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

Also transmitted by FAX
(202) 906-6518
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Re: Docket No. 2002-17 (Alternative Mortgage Transaction Parity Act: Elimination of Regulatory Provisions Specifying that Prepayment Penalties and Late Fees are Preempted under the Alternative Mortgage Transactions Parity Act ("Parity Act"))

Dear Counsel:

Option One Mortgage Corporation, the largest nonprime whole residential mortgage lender in the United States, opposes the amendments proposed by the OTS to amend 12 C.F.R. §560.220 to eliminate prepayment penalty and late fee provisions from those applicable to housing creditors who make alternative mortgage loans under the Parity Act—in essence, making nonfederally chartered housing creditors subject to state laws that limit or prohibit prepayment or late charges. We do so for the following reasons:

First, inclusion of a prepayment charge feature in loans provides secondary market investors with greater certainty about their return on investment, which makes loan portfolios containing the prepayment feature a more attractive investment. This enables lenders to obtain capital at a lower cost and to pass on the savings to borrowers through lower rates or fees. The proposed amendments will tend to constrict the availability of capital for housing or increase its cost because the absence of the prepayment feature will make such loan portfolios less attractive. Lenders will be forced to raise the interest rates on their loans to compensate. That means borrowers will pay more for the loans that are made available by non-federally chartered housing creditors or not borrow from them



at all. To a lesser extent, the inclusion of a late charge feature in loans has a similar effect.

Second, the overarching effect of the proposed amendments is to undercut the principal purpose of the Parity Act. In enacting the Parity Act, Congress sought to level the playing field for non-federally chartered housing creditors who make alternative mortgage loans so they could more fairly compete with federally chartered entities by making them subject to the same essential regulatory constraints. The proposed amendments, if adopted, will bestow a competitive advantage on federally chartered institutions that are not subject to state law prohibitions and restrictions on including prepayment and late charge features in their loan products.

Third, the real impetus behind the proposed amendments is the mistaken belief that loans containing prepayment or late charge features are "predatory." While it is theoretically possible that such features could be drawn to be so onerous that one might appropriately apply that label, neither is inherently so. In fact, both can be beneficial to borrowers because their inclusion allows the lender to offer a lower interest rate (or lower fees). In sum, with both features "the devil is in the details." Were it not so, federally chartered institutions would be prohibited from including such features in their mortgage loans.

Significantly, Option One **always offers borrowers the choice** of a loan product with or without a prepayment charge feature, and those choosing one with such a feature always benefit by either lower fees or a lower interest rate. Moreover, loans containing a prepayment feature impose prepayment penalties for no more than the first three years of the loan in any event.

Option One believes that promoting, not restricting, competition in the marketplace is essential to providing borrowers with loans at favorable rates and terms and to encouraging the free flow of capital to meeting the nation's important housing needs. And regulations, well-intended though they may be, that reduce consumer choices and make capital more expensive and harder to obtain ultimately hurt the borrowing public and retard national economic growth.

For all these reasons, we respectfully urge that the OTS forego promulgating the proposed regulations in final form. If additional information and analysis are desired, please do not hesitate to contact the undersigned at (949) 790-8142.

Sincerely,



James P. Gazdecki
Executive Director of Government Relations
Option One Mortgage Corporation