Office of Thrift Supervision

FOR RELEASE at 9:00 A.M. EDT
Wednesday, September 25, 2002
OTS 02-37

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OTS Says State Housing Creditors Using the Parity Act Must Follow State Prepayment and Late Fee Rules

WASHINGTON – The Office of Thrift Supervision (OTS) announced today that it is removing prepayment and late fee rules from the list of OTS regulations that apply to state housing creditors under the Alternative Mortgage Transaction Parity Act.

The change means that state-chartered housing creditors — including state savings associations, state savings banks, mortgage bankers, certain HUD lenders, and others who make mortgage loans — would once again be subject to state rather than OTS prepayment and late fee rules. Federally chartered thrifts supervised by OTS are not subject to the Parity Act and, thus, would continue to follow OTS rules.

The Parity Act, passed in 1982, grants state-chartered housing creditors parity with federally chartered lenders when making alternative mortgages, such as adjustable rate mortgages loans, by permitting them to follow OTS rules.

"After reviewing how the parity rules affect the ability of state housing creditors to make alternative mortgages, OTS determined that the provisions dealing with prepayment penalties and late fees were not essential to making alternative mortgages," said OTS Director James E. Gilleran. "Therefore, it is not necessary to continue to identify these provisions as applying to these loans. In addition, available data indicated that including late fees and prepayment penalty provisions may have allowed some state housing creditors to engage in lending practices outside of state consumer protection laws."

OTS received 298 comments on the proposed rule, almost equally divided between supporters and opponents of the change. The comments came from state housing creditors and their representatives, consumer groups, states, financial institutions and trade organizations.

The rule announced today will appear in the September 26 Federal Register. The new rule will be effective on January 1, 2003.

OTS is also recommending that Congress revisit the Parity Act in the context of broader mortgage reform legislation involving the Real Estate Settlement Procedures Act, the Truth in Lending Act and predatory lending.

“Only comprehensive reform can guarantee that borrowers receive meaningful information in a full and understandable form, that healthy competition between housing creditors is stimulated to provide affordable housing credit, and that legal and regulatory burdens are minimized,” said Mr. Gilleran.

If the Parity Act is retained, OTS suggests that Congress give states a new opportunity to opt out from Parity Act preemption. Congress should also require state housing creditors lending under the Parity Act to identify themselves to the states, which could improve the states’ ability to monitor housing creditors’ compliance with the Parity Act.

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