



TEXAS ASSOCIATION OF COMMUNITY DEVELOPMENT CORPORATIONS

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FAX

To: Chief Counsel's Office From: J. Reymundo Ocañas
Org.: Office of Thrift Supervision
Fax: 202-906-6518 Pages: 2
Phone: Date: May 28, 2002
Re: Docket No. 2002-17 CC: National Community Reinvestment Coalition
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Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

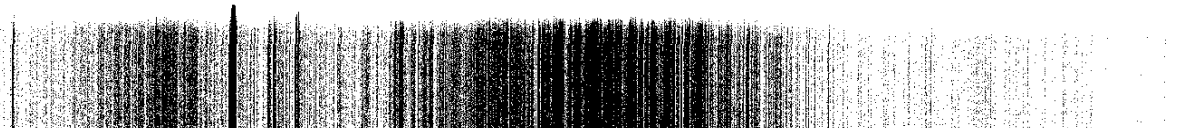
Attention: Docket No. 2002-17

To Whom It May Concern:

As a member of the National Community Reinvestment Coalition, the Texas Association of Community Development Corporations (TACDC) strongly supports the proposed changes to the Office of Thrift Supervision's regulation implementing the Alternative Mortgage Transaction Parity Act (AMTPA). Many of TACDC's member organizations have been involved in combating predatory lending for several years. We have repeatedly seen instances in which unscrupulous lending institutions have used prepayment penalties to trap borrowers in abusive loans. The current AMTPA regulations have facilitated the proliferation of prepayment penalties and late fees in predatory loans.

AMTPA has outlived its usefulness. Congress passed AMTPA in 1982 during a high interest rate environment in order to provide state-chartered institutions the ability to offer adjustable rate mortgages (ARMs) and other alternative mortgages. At that time, many states had outlawed ARMs. From 1983 to 1996, the Federal Home Loan Bank Board and the OTS granted state-chartered thrifts and non-depository institutions preemption under AMTPA from state law on alternative mortgages so they could offer ARMs. During this time period, however, the Bank Board and the OTS did not allow institutions to preempt state law on alternative mortgages that limited prepayment penalties and late fees. In 1996, the OTS inexplicably reversed course and allowed institutions to preempt state limits regarding prepayment penalties and late fees on alternative mortgages.

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 (about





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80%) now have prepayment penalties. In contrast, only 2% 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.

Texas definitely has a stake in the change OTS is proposing. El Paso was recently crowned the subprime lending capital of the nation, with almost half of outstanding loans classified as subprime. In addition to its prevalence, predatory lending here is far more likely to affect minority communities. Cited in a recent report in Consumers Union, subprime lending for a particular income group in Dallas was four times more prevalent among African-American communities than among whites, and six times as prevalent in Houston. When seen as an issue that also has racial overtones, the predatory lending currently allowed under AMTPA is yet another obstacle barring some groups from fair credit.

With Senate Bill 1581, the 77th Texas Legislature recently enacted legislation that filled many of the loopholes exploited by predatory lenders. The new law specifically prohibits prepayment penalties on high-interest home loans. However, these new measures can be circumvented through AMTPA. Until this backdoor is eliminated, the OTS is preventing Texas from comprehensively addressing predatory lending problems.

The OTS notes in its proposal that prepayment penalties and late fees are not integral elements of alternative mortgages. The OTS also reports that all states but one now allow ARMs, meaning that AMTPA is no longer needed. Instead, predatory lenders are using AMTPA and the existing OTS regulations to evade state law on alternative mortgages and prey upon unsuspecting and vulnerable borrowers. TACDC cannot emphasize enough how urgent it is to remove AMTPA's preemption of state limits regarding penalties and late fees on alternative mortgages.

TACDC notes that the OTS could have made its proposal stronger. The AMTPA statute provides OTS with the discretion to prescribe general limits on loan terms and conditions. The OTS could have adopted a two-year limitation on prepayment penalties for the alternative mortgages issued by all the institutions it regulates including federally chartered thrifts, state-chartered thrifts, and non-depository institutions. The limitation would also stipulate the maximum amount of the prepayment penalty at 1% of the loan amount. Currently, victims of predatory lending are confronted with paying about 5% or higher of the loan amount as a prepayment penalty.

TACDC believes that limiting prepayment penalties across the board would have achieved a greater degree of uniformity in the regulatory framework for different institutions. If the OTS does not adopt a more prescriptive approach, TACDC strongly urges the OTS to stick with its proposal and to resist industry calls to weaken its proposed regulatory changes.

We applaud 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.

Sincerely,

J. Raymundo Ocañas
Executive Director

cc.

National Community Reinvestment Coalition