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The Honorable James E. Gilleran
Director
Office of Thrift Supervision
Department of the Treasury
1700 G Street, NW
Washington, DC 20552

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Re: Alternative Mortgage Transaction Parity Act; Preemption Final Rule, 67 FR 60542 (September 26, 2002)

Dear Director Gilleran:

We are writing on behalf of our client, the National Home Equity Mortgage Association, to request that the Office of Thrift Supervision ("OTS") extend its stay of the effective date of the above referenced Final Rule amending Section 560.220 (the "Amended Regulation"). As you know, both the OTS and NHEMA are waiting for a decision from the United States District Court for the District of Columbia (the "Court") in the case of National Home Equity Mortgage Association v. The Office of Thrift Supervision et al, Case Number 1:02-cv-2506. We respectfully request that the OTS extend the effective date of the Final Rule until sixty days after the Court renders its decision in this case.

OTS published the Final Rule with respect to the Amended Regulation on September 26, 2002, with an effective date of January 1, 2003. The OTS subsequently agreed to extend this effective date to July 1, 2003 in response to requests from various trade associations (including NHEMA) that had expressed concerned about the timing of the implementation of the Amended Regulation. On December 20, 2002, NHEMA filed the above referenced complaint, seeking, among other forms of relief, the Court to declare unlawful and set aside the Final Rule. NHEMA and OTS worked together to submit an agreed upon scheduling order to the Court, with the common expectation that the Court would render a decision before the revised effective date. We found out last week that the Court is not likely to decide this case before July 1, absent a request by NHEMA for a preliminary injunction. We have had some informal, preliminary conversations with OTS representatives involved in the lawsuit concerning our request for a further extension of the effective date of the Amended Regulation pending the outcome of the lawsuit. This letter is to formalize our request.

When we first wrote on November 22, 2002 seeking an initial extension of the effective date, we highlighted the difficulty confronting the industry to implement the Amended Regulation in a three-month period. The Amended Regulation eliminated the availability of federal preemption with respect to prepayment fees and late fees on alternative mortgage transactions. The consequence of this change was to subject the industry for the first time in years to the patchwork of laws in fifty states and several local jurisdictions on this subject. Determining what laws may apply depends on such factors as: (i) the amount, interest rate or lien priority of or on the loan, (ii) the licensing status of the originating lender and (iii) the particular state or local law under which the loan is made; indeed, several states have multiple laws governing prepayment

penalties, sometimes with inconsistent limitations, so the specific terms and conditions of a particular loan will determine what laws apply.

Our prior letter highlighted the difficulty of determining what laws apply for a particular transaction as well as then programming software systems and revising loan documents to account for these new laws. While the three-month extension has afforded the industry some time to adapt, unfortunately the industry is not fully ready to convert its systems to accommodate the changes. In part, the actual implementation of the changes has been hindered by the uncertainty surrounding the lawsuit. Companies were reluctant to complete the final conversion tasks when there was a reasonable expectation that the Court would decide the case well before the July 1st implementation date and perhaps render the changes moot.

Pricing issues further complicate the conversion process. A typical residential mortgage loan takes 30 to 60 days to close after loan application. Loans that close on or after July 1st relate to loan applications that consumers submitted before June 1st, when the conversion process was still underway. In order to be completely safe, lenders would have had to stop offering loans with prepayment fees around May 1st to ensure that they did not misprice the loans that they subsequently would close when the Final Rule goes into effect. Similarly, the capital markets price the loans they pay for future delivery well in advance of the consummation of the securitization of such loans. Indeed, the price at which many non-federally chartered housing creditors price their loans to consumers is based on the pricing they expect to receive or have locked in to receive in the capital markets. Again, the uncertainty surrounding the lawsuit has impacted the pricing models on both a retail and wholesale basis, because there presently is no definitive answer whether prepayment fees will be permitted on alternative mortgage transactions pending the outcome of the lawsuit. Of course, non-federally chartered housing creditors are reluctant to put themselves at a competitive disadvantage with their federally chartered counterparts any earlier than is absolutely necessary.

It is easy to say that non-federal housing creditors assumed the risk when they elected to defer final implementation of the Amended Regulation until the lawsuit is finally decided. In fact, most lenders have completed a fair amount of "backroom," preparatory work trying to get ready for the possible implementation of the Amended Regulation. Unless and until, it is clear that the Amended Regulation will go into effect, however, much of the industry has not completed the conversion process in advance of the scheduled implementation date. As noted above, effective implementation requires a partial conversion well in advance of the final date. The industry would have to undo the laborious, time-consuming conversion of systems if the Court rules in NHEMA's favor.

No one lender can act in a vacuum; they all are part of and compete within the larger mortgage finance system. Even if one wanted to complete the conversion process prior to the actual effective date, that would have been impossible unless the lender makes and holds its own loans. Those that make and sell or buy and hold or buy and securitize are subject to the conversion plans of the other participants in the mortgage finance "food chain." The fact is that

the lawsuit has caused some to wait to see if the Amended Regulation would become law, and others only can go as fast as the slowest industry participants with which they do business.

We respectfully request that the effective date of the Amended Regulation be extended until sixty days after the decision of the Court in the NHEMA lawsuit. Both the OTS and NHEMA thought that the case would be resolved by now. The pleadings spelled out the urgency of a prompt decision. The cooperation of the two parties in the development of a proposed scheduling order again illustrated the expectation and hope of both sides that there would be certainty in the marketplace before the July 1st effective date. If the Court were to rule in favor of NHEMA, depending on the basis of the decision, there may be no Final Rule to postpone. If the Court were to rule in favor of OTS, there could be some lingering disruptions while the entire "food chain" quickly seeks to complete the conversion process from the origination of mortgage loan on a retail basis up to the ultimate securitization of those loans in the capital markets. We would appreciate a final answer to our request by Friday June 13th, 2003, in lieu of our pursuit of alternatives. In addition, perhaps the OTS representative could be prepared to discuss this request with the Judge at Wednesday's status conference.

Thank you in advance for your consideration. We look forward to your answer.

Sincerely,

Laurence E. Platt

cc: Carolyn Buck, Esq.
Thomas Segal, Esq.
Maury Shevin, Esq.
Jeffrey Zeltzer