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United States Senate

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Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G. Street, N.W.
Washington, D.C. 20552

VIA FACSIMILE (202) 906-6518

ATTENTION: DOCKET NO. 2002-17

To The Office of Thrift Supervision ("OTS"):

I am writing to comment on the Notice of Proposed Rulemaking regarding Parity Act Preemption issued by the OTS on April 19, 2002 (the "Proposal").

At the outset, I wish to acknowledge the OTS' concern, evident in the Proposal about the negative effects certain abusive lending practices can have, particularly on those least able to deal with the consequences. I share that concern along with my colleagues in the Congress. However, I wish to address a few issues that have been brought to my attention regarding the possible implications of the Proposal.

First of all, concerns have been raised about the possibility of the Proposal reducing the borrowing choices and increasing the borrowing costs for consumers generally. It is my understanding that the Proposal will prevent state-chartered or licensed housing creditors from offering adjustable-rate or balloon loans that provide for the payment of a fee upon prepayment. The lenders assert that, because of the ability to impose a prepayment fee, lenders are able to, and do, offer such loans at lower interest rates than loans without prepayment fee provisions. They go on to say that, for borrowers 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 many cases, result in significant savings in the cost of credit for these borrowers.

Furthermore, lenders assert that the ability to impose a prepayment fee is especially important for lenders who offer loans to borrowers with impaired credit. These lenders are most often state housing creditors. Lenders making risk based loans price the loans according to credit risk and in accordance with market conditions. Lenders selling or securitizing these loans in the secondary market base the loan's interest rate on the assumption that the loan will remain outstanding for a certain period of time. Offering risk based loans with a prepayment fee mitigates the lender's exposure to the loan paying off early.

There are also some discernment that, if adopted, the Proposal may deprive consumers, particularly those with special credit needs, of this important home financing option. In states that prohibit or limit prepayment fees, which, I believe, are in the majority, state housing creditors would no longer be able to make loans having a prepayment fee option.

Secondly, it has been brought to my attention that the Proposal may contravene the will of the Congress in enacting the Alternative Mortgage Transactions Parity Act of 1982 (the "Parity Act"), which has been successful in increasing credit availability through out our Nation. The express purpose of the Parity Act was not only to facilitate "alternative mortgage transactions," but more specifically to place state housing creditors in parity with federally chartered institutions offering such transactions. The OTS itself recognized in its April, 2000 Advance Notice of Proposed Rulemaking on this same subject, the legislative history of the Parity Act shows that Congress contemplated future revisions to federal agency regulations under the Parity Act and expected conforming agency actions so that the regulatory list would continue to provide parity to state housing creditors.

Concerns are being raised that parity may not be achieved by giving federal thrifts a pricing advantage over their primary mortgage lending competitors, i.e., state housing creditors. The rate is one of the most important factors in the minds of consumers shopping for a loan. If federal thrifts have the ability to undercut state housing creditors on rate by including a prepayment fee provision, the result may not be the level playing field envisioned by Congress when it enacted the Parity Act.

To the extent prepayment fees pose a problem for certain borrowers, there may be more effective ways to deal with the issue than simply eliminating the ability of state housing creditors to offer loans which contain prepayment fee and late fee provisions.

An approach the OTS may want to consider would be to require lenders who wish to extend loans with prepayment fee provisions to offer to their customers, in writing, similar loans without prepayment fee provisions, and to have the customers affirmatively elect which option they would like. This alternative would ensure meaningful consumer choice of suitable loan products.

Additionally, there is also the approach already taken by Congress in its enactment of the Home Ownership and Equity Protection Act of 1994 ("HOEPA"), in which it specifically prohibited prepayment fees on covered ("high cost") loans except in circumstances where the creditor is able to verify that the borrower's monthly debt obligations (including his monthly mortgage payment) does not exceed 50% of his monthly gross income.

Thank you for considering these comments and I look forward to your views on the issues outlined above. Please feel free to contact me or Seema Singh of my staff at (202)224-4254 with any questions or comments.

Sincerely,



Arlen Specter