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From: Herbert Rubin [hrubin@niu.edu]
Sent: Sunday, June 23, 2002 11:52 AM
To: regs.comments@ots.treas.gov
Cc: Josh Silver
Subject: Comments on Docket Number 2002-17

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Regulation Comments

Chief Counsel's Office

Office of Thrift Supervision

1700 G Street, NW

Washington, DC 20552

Attention: Docket No. 2002-17

To Whom it May Concern:

I am an activist citizen, an academic who studies economic justice issues,
and am working with a local coalition of religious leaders who are combatting predatory lending. It is the responsibility of those offiices
supervising banks to ensure that all reasonable precautions be taken to ensure that citizens, especially the nation's poorest citizens, not become
vicitms to predatory lending. The details of the matter, as you are aware,
are quite technical. I thoroughly support and endorse the technical analysis prepared by the NCRC and strongly recommend implementing the Alternative Mortgage Transaction Parity Act (AMTPA).

I have enclosed below a copy of the NCRC commentary letter as their fine staff is far better able to undertake the needed technical analysis than I
am. The issue if anything will expand and regulators must do all they can
do to reduce harm. I live in a small rural city in Representative Hastert's
district. Even here, in the boondocks, individuals are now aware of the harms of predatory lending and are organizing to fight it. It is the responsbility of regulators to facilitate this fight, a fight that is bringing together community activists, concerned citizens, and the local religious leadership. .

Sincerely,

Herbert J. Rubin

Professor of Sociology

Copy of the NCRC Letter:

June 19, 2002

Regulation Comments

Chief Counsel's Office

Office of Thrift Supervision

1700 G Street, NW

Washington, DC 20552

Attention: Docket No. 2002-17

To Whom it May Concern:

The National Community Reinvestment Coalition (NCRC) strongly supports the proposed changes to the Office of Thrift Supervision's regulations implementing the Alternative Mortgage Transaction Parity Act (AMTPA). NCRC and our 700 community group members have been involved in combating predatory lending for several years. We have repeatedly seen instances in which unscrupulous lending institutions have used prepayment penalties to trap borrowers in abusive loans. 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.

Policy and Legal Background on AMTPA

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 Federal Home Loan Bank Board (the OTS' predecessor agency) and the OTS granted state-chartered thrifts and non-depository institutions preemption under AMTPA from state law on alternative mortgages so that they could offer ARMs and other alternative mortgages. 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 2 percent of prime borrowers have prepayment penalties on their loans according to Standard and Poor's.[1] 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' legal and policy positions for proposing their AMTPA changes are valid and convincing. The OTS correctly notes in its proposal that prepayment penalties and late fees are not integral elements of alternative mortgages. Since prepayment penalties and late fees are not intrinsic to alternative mortgages, the OTS is correctly using its discretionary authority allowed under the AMTPA statute to remove prepayment penalties and late fees as permitted features in the OTS regulations for alternative mortgages issued by state-chartered institutions. In fact, NCRC believes that stiff prepayment penalties and punitive late fees render alternative mortgages to be unsafe and unsound because these features make it likely for borrowers to default. The OTS' role as a safety and soundness enforcement agency is bolstered by its proposed changes to its AMTPA regulation.

The OTS also reports that all states but one now allows 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. NCRC cannot emphasize enough how urgent it is to remove AMTPA's preemption of state limits regarding prepayment penalties and late fees on alternative mortgages.

NCRC applauds the OTS for recommending the Congress repeal AMTPA in the context of strengthening HOEPA (Home Ownership and Equity Protection Act) and RESPA (Real Estate Settlement Procedures Act). This type of Congressional action would significantly reduce the amount of predatory lending as well as making banking law more uniform. At the very least, NCRC agrees with the OTS that Congress ought to issue another opt-out period for states to nullify AMTPA in their jurisdictions. In addition, NCRC vigorously supports OTS' recommendations that state-chartered institutions and housing creditors be required to indicate to state supervisory bodies that they are taking advantage of AMTPA's preemption authority. This disclosure requirement would enhance enforcement and monitoring activities of state supervisory agencies, fair housing organizations, and other parties.

NCRC Data Analysis in Support of Changing the AMTPA Regulation

NCRC believes that our data analysis presents a compelling and convincing case that the current AMTPA regulation has facilitated predatory lending. For starters, the lenders most likely to use the AMTPA preemption are independent mortgage companies (so-called housing creditors in the regulatory jargon) who report their Home Mortgage Disclosure Act (HMDA) data to the Department of Housing and Urban Development (HUD). Using HUD's list of high cost lenders and HMDAWare software produced by Compliance Technologies, NCRC calculates that these independent mortgage companies are much more likely to make subprime and manufactured home loans than other financial institutions.[2] In 2000, subprime and manufactured home lenders made 15.7 percent (or 1,278,575) of the total 8,138,192 single and multifamily loans. The high cost lenders are much more likely to make refinance loans; they issued 25.6 percent of the refinance loans reported in 2000.

High cost lenders grabbed an even larger market share of the loans reported by independent mortgage companies. Subprime and manufactured home lenders made 30.4 percent (or 640,866) of the 2,110,705 loans reported by independent mortgage companies. They made just over half (50.8 percent) of the 626,613 refinance loans reported by independent mortgage companies in 2000. In other words, subprime and manufactured home lenders had twice as high a market share in the universe of independent mortgage companies than in the universe of all lenders reporting HMDA data. The subprime and manufactured home lenders that are independent mortgage companies are also probably most likely to be using AMTPA's preemption of state limits on prepayment penalties in alternative mortgage loans.

NCRC's Consumer Rescue Fund Loan Files

Alarmingly, NCRC has uncovered evidence that the independent mortgage companies (or financial institutions most likely to be making high cost loans using AMTPA's preemption) are issuing predatory loans. NCRC operates a program called the Consumer Rescue Fund (CRF) that provides prime refinance loans for victims of predatory lending. Responsible lending institutions have provided the financing for the loans while NCRC staff conduct the underwriting and loan processing. NCRC pulled a sample of 30 predatory loans from the CRF program: independent mortgage companies issued 22 of these loans, thrift affiliates issued three of these loans, and banks issued the other five. The great majority of these loans (72 percent) were alternative loans with either adjustable rates or balloon payments.[3] Sixty six percent of the CRF sample was alternative loans qualified for AMTPA preemption.[4]

Because of their abusive nature, the alternative mortgage loans being rescued by the CRF program have caused borrower distress, delinquency, and bankruptcy. The vast majority of loans in the CRF sample are high cost loans. The average Annual Percentage Rate (APR) is 12.91 percent; the average points and fees (in the 800 series on the HUD-1 form) is 4.3 percent; and the average settlement cost (line 1400 on the HUD-1) is 8.8 percent.[5] In comparison, most prime loans have points and fees of less than 1 percent.[6] The high cost nature of these loans has resulted in burdensome monthly payments that consume more than reasonable portions of borrower income. The average monthly housing payment-to-income ratio was 45 percent and the average debt-to-income ratio was 58 percent (at either loan origination or CRF program intake).[7] Prudent underwriting criteria for conventional loans usually involve housing and total debt ratios of 33 percent and 38 percent, respectively. In the subprime secondary market, loans with total debt ratios of up to 50 percent are commonly sold. The alternative mortgage loans in our sample had an average debt ratio that was almost 10 percentage points higher than the upper end of acceptability in the subprime secondary market.

One of NCRC's most astonishing findings is that the great majority of the loans in our CRF sample did not provide an escrow for taxes and insurance payments. Of the 26 loans with complete HUD-1 settlement sheets, 22 loans or 84.6 percent of the loans did not provide an escrow. In many cases, the lack of escrows causes the borrower to confront sudden and unexpected property tax or insurance payments, leading to financial distress or the need to secure an emergency loan or refinance. These borrowers are consequently susceptible to flipping and refinancing into loans with additional fees and points.

An insidious aspect of the high cost and abusive loans being rescued by CRF is that prepayment penalties effectively trapped borrowers in these loans. Of the 24 loans in the CRF sample that had information about whether prepayment penalties were present, 17 loans or 71 percent of them had stiff prepayment penalties. Of the 17 loans in the CRF sample that had prepayment penalties, 13 loans or 76 percent were alternative mortgages. The prepayment penalties equaled 3.3 percent of the loan amount, on average and were applied for a period of 3.3 years after loan origination, on average.[8]

As part of our CRF Fund, NCRC recently represented an elderly minority couple who had owned their home in the District of Columbia for nearly 40 years. In order to pay medical expenses, an independent mortgage company convinced the couple to take out an adjustable rate mortgage with a prepayment penalty of over $13,000 and a loan payment that exceeded the couple's monthly income. Faced with imminent foreclosure, the couple attempted a "short sale" of their home, but was almost unable to complete the sale due to the prepayment provision. After NCRC's intervention, the sale took place. This is the type of loan that has been facilitated by OTS' AMTPA regulations.

NCRC's sample of CRF loans indicated that late fees averaged 5 percent of the overdue payment and were usually applied 15 days past the due date.[9] Abuses occurred in a significant portion of our sample: three loans had late fees that were 10 percent of the overdue payment, or twice the average late fee. Each of these three loans was an alternative mortgage loan. Furthermore, five of the loans applied the late charges 10 days past the due date. Ten days is onerous since mail delays and other logistical mishaps are much more likely to interfere with delivery of a borrower loan payment in a ten day time period as opposed to a fifteen day time period. Four out of five of the loans with late fees applied after ten days were alternative mortgage loans. One of these loans had a provision that was particularly pernicious. The late charge was assessed in each subsequent month in which the payment remained outstanding. For the other loans in our sample, the late fee was assessed only once.

While not as widespread as stiff prepayment penalties, abusive late fees occurred in a significant portion of the loans being rescued by CRF, especially when considering that our sample size is large enough to indicate the likely frequency of the abuses. Of the 24 loans in the CRF sample with information about late fees, five had abusive late fees and provisions, suggesting that 1 out of 5 subprime alternative loans contain onerous late fees and provisions. In contrast, 7 out of 10 of the sampled CRF loans had prepayment penalties, consistent with the national finding of 8 out of 10 subprime loans as reported by Standard and Poors. While stiff prepayment penalties are a widespread problem, late fee abuses appear to occur on one fifth of subprime alternative loans and thus cannot be ignored.

The following are some case study descriptions of the alternative mortgage loans with prepayment penalties in the CRF sample:

- A home purchase ARM loan with an APR of 11.16 percent and settlement charges of 15 percent and still no escrow for taxes and insurance. NCRC staff estimated that the property's appraisal was inflated by about $ 20,000. When the borrower tried to obtain the original appraisal from the lender, he was told it was deleted from the computer. The borrower was also hurried through the closing; he did not understand the loan terms and he did not understand why the closing costs were significantly different from the Good Faith Estimate (GFE). A prepayment penalty equal to six months of interest payments was applied for a period of three years after loan origination.

- A balloon loan with an APR of 11.16 percent. The borrower spoke only Spanish, but the broker conducted the closing in English. Needless to say, the broker did not explain loan terms adequately. When the borrower approached our CRF program, the monthly housing payment to income ratio was an incredible 86 percent. Despite consuming almost her entire monthly income, the loan did not contain an escrow for taxes and insurance payments.

- A balloon loan over $41,000 with an APR of more than 13 percent. When the balloon payment must be made at the end of 15 years, the borrower will owe $35,000, or almost the entire loan amount. This alternative mortgage loan made by an independent mortgage company represents equity stripping in its perfected form.

- A balloon loan of over $183,000 with an APR of 9.1 percent. In prime lending, the balloon is usually on a second mortgage, which represents a much lower dollar amount and thus does not present as much as a financial difficulty when the payment on the outstanding loan amount becomes due. The borrower reported that loan terms were different at closing than indicated on the GFE. He was quite distressed, but felt that he had no alternative but to sign the loan document. At CRF intake, his monthly housing payment to income ratio was a whooping 54 percent. The loan did not establish an escrow for taxes and insurance. To shed this unaffordable and predatory loan, the borrower confronted a 5 percent prepayment penalty that was applied for a time period of five years.

- A balloon and ARM purchase loan of over $116,000 with an APR of 12.55 percent. This gem of a predatory loan had a yield spread premium (YSP) equal to 2 percent of the loan amount and additional broker fees of more than $3,300. The YSP contributed to an interest rate much higher than the borrower was quoted during the application stage, but the YSP did not apparently reduce broker fees. The broker fee contributed to points and fees in the 800 series equaling a significant 5 percent of the loan amount. In other words, the YSP amounted to double gouging. When used in an appropriate manner, YSPs should substantially reduce fees paid by the borrower.

- An ARM non-purchase loan of $105,000 with an APR of 13.996. The fees and points on this loan amounted to 4.7 percent of the loan amount, due in large part to a broker fee of $4,725. The loan was unaffordable from inception since the broker exaggerated the borrower income by adding the income of a minor, teenage daughter who had worked part time. At time of CRF intake, the total debt to monthly income was an incredible 67 percent. Yet, the loan did not have an escrow for taxes or insurance payments. To escape this predatory loan, the borrower confronted a prepayment penalty of 5 percent for a period of three years after loan origination. Consequently, the foreclosure process had commenced by time the borrower had contacted NCRC's CRF program.

In order to develop a larger sample of alternative mortgage loans, NCRC analyzed prospectus statements of major subprime lenders available via the web page of the Securities and Exchange Commission (SEC). Financial institutions issue prospectus statements when they sell loans to investors. The prospectus statements NCRC examined containing alternative mortgage loans are disquieting at best and make us wonder who would purchase these loans.

In June of 2001, a large independent mortgage company issued a prospectus concerning 1,676 loans.[10] Most of these loans would qualify for the AMTPA preemption since more than 96.4 percent of them were ARM loans. Ninety five percent of these loans were refinance loans; the interest rate ranged from 6.88 percent to 14.99 percent with an average rate of 9.15 percent. Eighty one percent of the loans, by aggregate principal balance, had prepayment penalties, generally within the first three years of origination.

A significant number of loans were questionable in terms of borrower repayment ability. Underwriters processed twenty six percent of the loans without verifying borrower income.[11] It is likely that brokers were involved in the great majority of these loans since 21 percent of the loans in the prospectus were wholesale loans. As NCRC's Consumer Rescue Fund data reveals, when brokers are not required to document borrower income with tax forms and other standard forms, they are likely to exaggerate income levels. As a result, loans are made that are beyond the borrowers' abilities to repay. In the fall of 2001, the Federal Reserve Board changed Regulation Z (implementing the Home Ownership and Equity Protection Act) to state that loans covered by the regulation are presumed to be made without considering borrower ability to repay if the lender did not verify borrower income. It is likely that many loans in this prospectus would run afoul of the Federal Reserve's changes to Regulation Z.

The prospectus statement of this large independent mortgage company also raises the possibilities of pricing inefficiencies at best and price gouging at worst. The prospectus lists 34 percent of the loans as issued to borrowers in the best risk category of "AAA." These borrowers have FICO scores of 620 and higher and no late payments in the last twelve months. The loans to these borrowers had total debt-to-income ratios of 50 percent or less. While one third of the borrowers were probably qualified for prime loans or loans close to prime rates, only 6.37 percent of the loans had interest rates below 7.5 percent (Freddie Mac's weekly survey indicated that prime rates were generally below 7.25 percent during 2001 and the prospectus statement reported that 90 percent of the loans were issued in 2001). In addition, 42.9 percent of the loans had loan-to-value (LTV) ratios below 80 percent; in terms of LTV ratios, these loans would qualify for prime interest rates. Clearly, some of the "AAA" risk borrowers and some of the borrowers with LTVs below 80 percent may be highly leveraged in terms of debt-to-income ratios. These borrowers would then have interest rates above the prime rate of 2001. It is unlikely, however, that most of the 34 percent of the borrowers with the lowest credit risk and that most of the 43 percent of the borrowers with LTVs below 80 percent would have relatively high debt to income ratios. It appears that a considerable mismatch exists between the high interest rates and the portion of loans with prime characteristics listed in the prospectus statement.

High delinquency and default rates listed in the prospectus suggest a failure to adequately document borrower income levels and pricing inefficiencies. For the first quarter of 2001, the prospectus statement indicates that 5.32 percent of its outstanding loans were in foreclosure. The Mortgage Bankers Association (MBA) records a foreclosure rate of 1.04 percent for all loans in the fourth quarter of 2001. This large independent mortgage company records a total delinquency rate on its outstanding loans of 8.36 percent in the first quarter of 2001. The MBA notes that ARM loans had a delinquency rate of 5.9 percent in the fourth quarter of 2001. The question raised by this comparison is to what extent did prepayment penalties, which were applied on the great majority of alternative mortgage loans in this prospectus, contribute to an unaffordable and unfairly priced loan ending up in delinquency or foreclosure.

In April of 2002, another independent mortgage company issued a prospectus selling several thousand loans in two groups - Group I and Group II. More than 95 percent of the loans in both groups were issued in 2002. Group I contained about 4,961 loans; 83.2 percent of the loans were ARMs and 82.7 percent of Group I loans had prepayment penalties. The prepayment penalties could be up to five years in duration and typically involved a charge equal to six months' interest. In return for stiff prepayment penalties, the borrowers confront high interest rates ranging from 6.1 percent to 13.99 percent. The weighted average maximum rate for the ARM loans in Group I was

14.766 percent, and the weighted average minimum rate for the ARM loans was 8.747 percent. The statistics for the 2,267 Group II loans were similar. For example, 81.8 percent of them had prepayment penalties.

The "Group 1" loans contained a mismatch between the portion of loans with subprime rates and the subset of loans with prime characteristics. About 17.5 percent of the borrowers had FICO scores of 650 and above, which are usually credit scores for prime candidates. The majority of the loans (60.38 percent) had LTVs below 80 percent, which are LTVs associated with prime loans. In contrast, only 5.09 percent of the loans had interest rates 7 percent or below. In the first 23 weeks of 2002 that Freddie Mac surveyed, prime interest rates were 6.92 percent, on average. The prospectus did not provide the range of monthly housing payments to income and total debt to income. It is doubtful however, that relatively high housing and debt payments can explain away a significant portion of the gap between prime rates and the prime FICO scores and LTVs in the prospectus. The disparities were similar in the Group II loans as well.

The prospectus of this second mortgage company, like the prospectus discussed above, raises the specter of lending without regard of the borrower ability to repay. Thirty three percent of the loans in Group I were issued under the "Stated Income Documentation" program. Under this program, "an applicant may be qualified based upon monthly income as stated on the mortgage loan application if the applicant meets certain criteria." In the hands of unscrupulous brokers, this program is dangerous. Thirty five percent of the Group II loans were also offered as part of the Stated Income program.

It is likely that inappropriate underwriting and pricing inefficiencies resulted in high delinquency and default rates. The prospectus of the second mortgage company states that in the fourth quarter of 2001, 8.9 percent of the loans in portfolio were delinquent and that 4.56 percent of the loans were in foreclosure. As stated above, the MBA records a delinquency rate of 5.9 percent for ARM loans and a foreclosure rate of 1.04 percent for all loans in the fourth quarter of 2001. Prepayment penalties on the second mortgage company's alternative loans contributed to the high delinquency and foreclosures rates since many borrowers probably did not have the funds to pay the penalties and thus could not escape the abusive loans by refinancing with other lenders.

Recommendations Regarding OTS' Proposals

NCRC's evidence demonstrates overwhelmingly that AMTPA has increased predatory lending. While NCRC supports OTS' proposal, NCRC notes that the OTS could have made its proposal stronger. NCRC's evidence presents a compelling case for a comprehensive and rigorous anti-predatory lending regulation.

Preemption of State Law on Manufactured Home Loans - Late Fees

In addition to the proposed changes to the AMTPA regulation, the OTS is proposing to change its regulation on manufactured home loans to allow lenders to charge a late fee equal to 5 percent of the monthly payment. The OTS also asks for comments regarding whether the 5 percent limit should be removed. The current regulation stipulates that the lesser of 5 percent or $5 be imposed as a late fee. This means that for the great majority of loans, the limit is currently $5. NCRC believes that 5 percent must be the upper limit on a late fee, and that state law must apply if it stipulates a lesser charge. In addition, the OTS must mandate that a late fee cannot be assessed before 15 days after the payment is due. Our Consumer Rescue Fund data show cases in which a late fee was imposed after 10 days. We believe this time period is too short and abusive in that it does not accommodate mail delays beyond the control of the borrower. Furthermore, the OTS' regulation must stipulate that the late fee must be assessed only once per missed payment. One loan in our CRF program stipulated that a late fee for a particular missed payment would be charged each subsequent month and as long as the payment was not received. This one late fee provision stood out as particularly abusive since all of the other predatory loans in the CRF sample assessed the late fee only once per missed payment.

NCRC believes that lending institutions abuse late fee provisions less frequently than prepayment provisions because the OTS regulations are more prescriptive on late fees than prepayment penalties. In 12 CFR Section 560.33, the OTS mandates that all institutions it regulates assess late fees only after 15 days past the payment due date and that late fees apply only once per missed payment. In contrast, 12 CFR Section 560.34 does not similarly limit prepayment penalties applied by OTS regulated institutions. Accordingly, NCRC is not surprised that our sample of CRF loans revealed a greater frequency of abusive prepayment penalties than late fees. Prudent public policy would be to limit prepayment penalties on high cost loans in a manner similar to late fees (see immediately below).

NCRC Recommendation on the OTS AMTPA Proposal

NCRC is skeptical that prepayment penalties serve any useful purpose in terms of providing consumers meaningful choices on high cost loans. On the contrary, NCRC's data, particularly our Consumer Rescue Fund case studies, show that prepayment penalties are nothing more than a trap on high cost loans that are purposefully designed to fail. The AMTPA statute provides OTS with the discretion to prescribe general limits on loan terms and conditions. Therefore, NCRC believes that the OTS could and should ban prepayment penalties on all high-cost alternative mortgage loans issued by all institutions regulated by the OTS. The OTS could adopt a trigger such as the Federal Reserve's suggestion of three percentage points above Treasury rates (see Federal Reserve's proposed changes to HMDA data). The Federal Reserve estimates that this interest rate trigger would cover almost all subprime loans.[12]

Mindful of political realities, however, we suggest another possibility, besides a ban, of stringent limitations on prepayment penalties in alternative loans. The OTS could adopt a two-year limitation on prepayment penalties and limit prepayment penalties to 1 percent of the loan amount for the alternative mortgages issued by all the institutions it regulates including federally charted thrifts, state-chartered thrifts and non-depository institutions.[13]

NCRC's suggested limits would provide real protections, reduce predatory lending, and curb abuses associated with prepayment penalties. Our CRF data indicate that prepayment penalties average over 3 years in duration and equal more than 3 percent of the loan amount, on average. In the case of the couple who almost could not sell their home due to a prepayment penalty, the penalty amounted to $13,791 or 4.4 percent of the loan amount. Limiting the penalty to one percent of the loan amount would have reduced the penalty to $3,140, which would have been more manageable for the borrower. Likewise, limiting the duration of the prepayment penalty to two years would enable more borrowers to refinance out of abusive loans without incurring a penalty at all.

NCRC believes that prohibitions or at least strong limitations on

prepayment
penalties on alternative loans would achieve a greater degree of uniformity
in the regulatory framework for different institutions than the OTS' current
proposal. If the OTS does not adopt a more prescriptive approach, NCRC strongly urges the OTS to stick with its proposal and to resist industry calls to weaken its proposed regulatory changes.

We applaud the OTS for proposing this change to their AMTPA regulations and
ask the OTS to act as quickly as possible after the close of the public comment period. Every day, predatory lenders use prepayment penalties to
entrap Americans and rob them of their homes and wealth. To protect the record gains in homeownership achieved in the 1990's, NCRC and our 700 community organization member organizations urge the OTS to take swift and
strong action.

Sincerely,

John Taylor

President and CEO

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[1] Standard & Poor's, "NIMS Analysis: Valuing Prepayment Fee Income," (January 3, 2001).

[2] On an annual basis, the Department of Housing and Urban Development releases a list of HMDA reporters that are subprime and manufactured home
loan specialists. See http://www.huduser.org/datasets/manu.html.

[3] In the CRF sample, 29 loans had documents indicating if the loan was an
ARM, balloon, or fixed-rate loan. Seventy two percent or 21 loans were alternative mortgage loans with either an ARM or balloon. Of the 21 loans
that were alternative mortgages, 16 were issued by independent mortgage companies, 1 was issued by a thrift, and four were issued by lenders under
the OCC AMTPA regulations including state-chartered banks, nationally-chartered banks, or operating subsidiaries of nationally-chartered banks.

[4] Twenty-one of the loans in the CRF sample was balloon or ARM loans. But
two of the balloon loans was made by OCC-regulated institutions; balloon loans made by OCC-regulated institutions are not eligible for AMTPA preemption.

[5] In the CRF sample, 18 total loans had information about the final APR,
23 had information on the HUD-1 about settlement fees, and 24 had information on the HUD-1 about fees and points.

[6] Freddie Mac conducts a weekly mortgage market survey that lists average interest rates and points and fees on prime mortgages. The fees and points are generally .7 or .8 percent of the loan amount. See http://www.freddiemac.com.

[7] In the CRF sample, a total of 15 loans had information about monthly housing-to-income ratios, and a total of 6 loans had information about total debt-to-income ratios. Fewer loans had information about these ratios because NCRC staff discovered that NCRC had to retrieve additional documents from the borrowers and calculate the ratios since fraud occurred on a large portion of loan documents regarding borrower income.

[8] For loans in the CRF sample, 11 had information on the size of the prepayment penalty and 17 had information on the duration of the penalty.

[9] The CRF sample had 24 total loans with information about late fees.

[10] The prospectus statements analyzed in this section are available via the website of the Securities and Exchange Commission (http://www.sec.gov).

[11] The prospectus states that, "the Originator reviews and verifies the loan applicant's sources of income (except under the Stated Income and Fast Trac Documentation residential loan programs)." Twenty six percent of the loans in the prospectus fell under the Stated Income and Fast Trac Documentation programs. The Stated Income program is the looser of the two: "the applicant's income as stated must be reasonable for the related occupation in the loan underwriter's discretion. However, the applicant's income as stated on the application is not independently verified." Fourteen percent of the loans in the prospectus fell under the Stated Income program.

[12] Board of Governors of the Federal Reserve System, Proposed rule relating to home mortgage disclosure, Federal Register, Vol. 67, No. 32, Friday, February 15, 2002, p. 7252.

[13] NCRC notes that Freddie Mac recently announced that it would not purchase loans with prepayment penalties beyond three years. Our two-year limitation is consistent with movement in the marketplace and legislative proposals to limit the duration of prepayment penalties. According to the Coalition for Responsible Lending, eight states ban prepayment penalties altogether and an additional two states limit prepayment penalties to one year. Senator Sarbanes and Representative LaFalce have introduced anti-predatory bills that would prohibit prepayment penalties beyond two years on high cost loans. We also believe it is reasonable to limit prepayment penalties to 1 percent of the loan amount. This is in line with recommendations by HUD and the Treasury Department to prohibit the financing of fees to 3 percent of the loan amount in high cost loans.

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"A community will evolve only when the people control
their means of communication."   Fanon

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