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Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
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Attention: Docket No. 2002-17

To Whom it May Concern:

The California Reinvestment Committee (CRC) strongly supports the proposed changes to the Office of Thrift Supervision's regulations implementing the Alternative Mortgage Transaction Parity Act (AMTPA). These changes will make clear that many more borrowers are protected by California's laws regulating prepayment penalty provisions and late fees. These two loan provisions are mainstays of predatory mortgage lending, which has exploded in California and nationally in recent years.

The California Reinvestment Committee ("CRC") is a nonprofit membership organization of more than two hundred (200) nonprofit organizations and public agencies across the state of California. We work with community-based organizations to promote the economic revitalization of California's low-income communities and communities of color. CRC promotes increased access to credit for affordable housing and community economic development, and to financial services for these communities. During the past few years, CRC's membership and board of directors has identified predatory lending as a priority area in light of the devastating effects such practices have had on California's communities.

CRC, in conjunction with community based partners, conducted a multi-city study on predatory lending that is based substantially on the recent study conducted by the Community Reinvestment Association of North Carolina. CRC assessed subprime lending practices and loans in Los Angeles, Oakland, Sacramento, and San Diego through interviews with one hundred and twenty-five borrowers, review of their loan documents, and analysis of home loan data.

The study's main findings include:

§ ***Prime lenders are not serving low-income communities, communities of color, and seniors.*** Roughly three quarters of study participants did not approach a bank or thrift for their loan. Banks, thrifts, and prime lenders are doing a poor job of making loans to vulnerable communities due to few retail branches in low-income and minority neighborhoods, inadequate outreach efforts, a perceived history of discrimination, and inflexible loan products.

§ ***Subprime lenders are targeting elderly and minority borrowers and communities.*** Lenders and brokers use repeated phone calls, mailers, and door-to-door solicitations to sell their loans. Over a third of study participants reported that the idea to take out a home-secured loan came from aggressive marketing by subprime lenders. Forty-four percent (44%) of female respondents age 55 years or older reported that they responded to marketing efforts, and borrowers of color (42%) were more likely than white borrowers (25%) to cite marketing efforts as the reason for the loan.

§ ***Most subprime borrowers are stuck with loans having unjustifiable and onerous provisions.*** Most study participants (60%) had loans that included prepayment penalty provisions, which lock borrowers into predatory loans, or strip equity from homeowner wealth as borrowers refinance and incur the penalty. Approximately half of all study participants had loans with excessive points and fees.

§ ***Bait and switch.*** Nearly seven in ten respondents reported that they saw key loan terms suddenly change for the

worse at closing. Eight in ten African-American borrowers saw key loan terms change at closing, as did over seven in ten borrowers in the study age 55 or older.

§ ***Many subprime borrowers in the study had predatory loans.***
One-third of homeowners surveyed felt that they were victims of predatory lending or lending discrimination. Independent CRC analysis similarly found that over one-third of borrowers surveyed were predatory lending victims.

Reviewing Home Mortgage Disclosure Act (HMDA) data, CRC found subprime lenders to originate a greater percentage of loans in minority census tracts than prime lenders. In the Oakland assessment area, the top subprime lenders originated 29% of refinance and home improvement loans in minority census tracts, compared to 12% for the top prime lenders.

Further, HMDA analysis revealed that the subprime lending affiliates of banks and thrifts made a greater percentage of loans originated in minority tracts than did their affiliated prime lender. In the San Diego assessment area, Washington Mutual originated 3% of its refinance and home improvement loans in minority census tracts, compared to 16% for Long Beach Mortgage, the subprime company that Washington Mutual owns.

CRC's study was conducted in response to the growing concern about the devastating effects of predatory lending in many of California's most economically distressed communities and the lack of data about the problem. Subprime loans represent one-quarter of all the refinance loans originated in the year 2000.

These facts and findings make compelling the need for the proposed OTS regulatory change. California passed last year an anti predatory lending law that further restricted prepayment penalties on high cost loans as defined by the state. The OTS should not allow otherwise covered lenders to assert preemption arguments that permit the gouging of California consumers.

The following few stories gleaned from interviews with actual subprime borrowers reflect the homeowners who might have benefitted, or might yet benefit, from state consumer protections not preempted by federal law (note that borrowers names have been changed for the purpose of the study and this letter):

Mr. Bill Anders is a 45 year-old American Indian from San Diego. He had a second mortgage and wanted to combine it and his first mortgage. Mr. Anders reported that he had seen his credit report and that he has excellent credit, but did not seek financing from a bank or thrift because he thought the interest rates would be too high. He received a flyer in the mail from a subprime lender and contacted them. He reported that a subprime lender told him that his initial rate would be 10.75%, but would go down to 7.5%, and at the very least would never increase, if he made payments in full and on time for six (6) months. Mr. Anders read and signed an initial set of loan documents and then received a call from the lender alerting him to the fact that he had forgotten to sign a couple of things. Mr. Anders reported that at the second closing, the loan officer arrived with a whole set of documents and assured him that the first and second sets of documents were the same. The loan officer also told him that he was in a hurry, as he had another appointment, and would not let Mr. Anders review the loan documents before he signed them. The loan officer told him he did not need a new 3-day right to rescind because it was the same loan. Mr. Anders maintains that he signed a whole new set of loan documents and feels that the loan officer lied to him. He also felt that the prepayment penalty provision was sneaked in at the end. Mr. Anders' prepayment penalty provision expires after 5 years, while his initial rate changes after three years. After 6 months when he noticed no changes in his interest rate, he discovered not only that his rate would not decrease, but also that it could actually increase. In a few months, Mr. Anders' monthly payments may increase, though his prepayment penalty will last for the following 2 years, making refinancing difficult. Mr. Anders has been having difficulty making payments and reports that he has been close to filing for bankruptcy because of this loan.

Mr. Kevin Montgomery is a 68-year-old African American man from San Diego. He was interested in refinancing his home mortgage loan because of his divorce settlement. Despite having seen his credit and reporting that it was "excellent," Mr. Montgomery was denied credit from a bank. He saw an advertisement for a subprime lender and contacted them. He was not sure whether he was working with a broker or a loan officer. The loan they discussed prior to the closing was quite different from the one presented to him at the closing. While he wanted one 30-year

mortgage, Mr. Montgomery ended up with two loans: a 15-year $153,000 mortgage with a balloon payment of $124,000, and a second 15-year mortgage of $38,000 with a balloon payment of $36,000. His interest rate increased from 9.00% to 9.125% on the first, and 12.5% on the second mortgage, and his points and fees were over $6,000, significantly more than he felt he was promised. In addition, he reported that after being promised no prepayment penalty provision, he ended up with a 4-year prepayment penalty provision on the first, and a 2-year prepayment provision on the second mortgage. Mr. Montgomery felt that the representative could have told him earlier on in the process if he could not get the terms he wanted, rather than waiting until the closing. Since then, Mr. Montgomery reported that he refinanced with another lender prior to the expiration of his prepayment penalty provision, which cost him $7,000. "I had to pay $7,000. It stunk to high heavens, but I had to get out from under that loan."

Mr. Scott Jones is a 63-year-old white man from Sacramento. He was interested in refinancing his home mortgage to decrease his monthly payments, as he was putting his children through college. He reported that he felt pressured by a subprime lender who contacted him by phone up to three times daily. Mr. Jones did not seek financing from a bank or thrift, as the subprime lender promised a quick transaction. When he decided to refinance with them, he thought the terms looked fine. He also reported that instead of reading the loan documents himself, he glanced at them and relied upon the lender's promises, due to pressure by the escrow agent and due to the pressure of personal circumstances. He also indicated that the documents he signed had several blank spaces where he assumed loans terms would go. Mr. Jones paid over $3,600 in points and fees, though he thought he would pay no such costs. Mr. Jones also reported that he had no prepayment penalty provision when in fact he had one that was scheduled to expire in five (5) years, which is two (2) years after his initial interest rate changes. At the time of the interview Mr. Jones was extremely nervous about the upcoming interest rate change and reported that when his rate increases he is going to be in a "world of hurt". Mr. Jones said that the lender had begun calling him regularly again, reminding him of the upcoming interest rate change, and pressuring him to consider a new loan. Many other companies - he believes as many as 20 other subprime lenders - have called him as well.

Ms. Jan Roberts is a 56 year-old African-American woman from Los Angeles. She was interested in refinancing in order to consolidate her debt and reduce the size of her monthly payment. She applied for a loan with a bank, but was told that they did not have cash-out loan products. She did not read the documents she eventually received for a subprime loan, because she felt pressured and felt they were too long. Instead the representative read them to her. When she received her loan documents in the mail, she noticed several changes. She contacted the lender to cancel the loan, but was told it was too late to cancel, as five days had passed since the closing. Ms. Roberts reported that she had not been told that there was a 3-day limit to cancel. Ms. Roberts is now stuck with a loan with an interest rate of 11.125%, more than 2.00% higher than what she remembers being promised, and one that will likely increase every 6 months, despite reported promises of the interest rate decreasing. She also maintains that the lender promised to include an impound account for taxes and insurance, but that this was not done. Ms. Roberts reports that she now has to work three jobs to make her payments. While she is interested in refinancing due to the recent drop in rates, Ms. Roberts learned she would have to pay a $7,000 prepayment penalty if she were to do so. She reports, "the experience has been a total nightmare. It was a scam the way it was done. It's like they have a noose around my neck and every year they are lowering me down." She reported feeling very frustrated that while rates drop, she is stuck in a high interest loan until her 5-year prepayment penalty expires.

We now all know about unscrupulous lenders that use prepayment penalties to trap borrowers in abusive loans. Borrowers have also faced stiff late fees associated with abusive loans. The current AMTPA regulations and OTS interpretations have wrongly facilitated the proliferation of prepayment penalties and late fees in predatory loans. Prepayment penalty and late fee provisions are not intrinsic to alternative mortgages, they are merely loan features that have been misused and abused by predatory mortgage lenders that use OTS regulations to circumvent state law protections.

In 1996, the OTS interpretation first allowed state chartered lenders to suggest that AMTPA preempts state limits regarding prepayment penalties and late fees on alternative mortgages. This interpretation was wrong and inconsistent with the intent of Congress in passing AMTPA. This single change in the OTS regulations during 1996 significantly contributed to the dramatic increase in predatory lending of the last few years. Non-depository

institutions and mortgage companies that were state-chartered applied prepayment penalties at such a high rate that the great majority of subprime borrowers, approximately 60% according to our study supported estimates, now have prepayment penalties. In contrast, only 2 percent of prime borrowers have prepayment penalties on their loans according to Standard and Poor's. This huge difference in the application of prepayment penalties suggests that prepayment penalties trap subprime borrowers into abusive loans, and that subprime borrowers do not freely accept prepayment penalties as a means of lowering their interest rates.

The California Reinvestment Committee cannot emphasize enough how urgent it is to remove AMTPA's preemption of state limits regarding prepayment penalties and late fees on alternative mortgages. While we applaud the OTS effort to close this predatory lending loophole, the OTS could have and should have made its proposal stronger. The AMTPA statute provides OTS with the discretion to prescribe general limits on loan terms and conditions. In the case of prepayment penalties, we support the proposal of the National Community Reinvestment Coalition (NCRC) that the OTS should adopt a two-year limitation on prepayment penalties for the alternative mortgages issued by all the institutions it regulates including federally charted thrifts, state-chartered thrifts and non-depository institutions. The limitation would also stipulate the maximum amount of the prepayment penalty at one percent of the loan amount.

CRC applauds the OTS for proposing this change to their AMTPA regulations and ask the OTS to implement this change as quickly as possible after the close of the public comment period. This change will not restrict the ability of covered lenders to offer alternative and adjustable rate mortgages, the chief concern of AMTPA, but will merely allow state legislators to protect Californians' main source of wealth.

Thank you for your consideration of our views.

Very Truly Yours,

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cc. National Community Reinvestment Coalition