

Manager, Dissemination Branch  
Information Management and Services Division  
Office of Thrift Supervision  
1700 G Street, N.W.,  
Washington, DC 20552  
**Attn: Docket No. 2000-34**

OFFICE OF THRIFT SUPERVISION  
DISSEMINATION BRANCH

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Dear Office of Thrift Supervision:

On behalf of the nonprofits I work with, I would respectfully like to comment on OTS' Responsible Alternative Mortgage Lending rulemaking, Docket No. 2000-34. **First, OTS should promulgate regulations to prevent federal thrifts from engaging in predatory lending practices**. Predatory lending practices have increased dramatically in recent years. Not only do they harm low-income and minority homeowners, but they also impair the safety and soundness of institutions engaging in these practices since such practices often lead to borrower default. Since traditional federal thrifts are beginning to be active players in the subprime market, now is the appropriate time for OTS to set the appropriate standards of conduct through regulation. In addition, many finance companies engaged in subprime lending have applied to OTS to obtain thrift charters.

An appropriate federal regulation on subprime home loans would be based on three principles. **First, no subprime home loan (defined as loans having an interest rate greater than conventional loans) should contain a prepayment penalty**. Prepayment penalties trap borrowers in high-rate loans, which too often leads to foreclosure. They also act as the glue that enables broker-based racial steering, and borrowers in predominantly African American neighborhoods are **five times** more likely to be subject to a prepayment penalty than borrowers in white neighborhoods. The marketplace will help enforce fair lending principles and police steering if borrowers can get out of bad loans as soon as they realize they are harmed, but prepayment penalties prevent this from happening. Finally, borrower choice cannot explain the prevalence of prepayment penalties in subprime loans since only 2% of borrowers accept prepayment penalties in the competitive conventional market, while, according to Duff and Phelps, 80% of subprime loans they rate charge them.

**Second, no home loan should contain up-front, lump-sum credit insurance premiums or debt cancellation/suspension agreements that are financed into the loan. Finally, for subprime loans that exceed HOEPA thresholds, OTS should implement additional protections**, such as prohibiting balloon payments, the financing of fees into the loan amount, mandatory arbitration and requiring homeownership counseling before closing. In addition, OTS should require thrifts, their affiliates, and subsidiaries to upstream potential borrowers to the lowest-cost products offered by their related entities. Finally, thrifts should receive unfavorable CRA consideration for the origination, purchase or facilitation of loans with harmful characteristics, such as subprime loans with prepayment penalties, financed credit insurance or debt cancellation/suspension agreements, and fees greater than 3% of the loan amount as defined by HOEPA.

**Second, OTS should revise its Alternative Mortgage Transaction Parity Act (the Parity Act) regulation (12 CFR 560.220.) to remove prepayment penalties and late fees from the list of applicable regulations.** This revision would enable individual states to better regulate non-depository state housing creditors (primarily finance companies). Under current regulation, these state housing creditors are able to preempt state law restrictions on prepayment penalties and late fees by structuring loans as alternative mortgages (either adjustable rate mortgages or mortgages with balloon payments).

These lenders are thus able to take advantage of federal preemption without any corresponding obligation to submit to agency regulation.

OTS' role under the Parity Act is to identify which thrift regulations apply specifically to mortgage loans with alternative structures. Since the provisions relating to prepayment penalties and late fees apply to all mortgage loans generally, these provisions should be removed from the list of regulations applicable to state housing creditors. Certainly, time has demonstrated that allowing unregulated, non-depository institutions to piggyback on federal thrift preemption has inadvertently facilitated predatory lending practices.

**Finally, the OTS should recommend to Congress that it repeal the Parity Act.** In the midst of the high interest rate environment of the early 1980s, the Parity Act was passed to enable state-chartered lenders to offer ARMs and avoid asset-liability mismatches. The mortgage lending market, however, has changed dramatically over the last twenty years. Alternative mortgages are commonly accepted in the marketplace, and lenders have many more options available to manage asset-liability problems associated with mortgage lending. Therefore, the Parity Act is no longer necessary to ensure the adequate supply of mortgage credit to American homebuyers. Not only is the Parity Act no longer necessary, it is now harmful to state efforts to restrict deceptive terms that meet the Parity Act's definition of "alternative" mortgages, such as balloon payments, on high cost loans.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael S. Sher". The signature is written in a cursive style with a long horizontal flourish extending to the right.