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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 (Alternative Mortgage Transaction Parity Act; Usury Preemption)

Dear Chief Counsel:

FLORIDA LEGAL SERVICES represents low income Floridians. We has been heavily involved in combating predatory lending in Florida since at least the mid 1980s. FLORIDA LEGAL SERVICES strongly supports the Office of Thrift Supervision's proposed changes to its regulations implementing the Alternative Mortgage Transaction Parity Act (AMTPA) that remove federal preemption of state laws governing prepayment penalties and late fees. Unscrupulous state-chartered lenders in Florida use prepayment penalties and cascading late fees to trap borrowers in abusive alternative mortgage transactions. OTS's current AMTPA regulations, by providing protection from state law for these practices without themselves protecting consumers, have facilitated the proliferation of predatory lending in this state.

Federal preemption of state consumer protection statutes governing prepayment penalties and late fees hardly is related to, much less necessary to the purpose AMTPA has of removing discriminatory barriers to alternative (i.e., not fixed-rate) mortgages. OTS has correctly identified the factors to consider in determining whether to preempt state law under AMTPA - those relating to possible discriminatory impacts on alternative mortgage transactions as opposed to other mortgage transactions - and properly applied them. OTS' role under AMTPA is limited to preventing discrimination against alternative mortgage transactions, not, as much as the lenders might prefer, to shield them from nondiscriminatory state laws intended to protect consumers. We do not support, or believe it appropriate, for OTS to differentiate between depository and nondepository lenders in its enforcement of AMTPA; and we believe it would be a wholly inappropriate incursion of public policy favoring particular lenders into the protection of public deposits to incorporate any particular policies on prepayments and late payments into OTS safety and soundness review.

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 one percent of the loan amount. Currently, victims of predatory lending are confronted with paying about 5 percent or higher of the loan amount as a prepayment penalty.

FLORIDA LEGAL SERVICES 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, we strongly urge the OTS to stick with its proposal and to resist any lender requests to weaken its proposed regulatory changes.

While we support OTS's proposed changes to AMTPA, FLORIDA LEGAL SERVICES opposes OTS's proposal to permit greater late fees for mobile home loans, because the change would increase predatory lending in Florida. Our experience representing clients indicates that many of these loans may be made by predatory lenders, either as purchase loans in conjunction with mobile home dealers; or as refinancing loans in which their representatives apparently scour mobile home parks for likely customers. In Florida, mobile home owners are disproportionately low income or limited income. For the new purchase or refinancing loans, the monthly payments are typically several hundred dollars a month, so OTS's proposed change regarding late payment fees would increase the allowable fees several times over current levels. We urge OTS to *withdraw* this proposed rule change in order not to foster an increase in predatory lending. Failing that, at least keep the 5% of payment limitation in the proposed rule. To do otherwise, we believe, would be unconscionable.

FLORIDA LEGAL SERVICES 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. We also ask OTS to withdraw its proposed increase in allowable late fees for mobile home loans because it would increase predatory lending.

Respectfully submitted,

/S/

Benjamin Ochshorn, Senior Attorney
FLORIDA LEGAL SERVICES