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VIA: FACSIMILE (202) 906 - 6518
And E-Mail: regs.comments@ots.treas.govRegulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G. Street, N.W.
Washington, DC 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 New York. My firm handles real estate related transactions 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 USC §3801 et seq. ("Parity Act"). As such, many of the mortgage companies with which I 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. I am 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 would limit the options available to consumer borrowers ("consumers"). Therefore, I consider it necessary 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").

The OTS proposes to amend 12 CFR §560.220 ("Parity Act Rule") to delete the prepayment penalty (12 CFR §560.34) and late charge (12 CFR §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. I oppose this proposed amendment to the Parity Act Rule because it will : (a) impede the ability of state housing creditors to offer AMTs on a competitive basis in the existing marketplace, (b) adversely impact the cash to consumers, (c) 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 (d) 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 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-licenses 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.

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.

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.

It has been my 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, I oppose the proposed amendments to the Parity Rule. I appreciate your consideration of my comments on this important issue.

Respectfully submitted,



Robert J. Hecker

RJH/ss