

Inner City Press
Community on the Move
&
Inner City Public Interest Law Center

June 24, 2002

By Telecopier
to (202) 906-6518

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

221

RE: Docket No. 2002-17

To Whom it May Concern at OTS:

On behalf of Inner City Press / Community on the Move and its members and affiliates (collectively, "ICP"), this is a timely comment on Docket Number 2002-17. ICP supports the proposed changes to the Office of Thrift Supervision's (the "OTS's") regulations implementing the Alternative Mortgage Transaction Parity Act ("AMTPA"). In the course of ICP's work opposing predatory lending (see, e.g., ICP's submissions to the OTS West Region earlier this month concerning CitiFinancial¹), we have seen instances in which unscrupulous lending institutions have used prepayment penalties to trap borrowers in abusive loans. (There are, of course, many other predatory practices beyond this, including packing credit insurance onto mortgage and non-mortgage loans, *a la* CitiFinancial). Borrowers have also faced stiff late fees associated with abusive loans. The current AMTPA regulations have facilitated the proliferation of prepayment penalties and late fees in predatory loans.

¹ We expect the issues that ICP has timely raised into the record in that proceeding to be addressed at the July 8, 2002, formal meeting being scheduled by the OTS West Region, pursuant to its letter of June 18, 2002. We further note that the OTS unwisely avoided these issues as to AIG and American General Finance, by "waiving" its formal meeting regulations in the AIG - American General proceeding in mid-2001; the AIG issues must be addressed in the near future.

As stated by NCRC, of which ICP is a member and the undersigned is a director, AMTPA has outlived its usefulness. Congress passed AMTPA in 1982 during a high interest rate environment in order to provide state-chartered institutions the ability to offer adjustable rate mortgages (ARMs) and other alternative mortgages. At that time, many states had outlawed ARMs. From 1983 to 1996, the OTS and its predecessor granted state-chartered thrifts and non-depository institutions preemption under AMTPA from state law on alternative mortgages so that they could offer ARMs. During this time period, however, the Bank Board and the OTS did not allow institutions to preempt state law on alternative mortgages that limited prepayment penalties and late fees. In 1996, the OTS inexplicably reversed course and allowed institutions to preempt state limits regarding prepayment penalties and late fees on alternative mortgages.

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 (about 80 percent) now have prepayment penalties. In contrast, only two 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.

The OTS correctly notes in its proposal that prepayment penalties and late fees are not integral elements of alternative mortgages. The OTS also reports that all states but one now allow ARMs, meaning that AMTPA is no longer needed. Instead, predatory lenders are using AMTPA and the existing OTS regulations to evade state law on alternative mortgages and prey upon unsuspecting and vulnerable borrowers. (Name of organization) cannot emphasize enough how urgent it is to remove AMTPA's preemption of state limits regarding prepayment penalties and late fees on alternative mortgages.

ICP notes that the OTS could have made its proposal stronger. The AMTPA statute provides OTS with the discretion to prescribe general limits on loan terms and conditions. The OTS could have adopted 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. Currently, victims of predatory lending are confronted with paying about 5 percent or higher of the loan amount as a prepayment penalty.

ICP believes that limiting prepayment penalties across the board would have achieved a greater degree of uniformity in the regulatory framework for different institutions. If the OTS does not adopt a more prescriptive approach, ICP along with NCRC strongly urges the OTS to stick with its proposal and to resist industry calls to weaken its proposed regulatory changes.

Thank you for your attention. If you have any questions, please telephone the undersigned, at (718) 716-3540.

Very Truly Yours,


Matthew Lee

Executive Director

Inner City Press/Community on the Move
& Inner City Public Interest Law Center
1919 Washington Avenue

Bronx, NY 10457

Tel: 718-716-3540

Fax: 718-716-3161