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To: regs.comments@ots.treas.gov
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Subject: Regulation Comments Docket No. 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:

As a member of the National Community Reinvestment Coalition, former HUD

Community Builder Fellow and Community Investment Officer at the Federal Home

Loan Bank of Des Moines, I strongly support the proposed changes to the Office of Thrift Supervision's regulations implementing the Alternative Mortgage Transaction Parity Act (AMTPA). Predatory lending has become tantamount to the illegal redlining financial institutions used as a basis to deny loans to qualified borrowers. However, predatory loans are more insidious.

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 (Agency) 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 inadvertently 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. This huge difference in the application of prepayment penalties suggests that prepayment penalties trap subprime borrowers into abusive if not illegal 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. It is critical that AMTPA's preemption of state limits regarding prepayment penalties and late fees on alternative mortgages be removed immediately.

The AMTPA statute provides OTS with the discretion to prescribe general limits on loan terms and conditions. Thus, the OTS could 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 could 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.

Limiting prepayment penalties across the board would have achieved a greater degree of uniformity in the regulatory framework for different institutions.

But if the OTS selects not to adopt a more prescriptive approach it is crucial the Agency sticks with its proposal and resists industry calls to weaken its proposed regulatory changes.

It is important to note, the Agency should be applauded for proposing this change to their AMTPA regulations. Due to the urgency of the situation, we respectfully request this change be implemented as quickly as possible after the close of the public comment period.

Sincerely,

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cc.
National Community Reinvestment Coalition