

81

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Via e-mail: regs.comments@ots.treas.gov.

Attention: Docket No. 2002-17

To Whom it May Concern:

The Human Rights/Fair Housing Commission (HR/FHC) strongly supports the proposed changes to the Office of Thrift Supervision's regulations implementing the Alternative Mortgage Transaction Parity Act (AMTPA). These changes will make clear that many more borrowers are protected by California's laws regulating prepayment penalty provisions and late fees. These two loan provisions are mainstays of predatory mortgage lending which has exploded in California and nationally in recent years.

In 1963 the HR/FHC entered into a joint powers agreement with the City and the County of Sacramento to promote harmony and to protect all citizens in the County of Sacramento from acts of hate crime violence and discrimination in housing and public accommodations. The HR/FHC is empowered to enforce, investigate, mediate and / or litigate acts of housing discrimination in Sacramento County. The HR/FHC assisted the CRC with its 2001 California predatory lending audit by interviewing borrowers of subprime loans. A majority of the borrowers in Sacramento did have prepayment penalties that were applicable during the first three years of the loan.

These onerous provisions tend to trap borrowers into abusive loans. Borrowers have also faced stiff late fees associated with abusive loans. The current AMTPA regulations and OTS interpretations have wrongly facilitated the proliferation of prepayment penalties and late fees in predatory loans. Prepayment penalty and late fee provisions are not intrinsic to alternative mortgages, they are merely loan features that have been misused and abused by predatory mortgage lenders that use OTS regulations to circumvent state law protections.

In 1996, the OTS interpretation first allowed state-chartered lenders to suggest that AMTPA preempts state limits regarding prepayment penalties and late fees on alternative mortgages. This interpretation was wrong and inconsistent with the intent of Congress in passing AMTPA. This single change in the OTS regulations during 1996 significantly contributed to the dramatic increase in predatory lending of the last few years. Non-depository institutions and mortgage companies that were state-chartered applied prepayment penalties at such a high rate that the great majority of subprime borrowers (approximately 60% of California's subprime borrowers, according to a study conducted by the California Reinvestment Committee) now have prepayment penalties. In contrast, only 2 percent of prime borrowers have prepayment penalties on their loans according to Standard and Poor's. This huge difference in the application of prepayment penalties suggests that prepayment penalties trap subprime borrowers into abusive loans, and that subprime borrowers do not freely accept prepayment penalties as a means of lowering their interest rates.

HR/FHC cannot emphasize enough how urgent it is to remove AMTPA's preemption of state limits regarding prepayment penalties and late fees on alternative mortgages. While we applaud the OTS effort to close this predatory lending loophole, the OTS could have and should have made its proposal stronger. The AMTPA statute provides OTS with the discretion to prescribe general limits on loan terms and conditions. In the case of prepayment penalties, we support the proposal of the National Community Reinvestment Coalition (NCRC) that the OTS should adopt a two-year limitation on prepayment penalties for the alternative mortgages issued by all the institutions it regulates including federally chartered thrifts, state-chartered thrifts and non-depository institutions. The limitation would also stipulate the maximum amount of the prepayment penalty at one percent of the loan amount.

We applaud the OTS for proposing this change to their AMTPA regulations and ask the OTS to implement this change as quickly as possible after the close of the public comment period. This change will not restrict the ability of covered lenders to offer alternative and adjustable rate mortgages, the chief concern of AMTPA, but will merely allow state legislators to protect Californians' main source of wealth.

Sincerely,

Barbara Lehman
Executive Director

cc. California Reinvestment Committee