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NAMB

National Association of Mortgage Brokers

June 14, 2002

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attn: Docket Number 2002-17

Re: Docket Number 2002-17; Proposed Rule Amending the Regulations Issued Pursuant to the Alternative Mortgage Transaction Parity Act

Dear Sir or Madam:

The National Association of Mortgage Brokers (NAMB) appreciates the opportunity to comment on the above referenced proposal (the Proposal), which the Office of Thrift Supervision (the OTS) published on April 25, 2002. This comment letter begins with some background information and general remarks and follows with specific comments on the Proposal. First and foremost, we strongly urge the OTS to abandon the idea of eliminating the regulations regarding late charges and prepayment penalties, because we believe it would result in, among other things, disparate treatment among lenders. Further, to combat abusive lending while preserving parity, we believe the OTS should amend these regulations to include limitations on late charges and prepayment penalties that would apply to all lenders.

I. BACKGROUND AND GENERAL REMARKS

NAMB is the nation's largest organization exclusively representing the interests of the mortgage brokerage industry. NAMB now has more than 13,000 members and 44 state affiliates nationwide. NAMB provides education, certification, industry representation, and publications for the mortgage broker industry. NAMB members subscribe to a strict code of ethics and a set of best business practices that promote integrity, confidentiality, and above all, the highest levels of professional service to the consumer.

Today, the nation continues to enjoy an all-time record rate of homeownership. While many factors have contributed to this record of success, one of the principal factors has been the rise of wholesale lending through mortgage brokers. Mortgage brokers have brought consumers more choices in loan programs and products than they can obtain from a branch office of even the largest national retail lender. Brokers also offer consumers superior expertise and assistance in navigating the tedious and complicated loan process, often finding loans for borrowers that may have been turned down by other lenders. Meanwhile, mortgage brokers offer lenders a far less expensive alternative for nationwide product distribution without huge investments in "brick and mortar."

In light of these realities, it is no surprise that consumers have increasingly turned to mortgage brokers. Today, mortgage brokers originate more than sixty five percent of all residential mortgages. The rise of the mortgage broker has been accompanied by a decline in mortgage interest rates and closing costs, an increase in the homeownership rate, and an explosion in the number of mortgage products available to consumers. These positive developments are not mere coincidences. They would not have been possible without the advent of wholesale lending through mortgage brokers. NAMB and its members are proud of the foregoing record of accomplishment and our contribution toward consumers' greater access to mortgage finance and homeownership opportunity.

II. COMMENTARY ON THE PROPOSAL

While the Proposal does not directly affect mortgage brokers, NAMB is concerned when any new legislation or regulation affects the mortgage industry as a whole. Furthermore, because the Proposal treats different kinds of lenders differently, each mortgage broker will be treated differently depending on the wholesale lender with which it works.

A. Disparity.

We object to the proposed elimination of sections 560.33 and 560.34 from those designated as applicable to alternative mortgage transactions primarily because we believe it would result in disparate treatment among lenders. While all depository institutions other than state-chartered thrifts would continue to enjoy federal preemption of state restrictions on prepayment penalties and late fees in connection with alternative mortgage transactions, non-depositories and state-chartered thrifts would be singled out to lose this preemption. This result seems inconsistent with the legislative intent of the Alternative Mortgage Transaction Parity Act (the Parity Act). Under the Proposal, federal thrifts will continue to have the advantage of operating under a uniform nationwide system while non-depositories and state-chartered thrifts would have to comply with fifty-one distinct statutory schemes.

B. Fewer Credit Options for Consumers.

Compliance with fifty-one different sets of laws will result in a disproportionate administrative burden and expense to non-depositories and state-chartered thrifts. Accordingly, these lenders may choose not to operate in jurisdictions where the law on late fees and prepayment penalties is more restrictive, or may discontinue making alternative mortgage transactions with the newly restricted terms. As a result, consumers will have fewer credit options and diminished credit availability. Lenders that continue to make alternative mortgage transactions without late charges and prepayment penalties are likely to pass the increased cost through to consumers in the form of higher interest rates, also resulting in fewer credit options and diminished credit availability to consumers. Instead, we believe that consumers should be provided the opportunity to educate themselves about the characteristics of different loan products to determine whether a loan with a prepayment penalty or a loan with an otherwise higher interest rate is preferable.

C. *Limited Effect on Abusive Lending.*

By eliminating the regulations regarding late charges and prepayment penalties, the Proposal implicitly assumes that state laws are currently in place to combat abusive lending by non-depositories and state-chartered thrifts. In fact, some states do not have statutes that limit the late fees and prepayment penalties charged by lenders. In these jurisdictions, the actual impact on abusive lending by non-depositories and state-chartered thrifts would be limited, at best. Furthermore, the Proposal does not take any steps to prevent federal thrifts from engaging in predatory lending. We find it unlikely that, categorically, these institutions abstain from abusive lending practices. For these reasons, we recommend the alternative discussed below.

III. ALTERNATIVE TO THE PROPOSAL

We recommend an alternative that would provide effective measures to combat abusive lending practices as well as preserve parity by allowing all lenders to enjoy the same federal preemption. We believe the best possible solution would be for OTS to keep the regulations regarding late charges and prepayment penalties in place for all lenders but to amend the current provisions so that they contain reasonable limitations. We recommend that OTS establish the nature of these limitations in future rulemaking.

These uniform limitations, as opposed to the various state laws, if any, would apply to non-depositories and state-chartered thrifts, as well as federal thrifts. If it is true, as some consumers advocates and OTS assert, that federal thrifts do not engage in abusive lending practices, then becoming subject to such restrictions would have no impact on them. In the event that some of these entities do engage in predatory lending practices, the application of uniform limitations will have a positive effect. Unfortunately, other depositories (e.g., national and state banks) still would enjoy the more complete preemption of state laws with no federal restrictions imposed, as these entities are beyond OTS's regulatory reach. Nonetheless, we believe that such action by OTS is likely to generate pressure on other federal regulators to follow suit.

This alternative would provide relief for consumers from truly abusive lending without restricting consumer credit options and availability.

IV. CONCLUSION

We believe that eliminating the regulations regarding late charges and prepayment penalties would result in disparate treatment among lenders, and consequently, fewer credit options and diminished credit availability for consumers. Further, we believe the Proposal would have a limited effect on predatory lending. Because we support fully OTS's objective to combat abusive lending, we recommend amending the regulations on late fees and prepayment penalties to include reasonable limitations applicable to all lenders. We believe this alternative will preserve the spirit of the Parity Act without restricting consumer credit options and availability. We recognize that the specifics of these limitations would be the subject of future rulemaking and welcome the opportunity to comment on them at a later time.

We thank the OTS for the opportunity to comment on the Proposal. If you have any questions about the foregoing discussion, please do not hesitate to contact NAMB's general counsel, Robert Lotstein, of Lotstein Buckman, LLP, at (202) 237-6000, ext. 110.

Sincerely,

Joseph Falk
President