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DIVISION OF BANKS
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October 6, 2000

**VIA OVERNIGHT EXPRESS MAIL**

Thomas J. Curry, Commissioner
Massachusetts Division of Banks
One South Station
Boston, Massachusetts 02110

**RE: Statement of CitiFinancial Sevices, Inc. ("CSI") Relative to the Division of Banks' High Rate Mortgage Loan Regulations**

Dear Commissioner Curry,

CitiFinancial Services, Inc. ("CSI"), the consumer finance licensee of Citigroup, Inc., appreciates this opportunity to comment upon the proposed amendments to the Banking Regulations (209 CMR 32.32) intended to address predatory lending practices.

Consumer lending has become big business in recent years. A vigorous economy, low unemployment and robust consumer spending have contributed to attracting new lenders to the consumer finance industry, especially in the area of subprime lending. Unfortunately not all the participants in the subprime lending business – the brokers, appraisers, inspectors, and lenders -share the commitment demonstrated by CSI throughout its 88-year history to upholding both the spirit and the letter of the laws that govern the industry. It is understandable therefore that there has been recent heightened scrutiny of the industry, and that changes such as these are being considered.

CSI, however, cautions against outlawing legitimate business practices simply because they have been associated with illegitimate businesses. The targeting of minorities and the elderly for high cost loans, the practice of equity stripping, the making of high loan to value mortgages, loan flipping, abusive broker and third party lending, and abusive repayment terms all are anti-consumer practices appropriately prohibited or discouraged by existing law and regulations as well as by the proposed regulations. Other provisions of the proposal, however, are themselves anti-consumer for, by curtailing legitimate business practices, they will have the effect of denying credit access to many people who are not "prime" borrowers.

Since the start of this calendar year, CSI has made over 2,500 mortgage loans to Massachusetts customers in the subprime market. This figure includes first mortgages, second mortgages, and so-called "Equity Plus" mortgages (higher loan to value second mortgages for amounts up to $20,000). While all three products would be affected by the interest rate triggers and points and fee caps, the Equity Plus program, designed for those homeowners with the fewest credit options, would be most severely affected. In fact, the proposed regulations would have covered more than 80% of the Equity Plus loans made so far this calendar year, and would have most likely forced these customers into higher priced unsecured loans. Clearly, that is not of benefit to Massachusetts consumers.

CSI's delinquency and foreclosure rates provide further evidence of both the integrity of their operations and the benefits they provide to Massachusetts consumers. In the regular mortgage portfolio there have been fewer that 10 foreclosures in the past year, and less than .37% of the portfolio is 60+ days delinquent. In the Equity Plus portfolio there have been no foreclosures in the past 24 months and the 60+ day delinquency figure is .83%. Surely, these figures reflect responsible, consumer-oriented lending practices of value to Massachusetts consumers. To define these lending programs as "predatory" is surely an injustice to CSI and its customers.

While our detailed comment below will address a number of issues, of greatest concern to CSI are three: the rates and points threshold that would trigger coverage of a loan by the proposed regulations, the unclear but apparent prohibition on single premium credit insurance, and the points and fees cap.

1. Loans Covered by 209 CMR 32.32 (Section 32.32 (1)

Section (1) Coverage provides two "tests" or "thresholds" for residential mortgage loans, either of which will cause such loan to be subject to the Section 32.32 Regulations. The first identifies mortgage loans having an APR that exceeds the comparable Treasury Security yield by more than 8 points for first mortgages, and an APR that exceeds the comparable Treasury Security yield by more than 9 points for second or junior mortgages. The second refers to any loan where the total points and fees payable at closing exceed the greater of 5% of the loan amount or $400.

Because these triggers will eliminate much of CSI's current lending program, CSI urges that the interest rate levels and points and fees triggers be at least consistent with the existing federal levels as contained in the Home Ownership and Equity Protection Act of 1984 ("HOEPA"), now codified as 15 USC 103(aa) and 15 USC 1639, and covered by Sections 226.31 and 226.32 of Regulation Z, which interest rate levels are 10 points above the comparable Treasury Security yield for first and second mortgages, or total points and fees in excess of 8% of the total loan amount or $400 (adjusted annually), whichever is greater. The federal law provides appropriate parameters that are protective of consumer interests. Their adoption by Massachusetts will enable responsible lenders like CSI to maintain their current lending programs. Adoption of the federal triggers has the additional benefit of eliminating conflicting disclosures due to different thresholds applied to the same loan by different governing authorities.

In addition to the above, there are two points in the Section (1) Coverage and the Section (2) Definitions provisions that we feel need clarification:

a. The term "total points and fees" is defined in Section (2)(a) 1. by reference to all items required to be disclosed under 209 CMR 32.04 (1) and 32.04 (2) except interest or time price differential. Subsection (g) of 32.04 (2) includes premiums for credit life insurance written in connection with a credit transaction. However, subsection (4) of the same Regulation 32.04 (which is not mentioned in Section 2(a) 1) qualifies credit insurance premiums by excluding voluntary credit insurance premiums from the definition of finance charge in subsection (2) if certain conditions are met (similar to the voluntary credit insurance premium provisions of subsections (a) and (c) of Section (6) Unfair Loan Practices). CSI feels that this point should be clarified and respectfully urges the Division to adopt the same exceptions for voluntary credit insurance premiums for Sections (1) and (2) as are contained in Section (6).

b. The definition of "bona fide loan discount points" contained in subsection (c) of Section (2) Definitions provides, as a standard for determining whether or not a loan discount point is bona fide, a reduction by a minimum of 35 basis points in the interest rate. This is a test that is easily met

on shorter term loans (of seven or eight years or less), but is much more difficult to meet on a long term loan , as the following chart illustrates:

Based on a 50,000 loan at 10% APR with 5 discount points the interest rate would be reduced as follows:

| | |
|---|---|
| 5 yrs | 7.91% (.418 reduction in rate per point charged) |
| 10yrs | 8.85% (.23 reduction in rate per point charged) |
| 15yrs | 9.15% (.17 reduction in rate per point charged) |
| 20yrs | 9.30% (.14 reduction in rate per point charged) |
| 25yrs | 9.38% (.124 reduction in rate per point charged) |
| 30yrs | 9.43% (.114 reduction in rate per point charged) |

CSI prices its loan products by an Annual Percentage Rate yield. Then, to accommodate the customer, the loan rate can be reduced by the charging of points, or points can be eliminated by keeping the loan rate the same as the Annual Percentage Rate. CSI would feel that a test similar to this system would be more equitable.

2. Financing of Credit Insurance (Section 32.32 (6)(i)(a), (c) and (j))

Subsection (1)(a) of Section (6), Unfair Loan Practices, prohibits the financing of points and/or fees greater than 5% of the loan other than "voluntary credit, disability, unemployment and/or life insurance. . . ." This subsection also contains an additional restriction on the financing of voluntary unemployment insurance and prohibits the financing of credit insurance for any borrower whose scheduled monthly debt payments exceed 50% of the borrower's monthly gross income ("the 50% debt to income test").

Subsection (1)(c) of Section (6) prohibits "packing", but provides that charges for credit insurance are not considered "packing" if certain credit insurance disclosures are given prior to the loan closing.

However, despite the above exceptions allowing the financing of credit insurance, subsection (1)(j) of this section prohibits making any high cost home loan that contains single-premium credit insurance.

Here, the proposed regulations are contradictory. On the one hand, they recognize that the purchase and financing of credit insurance by an informed, consenting consumer is different from the anti-consumer practice of "packing", and it exempts voluntary credit insurance premiums from the five percent limitation of financing points, fees or charges. Then, however, the regulations outright prohibit the sale of single premium credit insurance. For all practical purposes, the only kind of credit insurance premium that could be financed is single premium insurance. We do not believe that this prohibition is warranted, in light of both the value of the product and CSI's consumer practices.

The availability of credit insurance is important to many of our customers, because they tend to be underinsured and have less financial security. The charging of a single premium for credit insurance, as opposed to insurance paid for on a monthly basis, is especially desirable since it remains in effect even if loan payments are delinquent. Further, CSI ensures that the purchase of credit insurance by a customer is always an informed decision. CSI borrowers are told at the time of application, pre-closing and closing of the optional nature of all credit products. Loan agreements quote the monthly payment amounts with and without insurance products. Customers are also provided with a toll-free number to call to cancel any insurance product they choose to purchase. Policies cancelled within thirty days are refunded in full; later cancellation entitles our customers to a proportionate refund of the premium.

These practices ensure that the customer controls the decision to purchase and that insurance products are not packed. With safeguards such as these, we feel there is no need to prohibit the sale of single premium credit insurance in the name of consumer protection.

3. Cap on Financing Points and Fees (Section 32.32 (6)(i)(a))

CSI has two concerns with respect to the limitation on the "financing" of points or fees in excess of 5%, and one area where it believes clarification is needed:

a. Bona Fide Discount Points. The Coverage and Definitions sections of the proposed regulations (Sections (1) and (2)) exempt "bona fide loan discount points" (as therein defined) from the total of points and fees to be considered in determining whether or not the 5% threshold has been reached with regard to Coverage of the proposed regulations. CSI urges that the same exemption for "bona fide loan discount points" be available in the determination of the 5% limitation contained in Section (6). Again, the same rationale would apply as set forth above in discussion of bona fide loan discount points; viz., if a bona fide loan discount point results in the reduction of the interest rate charged to the customer, then there is little detriment to the customer in allocating a portion of the Annual Percentage Rate to points, rather than to interest charges.

b. 50% Debt to Income Requirement for Credit Insurance. The 50% debt to income test with respect to the financing of voluntary credit insurance is an unnecessary restriction on the availability of this option, as discussed below.

c. What does "financing" mean? CSI feels there should be some explanation or guidance as to whether or not the term "financing . . . of points and/or fees" would mean only the adding such fees to the loan balance and charging interest on the total loan amount which would include the points, fees and other charges; as opposed to the adding points, fees and other charges to the loan balance, but charging interest only on the loan amount, and not on the points, fees and other charges. (In other words, could the customer be given the opportunity to pay the points, fees and other charges over the life of the loan, if there were no interest charges on such payments?)

In addition to the points raised above on the three critical issues, CSI has a few short comments on certain other areas of the proposed regulations as follows:

1. Inconsistency in Definition of Points, Fees and Charges. There is confusing inconsistency in the definition of points and fees between the Coverage and Definitions, Sections (1) and (2) and in the definition of points, fees and charges in the Unfair Practices, section (6)(1)(a).

2. Inconsistency in Treatment of Credit Insurance Premiums. Regulation 32.04 (2), containing examples of finance charges, includes premiums for credit insurance, but the exclusion for voluntary credit insurance provided in Section 32.04 (4) is omitted. This is inconsistent with the exclusion for voluntary credit insurance contained in the Unfair Practices Section (6)(1)(a) and (c).

3. Brokers Fees. Section 2.(2)(a) includes all compensation paid to mortgage brokers in identifying points and fees for the purpose of coverage under Section (1). CSI suggests that only fees or commissions paid to a mortgage broker by the customer should be included, since in those cases where the creditor might compensate a mortgage broker, there is no charge or increase of cost of the mortgage to the borrower.

4. Consistency of Disclosures. In Section (3) Disclosures, subsections (a), (b), (c) and (d) require the same disclosures as are currently required by HOEPA (Section 32 of Regulation Z). Since in many of the instances where a Massachusetts disclosure would be required, the same federal disclosure is also required, it might make better sense to provide that the Massachusetts disclosure must be given only if the federal disclosure is not required.

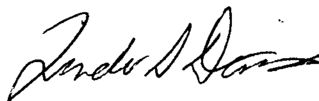
5. Application Disclosure. Subsection (e) of Section (3) requires a 12-point notice directly above the borrower's signature line on the application. Most of the loan applications taken by CSI are received by telephone, so there is no opportunity to obtain such a signature until closing. CSI would propose that the required notification be mailed to the applicants together with the counseling notice and other federal RESPA and HOEPA notices to be delivered to the applicant, and that the signature on these documents be obtained at closing. The companion regulation in the New York regulations (Section 41.4 d.) has a statement to the effect that, such a disclosure can be made to the borrower 3 days prior to the closing in the event of a telephone application.

6. 50% Debt to Income Test. In Section (4) Limitations, the 50% debt to income test first appears in connection with charging a prepayment penalty. CSI urges the Division to consider either dropping this requirement or using a more flexible test, for the following reasons: (a) there are many consumers who have the ability to pay required loan payments, yet for any number of personal reasons would not meet the strict 50% debt to income test, and (b) using the 50% debt to income test is not appropriate in connection with a prepayment penalty, since the primary purpose of a prepayment penalty is to discourage borrowers from jumping from one lender to another in a short period of time (before sufficient revenue can be realized to cover the expense of booking the loan transaction) and not to make income from persons who cannot afford the charge. CSI submits that charging a prepayment penalty in the first three years of a loan is not a "predatory" lending practice.

The 50% debt to income test also is a condition to the financing of credit insurance under Section (6), subsection (a)(1). For the reasons stated above, CSI feels that the 50% test is too inflexible in circumstances where each potential borrower's financial circumstances may be different, and that the benefits of obtaining credit insurance as part of the entire loan package are such that the 50% test is unnecessary.

In conclusion, CSI shares your concern that certain unscrupulous members of the industry are engaging in unethical, frequently illegal practices, which are resulting in financial devastation for some borrowers. In the exercise of regulatory authority, however, we urge you to be mindful of the consumer benefits provided by responsible lenders. We hope that these comments will help you to devise regulations that recognize the difference between wheat and the chaff.

Sincerely,



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