GOLDEN WEST
FINANCIAL
CORPORATION

(21)

June 5, 2002

VIA FAX

The Honorable James E. Gilleran
Director, Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Re: Docket No. 2002-17

Dear Director Gilleran:

World Savings fully supports the OTS' proposal to amend its regulation (Section 560.220) implementing the federal Alternative Mortgage Transaction Parity Act of 1982. The revised regulation would retain the current references to Sections 560.35 ("adjustments to home loans") and 560.210 ("disclosures for variable rate transactions") as the OTS regulations pertaining to alternative mortgage transactions and delete the current references to Sections 560.33 ("late charges") and 560.34 ("prepayments").

The proposed amendment, as we understand it, does nothing more than restore the regulation to what it provided between 1982 and 1996.

We believe the proposed amendment is in conformity with the original enabling legislation. The 1982 legislation was intended to allow state mortgage lenders to make alternative mortgage loans (primarily loans tied to an index, but also some other non-traditional types of mortgages) following the same rules concerning indices, notices, etc., as are required for federal thrifts making similar alternative mortgages.

Of course, federal thrifts are subject to extensive examination and other supervisory oversight of the OTS, which is not the case for state lenders that rely on the parity regulation. Even so, Congress was sufficiently concerned about the risks being created by fixed rate lending at the time the statute was enacted in 1982 that it apparently decided to give this minimal level of parity while giving discretion to the relevant federal agencies to determine which regulations were, in fact, applicable to alternative mortgages.

Another reason Congress allowed the federal agencies to designate which were the relevant regulations was the practical problem that the codification of a given regulation might change from time to time. Indeed, the Federal Home Loan Bank Board was eliminated by subsequent legislation, the OTS was created to take over some of the former FHLBB functions, and the former FHLBB regulations concerning alternative mortgages were subsequently moved from 12 CFR Part 545 to 12 CFR Part 560. The

1901 Harrison Street
Oakland, California 94612-3588
(510) 446-3420

P. 02 FAX NO. JUN-05-2002 WED 04:08 PM

fact that the statute gave the relevant agency (here, the OTS) flexibility to designate which were its alternative mortgage regulations did not mean Congress intended all of the OTS' regulations concerning all mortgage lending to be included.

Late charges and prepayment charges are elements of all types of mortgage loans, not just "alternative" mortgages. They are hardly more relevant to alternative mortgages than they are to other types of mortgage loans. And the fact that state-chartered lenders functioned for over 14 years without the OTS' regulations concerning late charges and prepayment fees being included in the parity regulation is ample evidence that the late charge and prepayment provisions were not essential for parity.

State lenders that wish to avail themselves of OTS regulations other than the regulations specifically relating to alternative mortgages have a variety of options. They can comply with the state statutes and regulations. They can seek corrective state legislation. If they are state chartered depository institutions, they can switch to a federal charter. Or they can consider doing their mortgage lending via a federal depository affiliate.

We hear from a variety of groups that what have proved to be appropriate provisions for home loans made by federal thrifts have been seriously abused when used, through the parity regulation, by state regulated or wholly unregulated entities. As we have already said, those entities usually are not subject to anywhere near the statutory, regulatory or supervisory requirements that are imposed on federal thrifts.

Congress appropriately addressed the problems that arose in the early 1980s from fixed rate mortgage portfolios by giving all mortgage lenders parity for alternative mortgages. If some mortgage lenders want parity with all the other OTS regulations concerning the origination and servicing of mortgages, then they also should accept "parity" with all the other statutory, regulatory and supervisory requirements.

It's not an unreasonable choice for them to make. And if it means some would have to be subject to the examination and supervisory process (and, in some cases, give up predatory practices) to be part of the federal system, that's a tradeoff they have the freedom to accept or reject.

Sincerely,

Michael Roster
Executive Vice President

JUN-05-2002 WED 04:09 PM FAX NO. P. 03