

24 May, 2002

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Attention: Docket No. 2002-17

Dear Sir or Madam:

Consumers Union strongly supports the proposed changes to the Office of Thrift Supervision's regulations implementing the Alternative Mortgage Transaction Parity Act (AMTPA) in Docket No. 2002-17. Consumers Union has been involved in combating predatory lending for several years.

We know of many examples of financing arrangements including prepayment penalties that can have the effect of trapping borrowers in abusive loans. Borrowers can also face stiff late fees associated with high cost loans, even though interest continues to accrue on loans when payments are late. Current AMTPA regulations facilitate the proliferation of prepayment penalties and late fees in predatory loans.

AMTPA has outlived its usefulness. Congress passed AMTPA in 1982 during a high interest rate environment in order to provide state-chartered institutions the ability to offer adjustable rate mortgages (ARMs) and other alternative mortgages. At that time, many states had outlawed ARMs. From 1983 to 1996, the Federal Home Loan Bank Board (the OTS' predecessor agency) and the OTS granted state-chartered thrifts and non-depository institutions preemption under AMTPA from state law on alternative mortgages so that they could offer ARMs and other alternative mortgages. During this time period, however, the Bank Board and the OTS did not allow institutions to preempt state law on alternative mortgages that limited prepayment penalties and late fees. In 1996, the OTS inexplicably reversed course and allowed institutions to preempt state limits regarding prepayment penalties and late fees on alternative mortgages.

In a recent study, the Coalition for Responsible Lending estimated that, every year, prepayment penalties cost borrowers \$2.3 billion. As they state in their report:

Prepayment penalties for subprime borrowers are troubling because these consumers do not "choose" prepayment penalties in any meaningful sense; otherwise, 80% of subprime loans would not have such penalties, compared with only 2% of loans in the competitive, more transparent conventional market. The competitive conventional mortgage market provides a test for people's true preferences for a prepayment penalty in exchange for a



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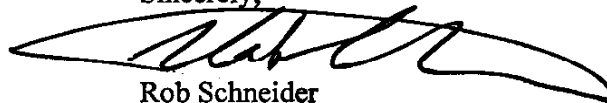
lower rate. Rational subprime borrowers with market power should prefer them no more often, and probably less often, than conventional borrowers so that they can refinance into a conventional loan as soon as credit improves.

The OTS correctly notes in its proposal that prepayment penalties and late fees are not integral elements of alternative mortgages. The OTS also reports that all states but one now allow ARMs. Predatory lenders are using AMTPA and the existing OTS regulations to evade state law on alternative mortgages and prey upon unsuspecting and vulnerable borrowers.

We urge the OTS to make its proposal stronger. The AMTPA statute provides OTS with the discretion to prescribe general limits on loan terms and conditions. In the case of prepayment penalties, the OTS could have adopted a two-year limitation on prepayment penalties for the alternative mortgages issued by all the institutions it regulates including federally chartered thrifts, state-chartered thrifts and non-depository institutions. The limitation would also stipulate the maximum amount of the prepayment penalty at one percent of the loan amount. Currently, victims of predatory lending are confronted with paying about five percent or higher of the loan amount as a prepayment penalty. We believe that this approach would achieve a greater degree of uniformity in the regulatory framework for different institutions.

We applaud the OTS for proposing this change to their AMTPA regulations and ask the OTS to implement this change as quickly as possible after the close of the public comment period.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rob Schneider', written over a horizontal line.

Rob Schneider
Senior Staff Attorney

cc: National Community Reinvestment Coalition