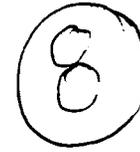




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May 31, 2000

Manager – Dissemination Branch
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DISSEMINATION BRANCH
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OFFICE OF THRIFT SUPERVISION

To Whom It May Concern:

Thank you for providing an opportunity to comment on OTS' Advance Notice of Proposed Rulemaking (ANPR) on Predatory Lending practices. I have always appreciated OTS' willingness to speak out forcefully against these practices and now to begin to look at how federal regulations can curb them. While organizations like NHS continue to educate vulnerable homeowners, our job will be made a lot easier in a stronger regulatory environment.

The ANPR clearly delineates the OTS' role particularly as it applies to the Alternative Mortgage Transactions Parity Act (AMTPA). While the purpose of the AMTPA, to ensure that non-thrift mortgage lenders were not unfairly regulated by states from creating alternative mortgage products to compete with thrifts, it has provided a window for predatory lenders. New York is one of the States that opted out of the AMTPA, allowing us begin to develop our own regulations. However, this has resulted in a process where competing interests may result in regulations which are weaker than many deem necessary. As predatory practices have become a national problem, strong federal guidelines are needed to ensure that there are uniform standards for regulating them.

NHS recognizes that most thrifts do not engage in predatory practices and also that OTS does not regulate commercial banks, which are increasingly engaged in mortgage lending. Since the AMTPA is meant to equalize the regulatory burden of federally chartered thrifts and state-regulated mortgage lenders, OTS's action would be a good first step but we recognize the need for commercial bank regulators to take action as well to ensure that all mortgage lending would be covered.

We are noticing that commercial banks are buying mortgage lenders that engage in predatory practices as well as securing many of these loans. We believe that strong prohibitions are necessary to ensure that this stops. OTS regulations would ensure that thrifts do not begin engaging in these activities. Strong regulations would also end different regulatory situations between States. This means that States would not need to make their own regulations and that there would be a national regulatory standard.



The spirit of AMTPA gives mortgage lenders a lot of flexibility in designing alternative mortgage products. Since their activities are not reviewed as thoroughly as thrifts, they are almost unregulated in designing their products. In New York this has led to the growing prevalence of predatory lending as publicized by cases such as Delta Funding and Alliance Capital. By setting up loans with high-interest rates, excessive fees, balloon payments, prepayment penalties or additional charges, the lenders end up providing a loan that the homeowners cannot pay back. The homeowner is often forced into foreclosure and loses the investment of a lifetime. This activity has, as you mentioned, resulted in New York developing proposed regulations on high-cost loans. The regulations can be implemented since we are not covered by AMTPA.

It is worth mentioning that these activities are promulgated by sub-prime lenders and that NHS realizes that good sub-prime lenders serve a need in our society to help people who are at a somewhat higher risk receive loans. Lenders step over the line when they structure loans that they know will not be paid back. It is the nature of predatory practices that loans are issued without due regard to a person's ability to pay the loan back. There needs to be strong standards for all lenders on this point. Another major problem is that subprime lenders do not need to report their loans to regulatory agencies like banks. If they were required to do so, there would be greater accountability in the industry.

Many predatory loans are made without substantiation of the borrower's income. New York's proposed regulations state that a borrower's monthly debts and expenses cannot be greater than 50% of his/her income. Our attorney general also suggested supplementing this with a residual income limit ensuring that borrowers have enough money left to live on. Adding these regulations to required substantiation of income on all loans would help ensure that borrowers can afford their loans.

The nature of sub-prime lenders means that victims of predatory lending are not those with good credit histories and access to a wide variety of loan choices. These victims are people who live in underserved communities and communities of color that do not have the same financing choices. An example is that according to 1998 HMDA data, 78% of Delta Funding's refinancing loans were in predominantly black communities.

Some of the specific regulations that OTS should consider pertaining to predatory lending practices include:

Counseling Requirements: Counseling should be required for all subprime loans. Many predatory lenders are successful because they make quick deals with uninformed borrowers. Proper counseling could stop many predatory loans.

Financing of Points and Fees: Strong limitations need to be set on the amount of points and fees which can be financed for high-cost loans. New York's proposed regulations limit the amount that can be financed to five percent of the loan amount. This is the maximum which should be considered.

Frequent Refinancings of High-Cost home loans: The major incentive for predatory lenders to frequently refinance high-cost home loans is that they charge points and fees on each refinancing. The way to stop this is prohibiting the charging of points and fees on the new loans if they are within a certain amount of time of the old loan. A minimum time period could be three years. This of course could be waived if the refinancing was for a significantly lower interest rate.

Balloon Payments: Balloon payments which borrowers cannot afford are a frequent cause of foreclosure. We believe there should be blanket prohibition on balloon payments for subprime loans.

Financing of Credit Insurance: This should be prohibited for subprime lenders.

Prepayment Penalties: Many borrowers whose credit situations have improved may want to pay off their high-cost loans. The high prepayment penalties on these loans often makes this impossible. There need to be sensible limits set for prepayment penalties that take into account the needs of the lender and the borrower.

Repayment Ability: Most predatory loans are made with terms that make it clear that there is little possibility that borrower will be able to pay back the loan. We support requirements that lenders of high-cost loans have verifiable proof of a borrower's ability to pay back the loan. New York's requirements that debts should not exceed fifty percent of his/her verified gross income should be a minimum standard for this requirement.

As I mentioned earlier, subprime lenders are becoming subsidiaries of commercial banks and are creating revenues for the banks through predatory practices. There is a danger that thrifts could also buy some of these lenders. So in response to the questions in the ANPR about reviewing regulations for subsidiaries of thrifts, it is something that should be done to ensure that all subsidiaries engage in ethical practices.

In the complicated world of bank regulation, it is difficult to know what steps a regulatory body should take. This ANPR represents the OTS' recognition of the problem of predatory lending and the desire to take decisive action. I hope these comments have been constructive and look forward to being of any further assistance. Thank you for taking leadership on this issue.

Sincerely,



Francine C. Justa
Executive Director

Cc: Ellen Seidman