AMERICAN
LAND TITLE
ASSOCIATION

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July 5, 2000

Manager, Dissemination Branch,
Information Management and Services Division
Office of Thrift Supervision,
1700 G Street, N.W.
Washington, D.C. 20552

Attention: Docket No. 2000-34

Dear Sir or Madam:

These comments on the Advance Notice of Proposed Rulemaking announced in Docket No. 2000-34 (65 Fed. Reg. 17811 (April 5, 2000)), are submitted on behalf of the American Land Title Association (ALTA). ALTA represents the interests of 2,400 title insurance companies, agents, independent abstractors and attorneys who search, examine, and insure land titles to protect owners and mortgage lenders against losses from defects in titles. Many of these companies also provide additional real estate information services, such as tax search, flood certification, tax filing, and credit reporting services. ALTA members employ nearly 100,000 people, and operate in every county in the country.

One of the questions raised by the Notice is whether OTS should adopt regulations on high-cost mortgage loans and, if so, what loans should be covered. (65 Fed. Reg. at 17816.) While ALTA has no position on whether new regulations are needed, we would like to address what loans should be covered and how "high cost" loan should be defined in any such regulation.

The current provisions of the Home Ownership and Equity Protection Act (HOEPA) amendments to the Truth in Lending Act (TILA) define a high cost loan to include loans with high interest rates (i.e., more than 10 percentage points higher than the yield on Treasury securities having a comparable maturity) or a loan where "the total points and fees payable by the consumer at or before closing will exceed the greater of (i) 8 percent of the total loan amount; or (ii) $400." TILA, §103(aa)(1)(B). In determining what constitutes "points or fees" for purposes of this provision, §103(aa)(4)(C) provides that points and fees shall include "the charges listed in section 106(e)" – which, in turn, includes "[f]ees or premiums for title examination, title insurance, or similar purposes" – but such fees shall be **excluded** if:

- the charge is reasonable;
- the creditor receives no direct or indirect compensation; and
- the charge is paid to a third party unaffiliated with the creditor.

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In other words, reasonable charges by independent title entities who are not affiliated with the lender, and where the lender does not receive direct or indirect compensation in connection with the charge, are not counted toward the 8%/$400 "points and fees" threshhold that can turn a mortgage loan into a "high-cost" loan. On the other hand, if the provider of title services is affiliated with the lender, or if the lender receives direct or indirect compensation in connection with the charge, or the provider's charges are unreasonable, the amount of the title-related charges is counted toward the 8%/$400 threshhold.

ALTA believes that this approach is both reasonable and appropriate, and should be maintained in any regulations OTS may adopt. As the Senate Banking Committee report on the 1994 HOEPA legislation made clear, the purpose of imposing a trigger based on points and fees charged in the transaction was to "prevent unscrupulous creditors from using grossly inflated fees and charges to take advantage of unwitting customers."[1] On the other hand, if the lender is not benefiting from the charge, the charge is made by an unaffiliated third party, and the charge is reasonable, the charge does not affect in any way whether the loan is "predatory," and, as Congress correctly concluded in 1994, there is no reason why such charges should be included in determining the trigger for HOEPA coverage.

Accordingly, maintaining the current HOPEA approach to "points and fees" would be consistent with OTS' desire to define "high cost loan" to "reach areas where the potential for abuse is highest without having an unnecessarily chilling effect on non-traditional, but non-abusive, loan structures." 65 Fed. Reg. at 17817. Moreover, it is worth noting that both the North Carolina legislation[2] and the proposed regulations in New York[3] referred to in the OTS Notice adopt this approach to defining "points and fees."

We appreciate this opportunity to present our views to the OTS. If you have any questions or need any further assistance, I can be reached on (202) 296-3671, ext 214.

Respectfully submitted,

Ann vom Eigen
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American Land Title Association

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[1] S. Rep. 103-169 at 24 (1993).

[2] See §24-1-1E(5)(b) of the North Carolina statute.

[3] See Section 41.1(g) of the Proposed Regulation (defining "points and fees" by reference to 12 C.F.R. §226.32(b)