MHI

Manufactured Housing Institute

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June 17, 2002

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

Attention: Docket No. 2002-17
Late Fees on Federally-Related Residential Manufactured Housing Loans

The Manufactured Housing Institute (MHI) has worked dutifully in recent months to inform OTS officials of the limitations inherent in rule 12 CFR Part 590, which constrains the late charges that may be assessed on loans secured by first liens on residential manufactured homes to the lesser of $5.00 or 5%. In effect, unless the installment on a manufactured home loan is less than $100, OTS's rule permits a maximum $5.00 fee for late payments on such loans. Since this rule was written into law as part of the Deregulation and Monetary Control Act of 1980, the average manufactured home loan amount has more than doubled, with no comparable increase in allowances for lenders' costs in collecting associated monthly installments.

As stated in previous correspondence with OTS officials (see attachment), the effective percentage rate of the $5 late fee on the average "home only" loan amount has decreased from 2.1% in 1982 to a mere 1.3% in 2001 (adjusted for today's terms) and is well below the current incentive structure established by many states to get consumers to pay their loans on time. In fact, an MHI survey of state laws reveals 5% to be the prevailing state late fee for manufactured housing loans.

Consequently, it has been the industry's experience that the $5.00 amount is too small to deter late payments and has been a contributing factor to the run-up of delinquencies and repossessions of manufactured homes over the past several years. In turn, this has also served to increase the cost of funds to manufactured home lenders from Wall Street, thereby pushing up interest rates for all new manufactured home loan borrowers.

MHI commends OTS for recognizing the existing outdated rule and for its proposal to drop the $5.00 limit, while retaining the 5% limit, in its Federal Register notice issued April 25, 2002. The advantage to the constant percentage late fee is that it is self-adjusting and thus fairly reflects changes in the costs of administering the loan. Based on today's average loan amount, a 5% late fee would amount to about $20. MHI believes this amount would at least partially compensate lenders for their increased cost of doing business since the implementation of this regulation over twenty years ago and serve as a significant deterrent to casual delinquency, without being excessive. Finally, we understand that this provision could be adopted on a stand-alone basis, quite apart from other changes you have recommended in the aforementioned notice.

Sincerely,

Chris Stinebert

Chris Stinebert
MHI President

Attachment

2101 Wilson Blvd. Suite 610 Arlington, VA 22201-3062 Tel: 703.558.0400 Fax: 703.558.0401
http://www.manufacturedhousing.org e-mail: info@mfghome.org

MHI

Manufactured Housing Institute

April 18, 2002

Carolyn J. Buck, Chief Counsel
Office of Thrift Supervision
1700 G Street, N.W.
5th Floor
Washington, DC 20552

Cc: Vicki Hawkins Jones
William J. Magrini

Dear Ms. Buck:

Following our meeting of February 25, I have been able to pull together from industry sources the additional information that you and Ms. Hawkins Jones requested.

For the "home only" loan late fee charge about which our lender members are concerned, the effective percentage rate of the $5 late fee was 2.1% on the average 1982 loan amount of $265.56. That has dropped to 1.3% on the average 2001 loan amount of $392.83. Thus, you were both correct in surmising that whatever the merits of the $5 when first put into place, that effectiveness has been greatly watered down over time. In arriving at these percentages I adjusted for the fact that the 1982 loan was for 180 months on average, while the 2001 loan was for 300 months on average.

In response to your request for data on state laws, I have concluded that they are highly varied. The information in the attached spread sheet is the best we are able to convey to you at the present time; the different databases are the records of different lenders. The discussion below relates to Data Base A. Data Base B does not present results that greatly differ, and I will send Data base C as soon as it is available.

The break down of frequencies listed in the spreadsheet is done in a manner which we feel best reveals the relative prevalence of state practices. For example, if a state late fee lists "5%", that is noted below in the row labeled "Percentages Noted"; but if the state fee lists "greater of 5% or $15", that is noted under three headings: "Percentages Noted", "Dollars Noted", and "Greater of".

Five percent (5%) appears to be the prevailing state late fee for manufactured housing lending. This appears in the language of 29 states: seven times it appears as part of a late fee structure that is the "greater of 5% or __"; eleven times it appears as part of a late fee

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structure that is the "lesser of 5% or __"; and in eleven states, the late fee structure is simply 5%. Notably, the federal late fee structure of the "lesser of 5% or $5" appears in only three states for both of the data bases in the spread sheet.

While $5 does appear in the late fee structure of six states in both data bases, $10 is the most frequent dollar level late fee, and $15 has the third highest frequency. Late fees of $25 appear for two states, $20 for one state and $15.50 for one state. In eight of the eleven instances where state late fees are structured as the "lesser of" a percentage and a dollar amount, the dollar amount is more than $5, ranging between $10 and $25. Finally, there are seven instances where 5% late fees are structured as the "greater of 5% or __". Five of these list dollar amounts exceeding $5, including two at $10 and two at $15.

In summary, it appears that the current federal late fee structure for manufactured housing, namely the "lesser of $5 or 5%", is well below the current incentive structure established by states to get consumers to pay their loans on time. As you know the number of market exits by lenders this year has been devastating, and our proposed change in late fees is among those items which could help reduce that trend.

At today's average loan payment of about $393, a straightforward 5% federal late fee would amount to about $19.65 on an average loan. This would partially compensate our lenders for the increase in their cost of doing business since the $5 practical limit was put into effect about two decades ago. More importantly, the change would be some incentive to pay on time, where none exists today. It could help reduce the spate of delinquencies that has raised manufactured housing's cost of funds on Wall Street, to the disadvantage of our prospective borrowers, which are for the most part lower income Americans.

Please don't hesitate to call if I can be of further assistance. My colleague Brian Cooney and I look forward to discussing the issue again with you in the near future.

Sincerely,

James A. Clifton

Attachment

Structure of State Late Fee Charges for Manufactured Housing

	Frequencies		
	Late Fees	Database A	Database B
Percentages Noted:			
	4%	2	2
	5%	29	18
	6%		1
	10%	1	5
	15%	1	1
Dollars Noted:			
	$2.00	1	
	$5.00	6	6
	$5.72	1	
	$10.00	7	8
	$13.00	1	
	$15.00	3	4
	$15.50	1	
	$20.00	1	
	$25.00	2	
Greater of:			
	4% or $5	1	1
	5% or $2	1	
	5% or $5	1	1
	5% or $5.72	1	
	5% or $10	2	2
	5% or $15	2	
Lesser of:			
	5% or $5	3	3
	5% or $10	3	2
	5% or $12.50		1
	5% or $13	1	
	5% or $15	1	1
	5% or $25	2	1
	10% or $10		1
	15% or $15	1	1