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VIA FACSIMILE (202-906-6518)
AND EMAIL: regs.comments@ots.treas.gov
Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G. Street, N.W.
Washington, D.C. 20552

Attention: DOCKET NO. 2002-17

Re: Notice of Proposed Rulemaking/OTS Proposal
Re: Prepayment Fees and Late Charges ("Proposal")

To The Office of Thrift Supervision ("OTS"):

I am an attorney practicing in the Commonwealth of Pennsylvania. My firm handles real estate related transactions and related matters for various residential mortgage lenders, many of which are state-licensed or state-chartered "housing creditors" ("housing creditors") as that term is defined in the Alternative Mortgage Transaction Parity Act, 12 U.S.C. § 3801 et seq. ("Parity Act") As such, the mortgage companies with which I work regularly rely upon the Parity Act's preemptive authority in offering "alternative mortgage transactions" as defined in the Parity Act ("AMTs") to their customers in my state. I am deeply concerned that the anti-competitive effects of the Proposal will hinder the ability of small lenders to stay in business. The effect of putting smaller lenders out of business, while increasing the presence of large institutional lenders, would limit the options available to consumer borrowers ("consumers"). I am therefore writing this letter to comment on the Notice of Proposed Rulemaking regarding Parity Act preemption issued by the OTS and published in the Federal Register on April 24, 2002, 67 Fed. Reg. 20468 ("Notice").

In the Notice, the OTS proposes to amend 12 C.F.R. § 560.220 ("Parity Act Rule") to delete the prepayment penalty (12 C.F.R. §560.34) and late charge (12 C.F.R. §560.33) between loan approval and loan denial and, in most cases, result in tremendous savings in the cost of credit for these consumers.

If adopted, the Proposal would effectively deprive consumers of this very important home financing option. Many of the states in which my clients originate loans prohibit or limit prepayment fees. As a result, my clients would no longer be able to make loans having a prepayment fee option in those states, thus eliminating a possible loan product for consumers.

In addition, eliminating the late charge provision, as proposed, means that consumers who pay on time will end up subsidizing borrowers who pay late.

The Parity Act preemption also enables housing creditors to offer AMTs on a nationwide or multistate basis with uniform prepayment and late fee terms and conditions. If this ability were eliminated, housing creditors would be forced to create loan documents to comply with the laws in each state in which they operate, which would increase costs to lenders and consumers, and increase the risk of documenting the loan incorrectly.

The proposed amendments are not an effective means of addressing "predatory lending" concerns. Predatory lending can take a variety of forms, with the result that there is no single loan term or practice that is the hallmark of a predatory loan. Moreover, many of the predatory lenders are engaging in fraudulent activities, or otherwise violating existing laws. Trying to cure predatory lending by imposing more limits on legitimate lenders would only hurt consumers by causing legitimate lenders to stop making loans in certain markets, leaving consumers in those markets more susceptible to predatory lenders who ignore the laws.

It has been my experience that the HOEPA "high cost mortgage" laws have cut down on high-cost and predatory loans (and have recently been expanded to cover even more loans), while the Parity Act and the Parity Rules have increased the amount and types of loans available to consumers.

For the reasons set forth above, I oppose the proposed amendments to the Parity Rule. I appreciate your consideration of my comments on this important issue.

Respectfully submitted:

Peter J. Smith

PJS/dpw
bc: Pamela H. Waldow, Esquire - Vice President & Associate General Counsel - ABFS