Nevada Fair Housing Center, Inc.

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June 19, 2002

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:

NEVADA FAIR HOUSING CENTER, INC (hereinafter, "NFHC") is a non-profit fair housing organization that provides for enforcement of fair housing and lending complaints. NFHC allow provides educational programs to the community.

NFHC supports two of the proposed changes to the Alternative Mortgage Parity Act (AMPTA) and opposes the third. The specifics, based on case experience, from a practitioner standpoint, is set forth for discussion.

A. Purpose / Scope of AMPTA

When passed in 1982, AMPTA was intended to remove barriers that existed for State chartered institutions by allowing them to engage in lending transactions on par with federally regulated institutions. Pursuant to AMPTA, state chartered institutions can offer adjustable rate mortgages, charge a periodic late fee[1], impose prepayment penalties, [2] adjust interest rates and loan balances[3]. Under Section 560.210, initial and adjustment disclosures from the lender for variable rate transactions are required. AMPTA also places a statutory limitation on the amount of late fees that can be charged on a manufactured housing loan.

During the early eighties, the passage of AMPTA allowed State chartered institutions the ability to compete in the market place by offering creative financing, such as ARM loans. Today, the face of lending has changed. Not only

[1] Section 560.33.
[2] Id
[3] Section 560.35

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is competition of State chartered institutions not in jeopardy, but the proliferation of various predatory lending actions make AMPTA a legal tool for avoiding state consumer anti-predatory lending protections.

B. Nevada Predatory Lending Landscape

In Southern Nevada, from January 17, 2001 through January 2002, NFHC handled 417 predatory lending cases. All loans investigated contained a minimum prepayment penalty of five years. Forty-five percent of the cases handled involved a foreclosure issue that was a direct result of a predatory practice. Thirty four percent of the cases (34%) involved some form of servicing issue, such as improper rate adjustments and/or improper calculation of loan balance, late fees and payoff (prepayment penalty calculation). In many instances, lenders failed to adjust variable rate loans when the variable rate went down. Another common practice was the failure to apply late charges to each late payment once.

While it can be argued that other federal consumer laws offer protections to prevent predatory practices, case studies indicate otherwise. Exemplary of this fact is the failure of over 75% of the lenders investigated to voluntarily comply with a qualified written request for an explanation of charges under the Servicer Act provisions of the Real Estate Property Settlement Act (RESPA).[4]

AMPTA allows lenders to take advantage of a mechanism originally instituted to 'even the playing field' between lenders by avoiding compliance in states that proactively protect consumers, at the expense of the consumer.

Case statistics also show that 97% of the predatory lending cases involved clients with adjustable rate loans versus fixed loans. Moreover, over 50% of the cases involved a change in financial paperwork at the close of escrow.

Non-profit agencies that administer down payment assistance programs also report predatory lending abuses by some participating lenders. A common practice is the attempt to switch loan products during the closing process. This not only impacts the use of federal HOME dollars to increase homeownership, but also creates an increase in required monitoring from local non-profit housing agencies.

NEVADA FAIR HOUSING CENTER also operates a victim's recovery fund to assist clients that are facing immediate foreclosure because of a predatory

[4] 12 U.S.C. Section 2605(f).

lending issue. The loan committee is composed of lenders from various financial institutions that have developed anti-predatory lending programs. The fund allows the disputed payment to be paid, while remedies are simultaneously pursued. From January 17, 2001 to December, 2001, $80,567.23 was distributed to victims of predatory lending.

C. Elimination of the Maximum Late Fee

According to the Nevada Manufactured Housing Division, there are over 450 licensed registered Manufactured Housing Developments that provide space to persons who own or rent their manufactured home. It is estimated that eighty percent (80%) of the occupants in these developments throughout Southern Nevada own their home. The average monthly cost for a lot space is approximately six hundred ($600) per month. Ninety five percent of manufactured home owners are seniors who live on fixed incomes.

In Nevada under N.R.S. 118B, the inability to pay lot fees may result in a forty-five day eviction. Consumers, who are unable to pay the average $3,000 to $4,000 to relocate their home to a development with cheaper lot fees, run the risk of losing their asset. To handle this issue, the Nevada legislature created a housing trust fund to help consumers. The Trust fund, which provides financial assistance only to owners, received over 177 requests for assistance in 2001. To date for the 2002 year, 52 applications have been received.

One effect of eliminating the maximum five-dollar late fee is that consumers who are facing financial difficulty with a lender will seek additional assistance from the fund. Low to moderate-income seniors are the hardest hit by rate changes. Statistics also demonstrate that they are also more likely to be victims of predatory lending.

D. Conclusion

NFHC believes in a free market and competition. It is only when competition goes unchecked that consumers and the community suffer. AMPTA, as currently written, provides a safe harbor to predatory lenders that deliberately structure ARM loans, in excess of loan to value, with no benefit to the borrower. NFHC applauds the OTS for its willingness to amend AMPTA. The change will allow consumer friendly states to protect its housing stock and consumers from predatory practices.

With the exception of the elimination of the maximum late fee for manufactured home loans, NFHC supports the proposed changes.