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June 18, 2002

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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 Indiana. My firm handles legal matters for various residential mortgage lenders, some of when 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"). I agree with those who are 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 in opposition to 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 (alternative mortgage transactions). 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. I oppose this proposed amendment to the Parity Act Rule because I understand 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 to avoid by enacting the Parity Act. Fewer loan originations from my housing creditor clients would not just adversely impact my practice, but would 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 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. 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.

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

Respectfully submitted:

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