June 24, 2002

228

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street NW
Washington, D.C. 20552
Attention: Docket No. 2002-17, Alternative Mortgage Transaction Parity Act

Ladies and Gentlemen:

Quicken Loans ("Quicken") and Intuit Inc. ("Intuit") appreciate the opportunity to submit comments to the Office of Thrift Supervision ("OTS") on its proposal to modify the Alternative Mortgage Transaction Parity Act regulations to exclude Parity Act protections for prepayment penalties and late fees. As a leading national mortgage lender making conventional, government and alternative (or "subprime") mortgages, we respectfully submit that the proposed amendments would only serve to unnecessarily restrict consumer credit and raise the costs of accessing much needed credit for consumers, without measurably increasing consumer protection. These consequences are antithetical to the rationales underlying the Parity Act: enhancing consumer access to credit (particularly during difficult economic periods) and eliminating discrimination against housing creditors depending on their regulatory status. Finally, while we strongly support the need to provide consumer protection and eliminate abusive lending practices, we believe that repealing the only federal preemption that now exists will not accomplish either objective and may not be within the OTS' legislative purview without express Congressional validation. In fact, enhanced enforcement at all levels of government, coupled with effective consumer financial education and credit counseling, starting at the very earliest ages, are much more effective tools to crack down on *exploitive* practices and protect consumers.

Overview

Quicken is the nation's largest online residential mortgage lender offering conventional, alternative, and government loans in the 50 states. An independent subsidiary of Intuit Inc., Quicken was founded by Chairman Dan Gilbert in 1985 and is now under the leadership of CEO Bill Emerson. Headquartered in Livonia, Michigan with two mega branch offices in Auburn Hills and Farmington Hills, we employ over 1,000 employees (an increase of 50% from April 2000). With our nationwide online presence in calendar year 2001, Quicken Loans closed approximately 31,500 residential mortgage loans, worth approximately $4.6 billion. The vast preponderance of our mortgage business consists of conventional loans. Of the $4.6 billion in mortgage loans closed in 2001, $4.485 billion, or 97.5% were conventional and governmental loans. In contrast, we make a relatively small percentage of alternative loans. We estimate that of

all loans closed in 2001, less than 2.5%, or $100 million would be considered to be alternative loans.

Our primary business consists of mortgage origination. Our goal is to resell our mortgages into the secondary market as soon as possible after closing. We are not a servicer, but the future revenue streams that are generated by servicing loans is a major component of our ability to find investors to purchase our loans. As discussed in greater detail below, the prepayment penalty feature of our alternative mortgage loans is a major component to protect these future revenue streams and thus our ability to package and resell loans.

One of our corporate operating values is "Integrity without Compromise" and we are proud to be a national housing creditor, as defined by the Alternative Mortgage Transaction Parity Act (the "Parity Act"), lending to all consumers fairly and with open and proper disclosure in compliance with federal, state, and local laws. As a lender that has been in the business for over 17 years, we understand and share the concern of elected officials and regulatory authorities regarding perceived predatory lending, especially in the legitimate alternative mortgage market. Although it constitutes only a minute segment of our lending business, we believe that the alternative mortgage market is a critical sector, offering access to credit-impaired borrowers who would otherwise have few credit alternatives to secure their financial needs and, importantly, to participate in the American dream of home ownership. Given our many years of experience in the lending business, we strongly believe that the strongest protection for consumers against predatory lending is a two-part strategy:

1. Government should enforce the existing laws that are on the books to stop the outright fraud and deception of borrowers who obtain certain subprime loans.

2. The lending industry and government should step up national, state and local financial literacy efforts through public and private partnerships which will leverage the expertise of the industry with the public policy need to increase the financial knowledge of our most vulnerable citizens.

These are the critical tools, combined with a streamlined mortgage process that provides information to borrowers in plain English as to the serious problems in the alternative mortgage market. We think that if the OTS' primary objective is combat predatory lending abuses, it would be better served incorporating these tools and addressing those issues head on, rather than incrementally chipping away at an important credit vehicle, like the Parity Act.

The Parity Act is a significant component of our ability to be a national lender. It helps us minimize our costs and to offer flexible financing vehicles to people with few options at price points which make financial sense for consumers. We submit that altering the Parity Act at this time is injurious to the very consumers who need its applications the most and is neither justified by the intent, history, or economics

underlying the adoption of the Parity Act nor the suggestion by Parity Act opponents that the Parity Act itself is the cause of abusive lending practices.

Proposals Are Inconsistent with the Language, Intent, and Spirit of the Parity Act

The Alternative Mortgage Transaction Parity Act (the "Parity Act") was enacted in 1982 as part of the Garn-St. Germain Depository Institution Act (the "Act"). The Act itself was a response to the fact that with a depressed economy and extraordinarily unstable savings and loan environment (caused by being locked into low rate loans when the cost of money was at all time highs), only a small percentage of consumers were able to access credit. The Act was the solution to maintain the viability of the nation's thrift industry by revising overly restrictive guidelines that prevented savings and loans institutions from offering credit or from operating in a financially viable manner during difficult economic circumstances. In addition, the Parity Act, which took its origins in earlier omnibus housing legislation, was intended to further ease the tension in the credit markets by attempting to harmonize the disparate and discriminatory impact created by subjecting state housing creditors to a different, inconsistent regulatory scheme. The Parity Act levels the playing field by enacting one, consistent, uniform set of rules, and, in so doing, stimulates the entire credit market.

The OTS correctly notes that one of the primary considerations underlying the introduction and implementation of the Parity Act was the fact that 26 states had inconsistent regulations in place. Discussed further herein, the regulatory situation since the 1980s has only gotten more complex, with states and municipalities increasingly anxious to layer additional lending regulation. For this reason alone, the federal government should be considering ways to strengthen the Parity Act, to ensure that housing credit remains available, as opposed to weakening its already limited applicability. Finally, we note that unlike the 1980s, technological advances, notably the development of the Internet and the repeal of outdated banking regulations such as Glass Steagall, have caused the credit and banking industries to truly become a national system. Thus, for example, although we are physically located in Michigan, we can make loans in fifty different states. We are a national lender. The fact that the Internet enables more business transactions to cross interstate boundaries should give any federal regulator serious pause at the proposition that the proper regulatory authority is not, in fact, the federal government.

The beneficiaries of the Parity Act included both the state chartered housing creditors, and, more importantly, any consumer previously locked out of the credit market because of the lack of availability and access. Those consumers tended to be those with blemishes on their credit histories and as a consequence, could not qualify for traditional fixed term, fixed rate loans. By increasing the ability of non-federally regulated housing creditors to make flexible and innovative, "alternative" loans, the segment of the market that stood to gain the most from the Parity Act were the individuals with the fewest credit options previously available to them.

The Joint Explanatory Statement of the Committee of Conferees eloquently expresses the twin goals underlying the Parity Act. According to the conferees, those goals are "to revitalize the housing industry by strengthening the financial stability of

home mortgage lending institutions and ensuring the availability of home mortgage loans." Although we have not experienced excessively high interest rates for some time, the economics and policy concerns that gave rise to the Parity Act continue unabated twenty years later. Those circumstances include an economy that remains challenged and challenging, despite some recent announcements of a slight recovery. They also include the fact that for those without the most sterling credit histories, credit is tight. Conventional, fixed-rate, fixed-term mortgages are most likely unavailable, and thus individuals in this circumstance must resort to more innovative financing vehicles for assistance. The conundrum for these individuals is that the more challenging the economic outlook becomes, the more difficult it will be to access credit.

We cannot understand any proposal that seeks to further limit the few credit opportunities that currently exist by driving out legitimate, state chartered housing lenders from the alternative mortgage market. For the same reason, we cannot understand a proposal that seeks to reintroduce discrimination into the marketplace on the basis of who regulates the lender. Our concern stems from the fact by subjecting state chartered housing creditors like ourselves to a different and infinitely more complex regulatory scheme than either depository institutions or federally regulated entities, the OTS will only succeed in making the loan products that we offer noncompetitive.

The costs of compliance with 50 differing state regimes (not to mention municipalities) will either force us out of the market or into a position of offering ever-increasingly expensive loans to cover our compliance costs. Chipping away at the limited protections against discriminatory impact now embodied by the Parity Act, as proposed by the OTS, will only serve to eliminate an important source of lending in the alternative mortgage market. Disproportionately affecting state housing creditors and limiting credit opportunities are outcomes that are not supported by the historic, economic or policy conditions underpinning the Parity Act, and, in fact, defeat its very purpose.

Proposals Misunderstand the Nature of Lending in Both the Conventional and Alternative Markets

OTS, in its notice of proposed rulemaking, makes several assertions to support removing prepayment penalties and late fee charges (collectively, "fees") from Parity Act preemptions. Specifically, OTS states that both fees are not an "intrinsic" feature of making alternative mortgages, but in fact are applicable to all mortgage loans. To support this proposition, OTS further notes that states limiting fees do so with respect to all mortgage loans. Finally, OTS notes that credit unions have allegedly banned such fees as further support that they are not intrinsic to the alternative mortgage market. Respectfully, these assertions misunderstand the nature of the alternative mortgage market, the nature of state laws regulating mortgage lending, and apply analytical factors to the Parity Act of limited relevance.

According to a July, 2000 Department of Treasury Report on Predatory Lending, "[w]hile predatory lending can occur in the prime [or conventional] market, it is ordinarily deterred in that market by competition among lenders, greater homogeneity in

loan terms, and greater financial information among borrowers." In other words, the nature of the conventional lending market and the borrowers within it are such that the market will not support these fees. In fact, the conventional market is extremely competitive. There are literally thousands of lenders nationally offering a variety of conventional lending products. Borrowers qualifying for conventional loans, by definition, have good credit histories. As such, these individuals have the luxury of being able to compare a variety of product and lending offerings and to make decisions based *not* on limited opportunities but on the basis of what is the best deal available. Not surprisingly, conventional borrowers will shop on the basis of price—which means that lenders imposing additional fees such as a prepayment penalty will lose the business. In short, we cannot impose additional fees such as a prepayment penalty in such a competitive market environment if we expect to close conventional loans.

There is another reality at work in the conventional market place that negates our need to impose prepayment penalties and late charges. Fees such as prepayment penalties and late charges are imposed to insure that the borrower repays the loan on time and in accordance with the repayment schedule created when the loan is originated. In turn, the repayment schedule assumes that the loan transaction will not be refinanced within a short period of time, enabling the lender (or servicer if the loan is resold into the secondary mortgage) to recover the costs of making that loan. By some estimates, it can take as long as seven years to recover the transaction costs. Because conventional borrowers, collectively, tend to make their loan payments on time and (in the absence of declining interest rates) do not refinance for long periods of time, they do not pose the investment or credit risks that justify the imposition of additional fees and charges.

Unfortunately, the nature of the alternative mortgage market and the credit and investment risks posed by such borrowers are such that prepayment penalties and late fees are a necessity to originate an alternative mortgage and, in turn, to be able to resell it into the secondary market. In contrast to the conventional markets, borrowers forced into the alternative market because of their degraded credit histories have fewer lending options available to them. In the past few years alone, there has been tremendous consolidation in the alternative lending market, with many such lenders no longer in that business. We estimate that there are two major secondary investors, and perhaps another 10-20 larger lenders willing to buy alternative loans in the secondary market. Given the limited nature of competition and choice in the market, borrowers in the alternative mortgage market have only a limited opportunity to be price sensitive. Put another way, like conventional borrowers, individuals in the alternative may be able to shop around for the best deal, but their choices in making that decision will be severely limited.

Even though the alternative market may have limited competition, we believe that market influences are beginning to develop that will influence the types of terms that might be in alternative mortgages. For example, although Freddie Mac is not a large presence in the secondary market yet, its guidelines already influence the terms of loans to be offered in the conventional market and increasingly in the secondary market. Freddie Mac will not purchase refinancing loans that exceed the HOEPA limits. Nor, for that matter, will it invest in loans in which we, as the lender, have not analyzed and

documented the borrower's capacity to repay the mortgage. Beginning October 1, 2002, it also will not purchase loans with prepayment penalties that exceed three years or that have not disclosed the terms of the prepayment. These are not isolated efforts—Assistant Secretary Sheila Bair, during her tenure with the Department of the Treasury, attempted to expand this example to Wall Street firms that securitize subprime loans. In other words, market and business considerations cannot be underestimated in terms of their ability to deter abusive practices.[1]

As a group, borrowers in the alternative market pose a much greater risk either that they will not make their scheduled payments predictably or on time, or will refinance the loan within a short period of time after financing, as routinely documented by Wall Street analytical comparisons. To be able to offset the risks that either the loan payments will not be made or that the loan will be refinanced before we (or our servicers) can recoup the investment costs, we must impose prepayment penalties and late fees on alternative mortgages. If we cannot either mitigate the credit or investment risk, we seriously question our continuing ability to make alternative mortgages and, we suspect, other lenders will engage in a similar analysis. The unavoidable conclusion is that these fees are not just intrinsic to but a critical feature of our continuing ability to participate in the alternative mortgage market.

We are in complete agreement that there are two superior solutions to this problem. One solution is to provide opportunities for individuals who cannot qualify for conventional mortgages to get the help and counseling they require to qualify for conventional loans. In fact, Fannie Mae's expanded approval process is a leading example of this effort, and we have incorporated a similar concept into our lending model. The second is to ensure greater choice in the alternative mortgage market. Altering the Parity Act as suggested by the OTS furthers neither solution.

To facilitate a national mortgage lending business, we rely on the Parity Act to continue offering alternative mortgages in the face of increasing state regulation. We have done so because the uniformity and certainty permitted under the Parity Act allow us to streamline our lending, compliance and legal operations. One consequence is that we have been able to keep our costs down for all lending sectors, including the alternative business. In the absence of full federal preemption and with additional state regulation, the Parity Act is an increasingly important tool for us to keep our compliance costs down and to continue operating in the national marketplace. It is the only regulation on the books now that allows us to consolidate and streamline our practices in the face of increasing state and municipal action. We know, for example, that at least three states alone this year have passed some form of legislation prohibiting certain types of "predatory lending" practices. We also know that besides these three states, there are, by

[1] We also emphasize the fact that Freddie Mac has not completely prohibited prepayment fees, recognizing instead that they help protect legitimate investment risk. In fact, Freddie Mac notes that the three year period is necessary to help subprime lenders resolve the underlying credit risk. "Freddie Mac recognizes that a complete ban on subprime prepayment penalties would severely disrupt the subprime market segment, limit borrower options, and immediately increase rates for all subprime borrowers." (Questions and Answers on Freddie Mac new prepayment penalty policy, released February 28, 2002)

some estimates, roughly 104 other state and municipal jurisdictions considering implementing "predatory" lending legislation. While we cannot know with certainty at this time how much this additional regulation will cost lenders, we know with absolute certainty that lenders will inevitably be forced to hire more people and develop more complicated systems simply to comply. Much of this cost will be borne by borrowers, including those least likely to be able to afford the additional costs. The alternative is to simply stop making alternative loans. Neither outcome is consumer friendly.

Moreover, the regulation that we see in the states is not aimed at restricting all conventional mortgage loans, as OTS contends, but is intended to combat allegations of growing abusive lending tactics in one segment of the alternative mortgage market. Most state and local regulators attempting to limit abusive practices use the construct of "high cost mortgage loan" as a proxy for the allegedly abused segment of the alternative mortgage market. In this context, and only in this context, to our knowledge states and municipalities are considering limitations on the ability of lenders to impose fees and charges (among other things). While it is obviously important to protect consumers from fraud, such efforts might be misdirected given the enhanced credit and investment risks that this market sector poses. Certainly, no conclusion about the applicability of such fees and charges to any other lending product should be drawn from these activities, as OTS attempts to do.

Finally, the prohibition on such fees by credit union regulators is neither dispositive nor relevant. By definition, credit union membership is strictly controlled and, as a consequence, the credit risks posed by its borrowers may not parallel the variety or scope of risks associated with a broader population sample. As a group, credit unions make an even smaller percentage of alternative mortgages than other types of lenders, although alternative loans appear to be a growing product line even for credit unions. (An individual who can access the benefits of credit union membership is in the enviable position of having yet another potentially favorable lending option that is not available to most segments of the borrowing community.) From a business perspective, if the credit and investment risks are minimal, there is even less reason to impose fees designed to protect against investment and credit risk, such as prepayment penalties and late charges. But, even credit unions permit "repayment" penalties, provided that such fees and charges are in line with actual costs.[2] Finally, as a group, credit unions have always been subject to different lending rules (including, without limitation, community reinvestment act requirements) due to their uniquely different membership and banking demands. Consequently, the comparison between the regulations for credit unions and other types of housing creditors for purposes of validating the proposed changes is, at best, imprecise.

Ultimately, the only analysis that should have any weight under the Parity Act is one that examines whether the proposal enhances or impairs the continuing availability of credit to credit-impaired borrowers, especially in difficult economic times. We are

[2] See, for example, statement of Ms. Lee Williams, President of Aviation Associates Credit Unions, on behalf of the Credit Union National Association, before the Senate Committee on Banking, Hearing on "Predatory Lending: The Problem, Impact, and Responses," July 27, 2001.

greatly concerned that the proposal impairs the availability of credit, particularly for those who need it the most. For this reason, we question whether, in attempting to regulate a few abusive lenders, the OTS may inadvertently contribute to the very problem it seeks to eradicate. As stated previously, even without the proposed changes to the Parity Act, there is limited choice available to alternative borrowers. If the OTS proposals become effective and legitimate lenders discontinue offering alternative mortgages, the very consumers the OTS seeks to protect will find themselves either in a much more vulnerable position with even fewer choices and thus susceptible to greater exploitation, or without the capacity to find credit altogether. Both results are contrary to the express purpose of the Parity Act and counter to sound public policy.

Greater Enforcement, Simplified Disclosures in Plain English, and Additional Financial and Credit Education are Better, More Targeted Tools to Fight Abusive Lending Practices.

Commentators arguing against continued operability of the Parity Act state that the proposals are necessary because states need more oversight authority over state housing creditors; lenders are taking advantage of OTS regulations to squeeze in conventional loans; and such changes are needed because the existing regime "allow[s] non-depository institutions to piggy back on federal preemption and facilitate predatory lending." We believe, based on this statement, that what OTS really seeks to accomplish is to open a national dialogue on predatory lending, and is using the Parity Act as the means to begin that dialogue. Although we would welcome a national dialogue on the topic, we are of the opinion that altering the Parity Act is an awkward and unconvincing mechanism for such discussion, and offer a few observations regarding the criticism of the Parity Act.

As a state chartered non-depository institution, we concede that we are subject to fewer safety and soundness regulations. On the other hand, because we are non-depository by definition, we are taking in no funds of the savings public, whether by means of a savings account, checking account, certificate of deposit, money market, or other type of account. Safety and soundness regulations seek to preserve the capital of depositors. There is simply less need to impose safety and soundness regulation on us as non-depository institutions.

In contrast, before we can make consumer loans, we must comply with strict lending requirements that are subject to state housing authority oversight in every state. In some cases, the requirements that are imposed on us, because we are state chartered, are far more onerous than those imposed on depository institutions, and may even be more rigorous than federal oversight of federally-regulated institutions. For example, the State of Michigan imposes strict lending and licensing requirements on us, but exempts depository institutions from these same laws. State housing regulators have the capacity to exercise oversight and do, in fact, exercise such oversight through periodic audits. From our own experience, these audits generally occur every 12-24 months. However, if the regulator suspects a problem, these audits can and do occur with greater frequency. During such audits, the regulators are overwhelmingly concerned with whether the loans that we make comply with the existing state lending laws. In short, there is sufficient

authority for state regulators to exercise investigative oversight to determine whether housing creditor lending practices are fair, just, and in compliance with the applicable laws. If there is a deficiency that now exists in the system it exists because too few resources have been dedicated at either the state or federal level to conduct additional or more thorough oversight. This problem is easily remedied, not by changing the Parity Act, but by dedicating additional resources to fight the problem.

We also note that education and counseling can and must be critical tools to help individuals repair their credit histories and thus qualify to access better and additional credit. Few people understand that the actions they have taken in the past, whether that be incurring too much revolving credit, not enough credit, or failing to pay their outstanding credit on time, have long-term consequences for them. These are the individuals that we seek to help when we, for instance, offer information on our web-site to better prepare them to become homeowners, to understand the lending and credit process, and to proactively restore their credit histories. These efforts are not dissimilar from programs offered by many other resources, including the Department of Housing and Urban Development, AARP, and Fannie Mae.

Despite the existence of such educational efforts, it seems that too few consumers utilize the benefits of these resources. Perhaps a broader consortium effort, coupled with public private partnership encompassing those who support the Parity Act and those leery of federal preemption, would be better served by consolidating and coordinating their education and outreach efforts to help consumers understand the process and legitimate lending transactions, thereby reducing the ability of an unscrupulous lender to take unfair advantage.

As to the other allegations, we accept as matter of general principle that there are some lenders that take advantage of vulnerable borrowers[3]. This practice is anathema to us for many reasons, and we are more than willing to be constructive participants to eradicate this problem. We do think, however, that our efforts should be confined to rectifying identified and documented problems. The OTS cites no evidence to support its contention that the Parity Act, in and of itself, is the source of predatory lending. Thus, in the absence of actual and convincing evidence that the Parity Act is the problem, we submit that the more logical use of the OTS' resources is to utilize its enforcement powers against those lenders it knows to be "facilitating predatory lending" while

[3] We note, however, that the incidences of predatory lending are documented only by anecdote. As such, whether there is a pervasive, national predatory lending problem has not been scientifically or rigorously established. See, for example, Predatory Lending Report, Department of Treasury, July 15, 2000, "However, there is a growing body of anecdotal evidence that an unscrupulous subset of these subprime actors…engage in abusive lending practices that strip home equity and place them at increased risk of foreclosure." See also, 'Analyzing Trends in Subprime Originations and Foreclosures, A Case Study of the Atlanta Metropolitan Area", prepared by Abt Associates for the Neighborhood Reinvestment Corporation, "However, while awareness of predatory lending practices has grown, there is little systematic evidence available to evaluate the magnitude and trends in the origination of these loans and resulting foreclosure." We think this type of basic research is the first step to determine how pervasive any problem might be and what reasonable steps should be taken by the industry and the regulators to correct it.

retaining the integrity of the Parity Act to permit legitimate alternative lenders to continue to provide important sources of credit.

Further, if the OTS' intent is to focus attention on predatory lending, that focus should encompass those practices about which we can all agree tend to be abused. By all accounts, prepayment fees, by themselves, are not abusive practices per se. By the same token, refinancing credit, by itself, is not an abusive practice. On the other hand, most commentators site continually refinancing loans where there is no perceptible benefit to the borrower, high pressure sales tactics, and lending without regard to a borrower's capacity to repay[4] as tactics that may be sufficiently abused in disregard of existing federal and state laws, that these might be areas ripe for additional federal oversight and enforcement.

Finally, we commend OTS for recognizing that it lacks the legislative authority to repeal the Parity Act in the absence of Congressional directive. Yet, by eliminating Parity Act application to two of the four critical features of alternative mortgages, we submit that OTS is effectively repealing the Parity Act, beyond its legislative authority. The fact that prepayment penalties and late charges are arguably not delineated in the Parity Act is of no consequence to the OTS' analysis, given the broad, flexible terms adopted by Congress and the Parity Act's goal of removing discriminatory impediments to housing credit. This conclusion is accentuated by the fact that the notice of proposed rulemaking contains explicit direction to Congress to reconsider the Parity Act in its entirety. We are greatly concerned that this activity may overstep executive branch authority, serving to preempt Congressional prerogative and acting as a backdoor attempt to repeal valid legislative action, solely on the commendation of a few voices and in the absence of documented need.

Parenthetically, we note that either legislative suggestion made by OTS to Congress would effectively nullify the Parity Act and should be flatly rejected. Given the number of states that are now considering predatory lending legislation, we can only conclude that given a second opportunity to opt-out of Parity Act application, a great many states would rush to do so. By itself, a second opportunity to opt-out would gut the application of what is intended to be a nationally uniform law. Consequently, the proposal cannot be seriously justified by the intent or the history of the Parity Act. The second conclusion, that somehow the states do not know who the state chartered housing

---

[4] See, for example, Statement of Mr. Mike Shea, Executive Director, ACORN Housing, Before the Senate Committee on Banking, Hearing on "Predatory Mortgage Lending: The Problem, Impact, and Responses," July 27, 2001; Department of Treasury Report on Predatory Lending, July 2000. The report makes several important observations. First, it identifies four principal areas as the most serious types of predatory lending abuses. These areas are: loan flipping, packing points and fees, lending without regard to a borrower's ability to repay, and outright fraud. On the question of prepayment penalties, the report notes that they are already subject to regulation (and limitation) by HOEPA. To the extent that there might be abuses involving prepayment penalties, the recommended correction is to limit the length of time during which such fees may be charged, provide explicit circumstances under which such fees could not be charged (for example, the borrower is forced to relocate for business purposes), and to require lenders to offer a choice of product in which there are no prepayment fees, which would almost certainly mean a lending product with a higher interest rate.

institutions are and thus must be subject to a special reporting requirement grossly misunderstands the amount of state-sponsored regulation and legislation to which we are currently subject, even though we may be relying on Parity Act application to permit prepayment penalties and late fees. Thus, we find no basis in law or reason to impose additional reporting requirements on us.

In conclusion, we appreciate both the opportunity to comment and the concerns that give rise to the notice of proposed rulemaking. And, we agree that every effort must be taken to punish those who abuse their special positions of trust and confidence. But, we submit that targeted and effective tools exist to help state and federal regulators detect and punish those who exploit vulnerable borrowers, notwithstanding the federal preemption provided by the Parity Act. By altering the Parity Act as it is now written and regulated, we believe that no abusive practice would be deterred or prevented, but many more individuals will be unable to access much needed credit. With our continuing sluggish economy, now is not the time to re-evaluate any legislative activity that helps maintain the availability of housing credit for all, especially those who need expanded credit opportunities the most.

We thank you for this opportunity and look forward to continuing to work with OTS on this and other matters in the future. If you have any questions, or would like additional information, please feel free to contact Whitney MacDougall (858-784-1451) or Angelo Vitale (734-805-7556).

Sincerely,

David Carroll
Vice President, Quicken Loans