, negative amortization, and arbitrary call provisions in all high-cost loan transactions. The OTS should also prevent the financing of single-premium credit insurance and mandatory arbitration for all mortgage loans, while requiring home ownership and foreclosure prevention counseling on high-cost loans prior to closing and foreclosure proceedings, respectively. This counseling should be done by a loan counseling agency that is independent from the lender and approved by the OTS.

Bold action by the OTS is needed to stop the current explosion in predatory lending. Bank Watchers appreciates the opportunity to comment and we ask that the OTS work with representatives of the National Community Reinvestment Coalition and its allies to develop effective deterrents to predatory lending.

Sincerely,
Hubert Van Tol
President; Bank Watchers