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Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G. Street, N.W.
Washington, D.C. 20552

ATTENTION: DOCKET NO. 2002-17

RE: Notice of Proposed Rulemaking/OTS Proposal Re Prepayment Fees and Late Charges ("Proposal")

To The Office of Thrift Supervision ("OTS"):

I am an attorney practicing in the State of Florida. My firm handles real estate related transactions and related matters for various residential mortgage lenders, many of which are state-licensed or state-chartered "housing creditors" ("housing creditors") as that term is defined in the Alternative Mortgage Transaction Parity Act, 12 U.S.C. § 3801 et seq. ("Parity Act"). As such, the mortgage companies with which we work regularly rely upon the Parity Act's preemptive authority in offering "alternative mortgage transactions" as defined in the Parity Act ("AMTs") to their customers in my state. We are deeply concerned that the anti-competitive

effects of the Proposal will hinder the ability of small lenders to stay in business. The effect of putting smaller lenders out of business, while increasing the presence of large institutional lenders, would limit the options available to consumer borrowers ("consumers"). I am therefore writing this letter to comment on the Notice of Proposed Rulemaking regarding Parity Act preemption issued by the OTS and published in the Federal Register on April 24, 2002, 67 Fed. Reg. 20468 ("Notice").

In the Notice, the OTS proposes to amend 12 C.F.R. § 560.220 ("Parity Act Rule") to delete the prepayment penalty (12 C.F.R. §560.34) and late charge (12 C.F.R. §560.33) regulations from the list of regulations OTS identifies as "appropriate and applicable" to housing creditors making AMTs. It appears that the effect of the Proposal would be to subject housing creditors making AMTs to state law limits on prepayment penalties and late charges. We oppose this proposed amendment to the Parity Act Rule because it will: (1) impede the ability of state housing creditors to offer AMTs on a competitive basis in the existing marketplace, (2) adversely impact consumers, (3) result in a significant compliance burden and increased exposure to litigation for state-licensed housing creditors that operate on a nationwide or multistate basis, and (4) do nothing to deter so-called "predatory lending."

Subjecting housing creditors to state law prepayment and late fee restrictions would severely disadvantage those creditors in their ability to compete with federal savings associations and banks, resulting in the same competitive disadvantage which Congress intended, by enacting the Parity Act, to avoid. Fewer loan originations from my housing creditor clients will not only adversely impact my practice, but will also limit a consumer's choice of lender and loan product.

The ability to charge prepayment penalties protects lenders and secondary market purchasers from extreme changes in their portfolios, and enables lenders to offer lower interest

[redacted]

rates to consumers who agree to take a loan with a prepayment penalty provision. Late charges encourage consumers to pay on time, thereby lowering the risk that the consumer would fall behind in payments. Late charges would also provide lenders with more flexibility in their loan pricing since, by imposing late charges, a lender can shift the cost of late payments to its delinquent borrowers instead of having to recoup its costs through higher rates charged to all of its customers.

If the Proposal is adopted, federally-chartered thrifts and banks will continue to be able to impose prepayment penalties and late fees without regard to state law limits to which state housing creditors would be subject, and thus would be able to offer AMTs with rates and other cost features that are more advantageous than those which state-licensed housing creditors will be able to offer. Rather than fostering competition on an even playing field with the resulting advantages to consumers, the effect of the proposal will therefore be to reduce competition and consumer choice.

The Proposal will subject housing creditors offering adjustable-rate or balloon loans to state law limitations and restrictions on prepayment fees and late charges. We believe this will have a negative impact upon consumers.

The existence of a prepayment fee both reduces the likelihood, and lessens the adverse financial impact upon the lender or subsequent loan purchaser, of an early prepayment. Because of this, lenders are able to, and many of my housing creditor clients do, offer such loans at lower interest rates than loans without prepayment fee provisions. For consumers who plan on remaining in their homes beyond the early prepayment period, the lower interest rate they can obtain by agreeing to a prepayment fee provision can, in some cases, represent the difference

between loan approval and loan denial and, in most cases, result in tremendous savings in the cost of credit for these consumers.

If adopted, the Proposal would effectively deprive consumers of this very important home financing option. Many of the states in which my clients originate loans prohibit or limit prepayment fees. As a result, my clients would no longer be able to make loans having a prepayment fee option in those states, thus eliminating a possible loan product for consumers.

In addition, eliminating the late charge provision, as proposed, means that consumers who pay on time will end up subsidizing borrowers who pay late.

The Parity Act preemption also enables housing creditors to offer AMTs on a nationwide or multistate basis with uniform prepayment and late fee terms and conditions. If this ability were eliminated, housing creditors would be forced to create loan documents to comply with the laws in each state in which they operate, which would increase costs to lenders and consumers, and increase the risk of documenting the loan incorrectly.

The proposed amendments are not an effective means of addressing "predatory lending" concerns. Predatory lending can take a variety of forms, with the result that there is no single loan term or practice that is the hallmark of a predatory loan. Moreover, many of the predatory lenders are engaging in fraudulent activities, or otherwise violating existing laws. Trying to cure predatory lending by imposing more limits on legitimate lenders would only hurt consumers by causing legitimate lenders to stop making loans in certain markets, leaving consumers in those markets more susceptible to predatory lenders who ignore the laws.

It has been our experience that the HOEPA "high cost mortgage" laws have cut down on high-cost and predatory loans (and have recently been expanded to cover even more loans),

while the Parity Act and the Parity Rules have increased the amount and types of loans available to consumers.

For the reasons set forth above, we oppose the proposed amendments to the Parity Rule and appreciate your consideration of our comments on this important issue.

Respectfully submitted:

Rod B. Neuman, Esquire