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On behalf of its low-income clients, the National Consumer Law Center and the Consumer Federation of America submit the following comments to the Office of Thrift Supervision regarding whether and how OTS should amend its regulations under the Alternative Mortgage Transactions Parity Act.[1]

First, we want to congratulate the OTS for taking the courageous first step toward addressing predatory mortgage lending. Clearly, the OTS recognizes that there is a grave problem throughout the U.S., particularly affecting low income and minority households and neighborhoods. While many regulators recognize the gravity of the predatory lending problem, the appropriate – and politically feasible – method of addressing the problem still appears illusive. In these comments, we recommend that OTS join with the other federal regulatory agencies. All agencies should adopt a bold, comprehensive and specific series of regulations to change the mortgage marketplace to accomplish the following:

- Predatory mortgage practices are either specifically prohibited, or are so costly to the mortgage lender that they are not economically feasible.
- Necessary credit is made available with appropriate rates and terms to all Americans.

The problem of predatory lending was not created by a single act of Congress or an individual regulatory action by a federal agency, nor – unfortunately – can it be solved by a similarly simple solution. Instead, we must all step back and examine the full extent of the problem and its various causes. The solution, we believe, lies in the appropriate combination of regulatory and legislative efforts. OTS's actions flowing from this brave first step of the ANPRM are an essential ingredient of this comprehensive scheme.

Later in these comments, we will describe the details of our recommended elements, however, **we urge OTS to join with the other federal credit regulators (Office of the Comptroller of the Currency and the National Credit Union Administration) and prohibit all creditors making loans secured by home loans from engaging in certain predatory lending practices.** We do not believe the problem of predatory mortgage lending will be significantly addressed simply by OTS prohibiting state housing creditors from engaging in the targeted practices; such an action would simply encourage those actors to obtain thrift or bank charters.[2]

The balance of these comments are in several parts:

Part I. The Historical Causes for Predatory Mortgage Lending. This section describes the changes in federal laws and policies and how these changes have created the current mortgage marketplace; it also describes how this marketplace fails to protect consumers in the deregulated environment of mortgage lending. In this section we also address a signficant the questions asked by OTS, the extent to which different loan rates and terms are justified by the higher credit risks posed by subprime borrowers. The alarming increase in the rate of home foreclosures in the United States is also described.

Part II. **Our proposal for specific regulations against predatory home loans that OTS, OCC and NCUA should adopt is addressed.** Answers to many of the questions posed in the ANPRM are also provided.

Part III. The other federal legislative and regulatory changes that should be adopted to address the predatory mortgage problem.

Part I. The Historical Causes for Predatory Mortgage Lending.

A. The Causes

Though home equity lending abuses are not new, the 1980s and 1990s witnessed a major upswing. In the past fifteen years, "equity-skimming," or "equity-theft" has become a major threat to many homeowners -- particularly to the elderly. A number of marketplace and policy factors converged to contribute to this problem:

Deregulation: In tandem with the appreciation of real estate values, the deregulation of consumer lending in the 1980s left the door wide open for unscrupulous operators. Federal laws passed in 1980 and 1983 preempted both state usury ceilings on mortgage lending secured by first liens (whether purchase money or not),[3] as well as state limitations on risky "creative financing" options, such as negatively amortizing loans.[4]

Federal deregulation also set the stage for many states to remove rate caps and other limitations on other home lending -- including second mortgage lending. Whatever the overall merits of economic deregulation, it undeniably unleashed the greedy instincts of unscrupulous operators all over the country. In keeping with the conventional wisdom of free market theory, "the market" was supposed to take care of any problems. Unfortunately, there are market failures, and predatory home equity lending provides a good example of one. Even though interest rates had significantly declined until early this year, these lenders did not lower their rates. For a number of reasons, competition and market forces did not operate according to theory on these loans.

The rise in real estate values: The inflation in real estate values in the 1980s created much new wealth -- the equity pool. While real estate values have remained stable in the 1990's (or declined in a few areas of the country), the equity acquired from the brisk rise in values in the 1980s continues to make aging homeowners a prime target of predatory lenders.

The appreciated value of the property led to "asset-based lending" -- that is, loans made based on the value of the security, rather than on the borrower's ability to repay. This has been common in commercial lending, but is generally unsuitable for consumer loans. Most borrowers are simply wage-earners who look to their regular income to repay their debts. The amount of equity in the collateral is only relevant to the ability to repay a loan if the borrower intends to liquidate the collateral. In short, "asset-based lending" is a legitimate-sounding justification to ignore sound underwriting principles, and make unaffordable loans.

Reverse Redlining. Mainstream banks nearly abandoned low income neighborhoods across the country, especially minority low income neighborhoods. This created a vacuum for finance companies charging high rates of interest to fill. Indeed, some mainstream banks helped fill the vacuum by setting up high rate finance companies or, alternatively, by funneling cash to unscrupulous lenders.[5]

The rise in the secondary mortgage market: Some high-rate mortgage lenders, particularly home improvement contractors, have historically operated by assigning installment contracts they write to other lenders, such as finance companies or banks. But the 1980s added a new wrinkle -- bundling mortgage loans into large portfolios and selling them on the secondary mortgage market. This enabled mortgage companies specializing in home equity lending -- unregulated in many states -- to operate much more profitably. Since there was a "back-end" income stream, they could operate with little capitalization base. They could obtain a line of credit from a major bank; originate predatory loans, taking out very high up-front fees; then dump the loans onto the secondary market.

The securitization of home equity loans: The 1990s saw the phenomenal growth in the use of asset-based securities to fund an ever-increasing supply of mortgage credit.[6] Creating capital flow in this way for *subprime* mortgage lenders took off following 1994. In that year, approximately $10 billion worth of subprime home equity loans were securitized.[7] By the end of 1997, the volume had leaped to about $90 billion.[8]

Prime and “sub-prime” mortgage market: The credit industry refers to “A” and “A-” borrowers (those with good credit histories) as “prime,” and “B’ and “C” borrowers (those with no credit history or poor credit history) as “subprime.” “Subprime” homeowners are the hot new market of the 1990s. [9]The earnings of small-volume subprime mortgage lenders are matching or surpassing the earnings of conventional mortgage lenders with significantly greater loan volume.[10] The securitization of home equity loans is a driving force behind the subprime market popularity.[11] A part of the subprime market includes the predatory lenders which are the subject HUD's concern.

"Tax Reform:" The amendment of the tax laws which retained the deductibility of interest only for home-secured loans added to the massive increase in home-equity debt. Many consumers and taxpayers are not well-equipped to calculate how the tax savings would weigh against the extra interest to be paid. Yet that is a sales pitch given by many creditors, and many homeowners listen to that siren-call.

The Market Does Not Work For Many. Many homeowners go through the home purchase, financing and refinancing process without any problem. Many others, however, find themselves confused, feel deceived, or worse: they lose their home as a result of abusive or improper loan terms. This latter group is much larger then it should be. Indeed, according to the mortgage industry's own analysis, 39-40%[12] of all mortgage borrowers were confused by the process.[13] Moreover, the Federal Reserve Board, HUD and Treasury[14] have recognized that the number of homeowners who are exploited in refinancing transactions is far too high.[15] These abusive loans are an indication of a failure in the marketplace; competition and self regulation do not stop bad loans from being made. The message is, therefore, efforts by industry to rely solely on enforcement of current laws and regulations will only hurt consumers.[16]

As OTS recognizes throughout the ANPRM, the premise of the current mortgage regulatory scheme is that if sufficient information is provided to the consumer, the market will allow the consumer to ensure that he or she is obtaining the best loan for which they qualify. This analysis may work with sophisticated homeowners, however, it must be kept in mind that according to the Department of Education, 24% of the adult population in the U.S. is functionally illiterate.[17] If someone cannot read, should that mean that they should be subjected to practices which most agree are abusive?

The marketplace does work to keep interest rates down and loan terms fairly even handed for many middle class borrowers who qualify for "A" credit. (But even this process can work against homeowners in the current market where the terms of the loan may change after the application fee has been paid.) It is clearly not working, however, for too many American homeowners who do not qualify for the best credit rating or are led to believe they do not qualify. All too often these homeowners are elderly, or minority. Nationally, 39% of households with incomes below the federal poverty level[18] own their own homes.[19] More dramatically, 58% of older Americans who are below the federal poverty guidelines own homes. Too many of these low-income, elderly homeowners have lost their homes or their equity as a result of abusive lending.

Abusive home equity lending, in particular, is a longstanding problem that exploded in the early 1990's. Vulnerable homeowners who could not access mainstream forms of credit were the focus of these abusive practices.[20] Many were forced to rely on equity loans with high rates of interest in order to finance home repairs, credit consolidation or other crucial credit needs. Refinancing low rate purchase money first mortgages with high rate first mortgage loans has become a serious problem in the low income community leading to the escalating loss of homeownership. The terms of these high rate loans are not necessary to protect the lenders against loss; indeed the terms are generally so onerous that they precipitate default and foreclosure.

Foreclosure Rate Skyrockets. The result of this type of lending is now driving the public debate: the number of foreclosures in the United States has increased by more than 384% - almost a *quadrupling of the foreclosure rate in 20 years.* [21] Families are evicted; neighborhoods suffer; and tax bases decline. That means that even though interest mortgage rates were almost twice as high in 1980 as they were in 1998, almost four times the number of homes were being foreclosed upon in 1998 as in 1980. It is important to note that these high foreclosure numbers are occurring in a boom economy. When a downturn befalls us, the devastation will skyrocket.

Foreclosures Do Not Equal Risk for Lenders. Foreclosures have skyrocketed, yet that does not mean that the lenders making those loans have necessarily lost money on the stream of credit that was provided to the homeowner whose home has been foreclosed upon. While the latest loan may indeed have proved to be unprofitable; in many instances that latest loan was made with the full cognizance by the lender that it would lead to foreclosure, because the payments required on the loan were simply unaffordable.[22] The creditor has already reaped tremendous profits from the equity of this home, by bleeding all the equity out of it.

Example of Home Equity Bleeding.

Typically a subprime loan will look like this:

Assume a home value of:	$110,000	
Borrower receives:	$70,000	
Borrower pays:		
6 Points	4,200	($4,200 profit to lender)
Closing Costs [23]	2,500	($1,500 profit to lender)
Credit Insurance	2,200	($1,000 commission to lender)
Total Loan Amount	$78,900	$6,700 - immediate profit to lender upon sale of loan to investor
Interest Rate of 12% 30 year term		Monthly payment - $811.58
Consumer owes after 36 payments:	$77,927	
After 60 payments, the balance is:	$77,056	

In this case, the homeowner has paid $8,900 in home equity to obtain

$70,000 in funds. Typically, this loan will be refinanced several times. Often, homeowners are solicited by loan brokers when they are current on their payments to offer "new" credit and promise to consolidate debt, reduce monthly payments, and, sometimes, to lower the interest rate. Typically, this refinancing will occur within three years.**???** Assuming this loan is refinanced at the end of three years, with a $4,000 extension of new credit the new loan might look like this:

Borrower receives:	$4,000 in "new money"	
Balance due on old loan:	$77,927	
Costs of New Loan:		
5 Points	$4,100	($4,100 profit to lender)
Closing Costs	$2,500	($1,500 profit to lender)
Credit Insurance	$2,400	($1,100 commission to lender)
Total Loan Amount	$86,927	$6,700 - immediate profit to lender upon sale of loan to investor
Interest Rate of 11.75% 30 year term	Monthly payment - $877.45	
Consumer owes after 36 payments	$85,798	
After 60 payments, the balance is	$84,794	

Typically, this loan will be refinanced several times, until there is no more home equity in the home. Only then – when the equity has been completely depleted, will foreclosure be pursued, instead of refinancing. At that point, on that last loan made by the lender, the lender may lose money. But over the course of the credit relationship, the lender will have stripped tens of thousands of dollars from the home, the homeowner will have spent tens of thousands of dollars attempting to keep their home. In the end, only the lender and the invester will benefit, the homeowner and the neighborhood will not.

These problems existed for many years prior to the passage of the Home Ownership and Equity Protection Act, and have since grown exponentially. We attach as Appendix 1 examples of legal but predatory loans. We saw these problems in the 1980s, Congress recognized these problems in the early 1990s. As should be is obvious from the substantial testimony and news stories, these problem loans continue to grow unabated.

Part II. Our proposal for specific regulations against predatory home loans that OTS, OCC and NCUA should adopt is described.

Answers to many of the questions posed in the ANPRM are also provided.

As OTS has recognized, policymakers in a number of states have become convinced of the need to address predatory mortgage lending and have begun to address the problem with state legislation and regulatory actions.[24] There are a host of problems with this approach:

First, it assumes that the 50 states will each find the appropriate balance between necessary consumer protection and overburdensome regulation to stop the assure predatory activities while assuring continued access to appropriate credit for homeowners.

Second, given the federal preemption of state consumer protection laws when applied to depository institutions under AMPTA, it encourages predatory lenders to seek depository charters and simply continue their activities under different auspices.

Third, this approach would yield a mishmash of consumer protection laws and access to credit throughout the nation that would be universally rejected by the credit industry that constantly seeks federal uniformity to ease compliance.

Currently most of the subprime lenders – and most of the predatory lenders – are state housing creditors, rather than thrifts or banks, although it would not be difficult for them to change that status. To date, given the courts broad interpretations of AMTPA and the OTS regulations, the practices of housing creditors have not been inhibited in any way.[25] Pursuant to AMTPA they can choose to operate under the OTS regulations for state housing creditors or they can operate under state law.[26] OTS AMPTA regulations currently govern thrifts and state housing creditors identically.[27]

As OTS has recognized regulations not only direct impact on the entities covered, but have an indirect impact on the general marketplace. Any regulation that is issued should not have the effect of overburdening thrifts – or other depository lenders – and should encourage innovation in meeting the credit needs of all potential borrowers, especially those which have been victimized in the past by predatory lenders.[28]

The key to meeting all these goals is for OTS issue regulations in conjunction with the other federal regulators which will have the effect of governing all depository institutions.[29] One cohesive regulation governing all institutions will have the effect of occupying the field.

Although technically, state housing creditors could still choose to act under a less restrictive state law, there would be a number of marketplace dynamics which would discourage this. First, as has been shown by the recent spate of state activity,[30] many states are quite willing to step in and fill the void left by the lack of substantive regulation if their homeowners are being victimized. Secondly, most large housing creditors profit from applying uniform standards to their lending practices, that allow lending terms to be applied regardless of state jurisdiction. Thirdly, there would be an excellent argument that loans containing certain terms would violate state laws prohibiting unfair and deceptive trade practices. After all, if the federal regulators have found that these loans are so fraught with predatory characteristics as to make them improper for a depository institution to make, surely the same loan made by a different creditor is just as problematic.[31]

Currently, prepayment penalties are illegal or are restricted under approximately 23 states' laws.[32] Because of the explicit or expected shield from the application of state law offered by AMTPA, predatory loans are made in these states and prepayment penalties are routinely charged. Here, it is patently clear that the preemption of these state laws provided by the OTS regulations obviously shelters activities that are significantly contributing to the predatory mortgage lending problem. However, that does not mean that simply removing the shelter from the specific activity – removing the preemption of state consumer protection laws for housing creditors – will solve the problem. These housing creditors will simply begin doing business as banks or thrifts. They can either apply for a new charter, purchase an existing institution,[33] or use the existing charters of an affiliate or subsidiary.[34]

OTS should not act alone. OTS has the authority to govern state housing creditors and state thrifts. If it acts alone and regulates the predatory practices of the institutions over which it has regulatory authority under AMTPA, it will simply push these lenders into obtaining national or state bank charters. Regulations promulgated by the Office of Comptroller of the Currency for national banks and state banks offer its regulated institutions similar exemptions from state consumer protections.[35] Credit unions are more tightly regulated, though the NCUA should be a part of the discussion.[36]

OTS, OCC, and NCUA should promulgate regulations prohibiting predatory practices. The regulations should be based upon the essential premise of HOEPA with some significant additions and specific new protections. The Home Ownership and Equity Protection Act (HOEPA) was passed to prevent some predatory lending practices after reviewing compelling testimony and evidence presented during a number of hearings that occurred in 1993 and 1994. This law created a special class of regulated closed-end loans made at high rates or with excessive costs and fees. Rather than cap interest rates, points, or other costs for those loans, the protections essentially prohibit or limit certain abusive loan terms and require additional disclosures. HOEPA's provisions are triggered if a loan has an APR of 10 points over the Treasury bill for the same term as the loan, or points equal to more 8% of the amount borrowed.[37]

It was hoped that HOEPA would reverse the trend of the past decade which had made predatory home equity lending a growth industry and contributed to the loss of equity and homes for so many Americans. However, experience over the last four years has shown that while HOEPA has made a start at addressing the problems, there are still yawning chasms of unprotected borrowers subject to the abuses of high cost home equity lenders.

The three most significant problems with HOEPA:

1) HOEPA does not in any way limit what the lender can charge as up-front costs to the borrower. It is the excessive, combined fees -- in closing costs, credit insurance premiums, and points -- which deplete the equity in abusive loans. These excessive, combined fees are charged over and over, each time the loan is refinanced. And with each refinancing, the homeowner's equity is depleted by these charges because they are all financed in the loan. The effect of this situation is to encourage lenders to refinance high cost loans because they reap so much immediate reward at each closing. If the law limited the amount of points and closing costs that a lender could finance in high cost loans, this incentive to steal equity would be stopped cold.

2) The interest rate trigger and points and fees triggers for HOEPA are too high, causing many abusive lenders who want to avoid HOEPA strictures to make high cost loans just under the trigger. The effect is that there are no protections whatsoever against these very high cost loans which are just under the HOEPA triggers.

3) HOEPA does not apply to open end loans. When HOEPA was passed in 1993, there were few predatory open end mortgage loans being made. In the past seven years, that picture has changed. It has become apparent that open end credit provides another vehicle for mortgage abuses. There is no longer any reason to exclude open end mortgage loans

from HOEPA's coverage. More importantly, unless open end loans are brought within the scope of HOEPA, the failure to regulate them will simply push the bad actors into that market.

But, otherwise, HOEPA has some good ideas. It is based on the economic rationale that the higher the charges for the loan, the more regulation is necessary and appropriate. By passing HOEPA, Congress has already recognized two essential truths: that there are some loans for which the marketplace does not effectively apply restrictions; and government must step in to provide balance to the bargaining position between borrowers who either lack the sophistication to avoid bad loans or do not believe they have a choice if they want the credit.

The core of this proposal is that OTS (and the OCC and the NCUA) should declare illegal loans with certain characteristics, specifically the financing of points, fees and credit insurance premiums, and the charging of prepayment penalties.

There are indisputable advantages flowing from the prohibition against the financing of any points, fees or credit insurance premiums:

No equity will be stripped from the home. The amount of money that the borrower directly receives, or is paid on the borrower's behalf will be the full loan amount, and nothing more. Every payment the borrower makes will reduce the loan amount. If there are repeated refinancings, the loan amount will *not* rise. The equity in the home is no longer the source of financing the loan -- the loan can only be financed through the borrower's income.

- *The lender will have the incentive to make these loans affordable.* Currently, a typical predatory mortgage transaction creates thousands of dollars of immediate profit to the lender upon sale of the loan to an investor. When the borrower refinances the loan, the lender sees a substantial profit, providing an incentive to the lender to encourage refinancings, regardless of whether the borrower can actually afford to repay the refinanced loan. Yet, if the lender only reaps a benefit from the loan through the *payments* the lender has a clear incentive to make sure that the borrower can afford the payments.
- *The market will work to keep the interest rate on these loans competitive.* So long as the borrower has not invested a significant amount of money in each loan -- as is done when thousands of dollars in points and fees are financed -- there is little to stop the borrower from shopping for a lower rate loan when his credit improves, or interest rates fall - just as is done in the prime market. As a result, when the loan is first made the wise subprime lender will make the rate only high enough to cover the costs, the real risk, and a reasonable profit. If more is charged, the borrower will be able to refinance at a lower rate with a competitor.

Specific Proposal: The relevant federal agencies should prohibit their regulated entities from making, purchasing or financing loans with the following characteristics:

1) ***Limitation on Financing of Points and Fees.*** Loans in which more than 3% of the total loan amount of upfront points and fees.

Explanation: As is explained above, a key regulation is the limitation on the financing of points and closing costs. To the consumer, the worst abuse in the predatory mortgage market is the financing of high points and fees. [38]

2) ***Loans in which credit insurance is financed.*** Loans in which the lender financed, directly or indirectly, any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the lender directly or indirectly for any debt cancellation or suspension agreement or contract, except insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed by the lender.[39]

Explanation. Credit insurance is a big ticket item in each individual loan.[40] Nationally, consumers spend as much as $2.5 billion per year on credit insurance, often with little understanding of what they have bought.[41] This volume of business conceals overcharges of $900 million[42] to $1.2 billion,[43] where 40 to 50% of the premiums are paid to lenders as commissions. The marketplace has created reverse competition because credit insurance premiums are paid up front for term insurance policies which cover the whole or a significant portion of the loan term and lenders receive a commission based on the size of the credit insurance premium. Thus, lenders are rewarded for selling the most expensive forms of credit insurance, rather than the least costly to the consumer. As a result, unsophisticated consumers spend thousands of extra dollars for credit insurance which provides negligible value to them.

The remedy for the reverse competition established by the marketplace: only allow credit insurance to be sold when the premiums can be paid monthly, along with the loan payments, and the credit insurance can be canceled at any time.[44]

3) ***Loans with prepayment penalties.*** Specifically, loan terms should be prohibited which would allow the lender to collect a prepayment penalty a) later than 24 months after consummation, and b) greater than of 3% of the loan amount *that was not financed as up front costs or fees when the original loan was first made.*

Explanation. The rationale for this is that 3% is sufficient to cover the lender's costs for making the loan; any more than that is unnecessary equity stripping. In this scheme the lender has the option of whether to charge all or part of the 3% up front or if there is an early prepayment of the loan. *This prohbition bill is crucial to clamping down on the frequent loan flipping which is the cause of the loss of equity.*

The prohibition against financing points, fees and credit insurance premiums only works if it is accompanied by a protection on the backend of the loan: a prohibition against prepayment penalties. Without such a prohibition, predatory mortgage lenders will still be able to strip equity and will not be forced to make their loans actually competitive.

Subprime lenders claim that borrowers voluntarily choose prepayment penalties to reduce their interest rates. Borrower choice cannot explain, however, why some 70% of subprime loans currently charge prepayment penalties and only 2% of conventional loans do (almost all in California). The real reason is that conventional mortgage markets are competitive and sophisticated borrowers have the bargaining power to avoid these fees; borrowers in subprime markets often lack sophistication or are desperate for funds and simply accept the penalty that lenders insist that they take.

4) ***Loans which contain mandatory arbitration clauses.*** Loans which contain a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through the judicial process for any and all claims and defenses the borrower may have against the lender, broker, or other party involved in the loan transaction.

Explanation. Over the last few years, including mandatory arbitration clauses in consumer credit contracts has become standard operating procedure, more often than not. Creditors use arbitration clauses as a shield to prevent consumers from litigating their claims in a judicial forum, where a consumer friendly jury might be deciding the case. Arbitrators, who typically handle disputes between two businesses, are unfamiliar with consumer protection laws, and may be unsympathetic to consumers. Creditors also prefer arbitration because their exposure to punitive damage awards is dramatically reduced, and the threat of class actions is generally nullified.

Arbitration also limits discovery in most cases, which benefits the creditor, not the consumer, and the arbitration may cost the consumer far more than bringing an action in court. By comparison, indigents in many jurisdictions can file court actions in forma pauperis. And consumers lose their rights to appeal the decisionmaker's erroneous interpretation of the law. This allows arbitrators to ignore state or federal consumer protection statutes and judicial precedent. Consequently, any comprehensive law or regulation addressing predatory mortgage lending must include a prohibition against mandatory pre dispute arbitration clauses.

Summary. None of these prohibitions would effect the prime mortgage market in any significant way. Loans to prime borrowers would continue to be made without regulation, without consequences to brokers, lenders, assignees or investors if they otherwise comply with the few applicable laws that govern the transaction. The prime mortgage market would not be effected. The subprime mortgage market would be pushed to offer loans with terms similar to those provided to prime borrowers, simply with interest rates slightly higher. As Fannie Mae and Freddie Mac are often pointing out, *real* risk based pricing involves only a matter of a few points in the interest rate for riskier loans. Subprime borrowers should have the same terms, with slightly higher costs associated with them – reflected solely in the interest rate – as prime borrowers.

Appendix 2 provides an easy way to compare the costs of financing points and fees to including them in the interest rate. This Appendix is composed of two records: 1) an Excel spreadsheet that shows how to compare three loans: a) a loan with the points and fees paid in cash, b) the same loan with the points and fees financed, and c) the same loan with the points and fees paid from the interest. Anyone can compare and see the obvious advantages to pushing the points and fees into the interest rate, rather than encouraging their financing.

OTS has noted that it participates in a number of interagency efforts to address predatory lending issues. This is an excellent opportunity for OTS to take the lead in this broad effort and propose a comprehensive response to this serious problem affecting millions of homeowners across the nation.

Part III. Other federal legislative and regulatory changes that should be adopted to address the predatory mortgage problem.

As OTS' regulations did not cause the problem of predatory lending, OTS cannot by itself fix the problem. However, as an important agency within the executive branch it can strongly recommend that an aggressive regulatory and legislative response is appropriate. There are a number of other regulatory actions that can be immediately adopted to address predatory mortgage lending. These include:

1. Expand the Home Ownership and Equity Protection Act. The Sarbanes/LaFalce legislation currently pending in both houses of Congress[45] provide an excellent framwork for the appropriate expansion of this law to address many of the problems flowing from predatory lending.

2. The Federal Reserve Board can prohibit unfair and deceptive practices. Pursuant to its authority under the Truth in Lending Act,[46] the Federal Reserve Board can take immediate steps to address the problem. We recommend that adopt a similar structure to our proposal for OTS, and prohibit loans bearing those characteristics.

3. HUD can create disincentives so that the GSEs will not purchase loans with predatory characteristics. Fannie Mae and Freddie Mac, combined, purchase almost one half of all conventional single-family mortgage loans originated each year.[47] The volume of capital created by these purchases is enormous. The underwriting guidelines of these GSEs help to set the standard for the industry as a whole. The entrance of Fannie Mae and Freddie Mac into the subprime market will encourage the making of subprime loans through the resulting flow of capital back to the originators. Many of these loans are predatory in nature. Unless these entities operate under strict guidelines which eliminate the risk of inadvertently purchasing predatory mortgage loans, this type of lending will continue to flourish. HUD's role at this juncture is critical. HUD should ensure that increased affordable housing goals for the GSEs results in Fannie Mae and Freddie Mac purchasing only subprime mortgage loans that are beneficial to the borrowers, by only permitting the GSEs to purchase loans that meet the guidelines outlined here for depository institution loans.

4. The agencies that promulgate regulations under the Community Reinvestment Act can expansion and extend the Community Reinvestment Act. The CRA should be expanded so that all mortgages made by a bank, as well as its subsidiaries and affiliates, are considered when a CRA rating is determined. All mortgages which are considered predatory should be counted against a bank's CRA rating.

5. The Home Mortgage Disclosure Act should cover all Mortgage Loans the information collected should be expanded. Effective enforcement of these rules requires sunshine – HMDA should be changed to require the full disclosure information of all subprime lending by all mortgage lenders. whether the loans are made the lender or its subsidiary or affiliate. Specifically, HMDA should require the following information about each loan:

A. the annual percentage rate and interest rate of the loan;

B. the principal amount of the loan and the amount financed (as defined by TILA);

C. the total closing costs, points and fees, and financed credit insurance premiums (and related products);

D. the delinquency and foreclosure rates on an annual basis (for all subprime loans, as compared to other types of loans in the total portfolio);

E. the length of time between purchase and refinance, if any, on an aggregate basis.

6. Federal Protections Should Be Established in Foreclosure Proceedings. Given the alarming increase in foreclosures over the past two decades, federal law must provide some additional protections to borrowers losing their homes to foreclosure.

A. Increased funding for housing counselors and mandatory notice regarding their availability. Good housing counselors can facilitate loan workouts that preserve home ownership, prevent foreclosure, and reduce costs for lenders. Fannie Mae, Freddie Mac, and the FHA have implemented loss mitigation tools to avoid foreclosure and housing counselors are an essential part of that process. All mortgage lenders should be required to provide some support for housing counselors and notice of the availability of housing counselors should be required before any foreclosure can proceed.

B. Lenders should provide homeowners with the opportunity to pay off the arrearage and avoid foreclosure. Although this seems obvious and in the best interest of both parties, this is not always done. Lenders should be required to give notice to defaulting homeowners of the amount past due and the amount needed to avoid foreclosure prior to the addition of fees. The notice should list the various workout options available. These options have been accepted by Fannie Mae, Freddie Mac, and the FHA as appropriate loss management tools in the industry. Lenders should also be required to attempt to avoid foreclosure through various loan workout mechanisms. Further, a lender should not be permitted to unreasonably reject a workout proposal and simply proceed to foreclosure.

7. Tax Reform. The changes in the 1986 Tax Reform Act that only permits personal interest deductions for loans secured by residences should be amended to limit home secured debt to home related debt, and to allow all individuals some measure of deductions for unsecured personal credit. Changing the tax code in this way is the best and simplest way for the U.S. government to confirm its commitment to the creation *and retention* of homeownership. Current tax policies reward taxpayers for putting their home at risk to secure the payment of credit that is not related to the home. This should be changed.

The tax reform we recommend should be revenue neutral to both the federal fisc and most homeowners. Homeowners should be allowed to deduct interest on loans related to the purchase and improvement of the home – up to the current limits on the loan value and equity in the home. All individual taxpayers should also receive some allowance for interest related to personal credit, regardless of whether it is secured by the home. After all why should homeowners alone be allowed to deduct interest related to school debt or medical debt or car purchases?

Appendix 1

Summaries of examples of predatory mortgages:[48]

An elderly homeowner in Minnesota whose loan was flipped several times by a major lender. New points were imposed on each occasion and none were rebated upon refinancing.[49] The lender charged this homeowner 1 cent under 10 points (computed on the amount financed) prior to HOEPA. In the 1996 refinancing, the homeowner paid points which were 1 cent under the 8% HOEPA trigger. Because points were not rebated, the effective interest rates on these loans were much higher than the APR due to prepayment early in the term. The 1996 loan yielded a 26.813% APR based upon the fact that points were not rebated and the loan was prepaid in February, 1997.[50]

- For individual borrowers, the costs of a credit insurance policy are huge in relation to the loan amount. For example, a Georgia homeowner paid $2,200 for a credit life insurance policy sold to her in connection with a home-secured loan with a principal of $40,606.26. The cost of this insurance added over 5% to cost of the loan. Nevertheless, this loan is not covered by HOEPA because the countable points are 5% which do not alone exceed the 8% trigger. Credit insurance is not currently included in the HOEPA points and fees trigger If the credit insurance charge is added to the points, the total of over 10% easily triggers HOEPA protections.
- Some high rate lenders require homeowners to sign two loans, one which refinances debt, and the other, a smaller second mortgage, to finance the lender costs from the first loan. The APR on the first lien loan may be under the HOEPA APR trigger. But the APR on the second lien loan is a whopping 24%. This problem is evidenced made to two homeowners in Baltimore, Maryland. The homeowners are paying an APR of 19.2% on

the first lien loan and 10 points. [51] The second lien loans reveals a 24% APR. When the HUD-1 Settlement Statements for both loans are compared, it is clear that the cash owed by the homeowners to pay for settlement costs (line 303) on the first loan is the same amount which is financed by the second loan.

- Another homeowner is paying an APR of 14.59% on the first lien and 10 points (calculated in the same way as the homeowners described above). The second lien loan reveals a 24% APR. When the HUD-1 Settlement Statements for both loans are compared, it is clear that the cash owed by the homeowner to pay for settlement costs (line 303) on the first loan is paid by the cash to be disbursed by the second loan.[52] Significantly, these homeowners report that they did not realize there would be two loans prior to settlement.
- Some lenders solicit borrowers with the promise that the borrowers can consolidate all of their debt into one payment which will cost less and save money over the term of the new mortgage. At settlement, when the borrower realizes that this claim is false, the lender or settlement agent for the lender promises that the loan will be refinanced on better terms in 6 months to a year. Further, borrowers are told, this is standard practice. Borrowers are induced to enter into the loan by these statements. Further, many borrowers are not in a position at that point to refuse the bad deal because they have paid appraisal, application or other fees or are in danger of losing their homes. This is a practice of a lender doing business in the Baltimore, Maryland area. Of course, the bad loan is never refinanced or, if it is, the same lender re-charges points and fees, thus gouging the borrower yet again.
- At least one major lender is beginning to refinance its already existing portfolio of closed-end loans with a new "credit line account." The initial APR is just under the APR HOEPA trigger but it could easily exceed the trigger shortly thereafter, depending upon the index that is used. The maximum annual interest rate allowed on the account is 21%. In many loans, the initial advance was very close to the credit line limit suggesting that the loan may be a disguised closed-end transaction. These loans typically have high initial interest rates - such as the 15.5% charged to some borrowers -- in addition to the 3 points the borrowers were charged. Every exception to HOEPA encourages lenders to craft a loan product to meet that loophole. Given the more widespread use of open-ended loans secured by real property, this loophole should be closed.
- Some lenders will get homeowners to sign loan applications which inflate their incomes or add other information to the application unbeknownst to the homeowners in order to satisfy underwriting requirements. Frequently, the homeowners do not see these applications in their final form until settlement when they are asked to sign numerous documents in a rush. Or homeowners are asked to sign loan applications that are not completely filled in. The lender later adds additional information. This causes borrowers problems for two reasons: first, credit is extended when the borrower does not have the true ability to repay which leads to foreclosure; and second, the holder throws the "fraud" on the application back at the borrower later to defeat any complains that the borrower has against the loan.

Appendix 2

Explanation of Spreadsheet File

Comparing Mortgages which Finance Fees to Including Fees in Interest

The attached Microsoft Works Spreadsheet file has three loan amortizations illustrated. The first loan (Loan One) is one that has fees paid in cash by the borrower – it is the base loan, against which the other two loans should be compared.

The second loan (Loan Two) is in all other respects the same loan, but it finances the points and fees in the principal. The interest rate is the same, but obviously the payments increase.

The third loan (Loan Three) allows the borrower to pay the fees in the interest rate; as a result the principal of the loan is the same as in Loan One, but the payment has to go up to cover the additional sum which the lender must recoup to pay for the fees. The first decision here is how long should allowed for the lender to recover the fees. The default number here is 84 months, because this is the average life of prime mortgage loans. The interest rate then will go up to yield the increased payment.

Step One – Design Loan:

The user of this file has to plug the following numbers (and all others will automatically emerge):

- The principal amount of the Base loan – Cell B3
- The interest rate of the Base loan – Cell B4.
- The fees to be charged on the Base loan – Cell B5.
- The term of the loan – Cell B6.
- The number of months in which the lender will recover the fee in Loan Three – Cell N3.

Step Two – Iteration of Interest Rate for Loan Three:

The new payment necessary to yield the additional flow of income over the desired term will automatically appear in Cell N5. The user then must guess at the appropriate interest rate to plug into Cell J4 for Loan Three. When the user plugs in an interest rate in Cell J4, the payment that results will automatically appear in Cell J7. The user must keep changing the interest rate until the payment which appears in Cell J7 is within a few cents of the payment which appears in Cell N5.

Step Three – Analysis:

The comparison between the three loans will automatically appear on the right side of the spreadsheet.

- The additional amount of the payment – over the payment paid in Loan One – will appear in Cell N7.
- The difference in the amount of the debt after 3 years will appear in Cell N8.
- The net benefit to the borrower after 3 years (the reduction of the amount owed on the debt, minus the additional amount of the payment as between Loan Three and Loan Two) will appear in Cell N9.
- The same analysis is illustrated for these loans after 7 years and 10 years.

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[1] The National Consumer Law Center, Inc. (NCLC) is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of eleven practice treatises and annual supplements on consumer credit laws, including Truth In Lending, (4th ed. 1999) and Cost of Credit (1995 & Supp.), and Repossessions and Foreclosures (4th ed. 1999) as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers. NCLC became aware of predatory mortgage lending in the latter part of the 1980's, when the problem began to surface in earnest. Since that time, NCLC has written extensively on the topic, advised legal services and private attorneys about litigation strategies to defend against such loans, and provided oral and written testimony before Congress that led to the enactment of the Home Ownership and Equity Protection Act. In addition, representatives of NCLC have actively participated with industry, the Federal Reserve Board , Treasury, and HUD in extensive discussions about how to address predatory lending.

The Consumer Federation of America is a nonprofit association of some 250 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interests through advocacy and education.

[2]There is extensive evidence to indicate that the “bad actors” in the marketplace are not limited to non-depository institutions. First of all, many of the most predatory of the mortgage lenders are owned by or affiliated with depository institutions. Secondly, experience in the unsecured market indicates that a national charter does not inhibit a depository institutions from engaging in the unethical practice of payday loans, or engaging in the illegal practice of charging exorbitant fees for short term loans secured by the electronic payment of social security benefits. *See,* Comments to Treasury by NCLC and others on on ANPRM 31 C.F.R. Chapter II, RIN 15055--AA74, Possible Regulation Regarding Access to Accounts at Financial Institutions, Through Payment Service Providers.

3] Depository Institutions Deregulation and Monetary Control Act of 1980, § 501 (DIDA), codified at 12 U.S.C. § 1735f-7a.

4]The Alternative Mortgage Transaction Parity Act of 1982 (AMTPA). 12 U.S.C. § 3800, Et seq.

5] The term "reverse redlining" has been coined to describe a practice wherein banks make loans at one rate in white communities through their banking arm and at another higher rate in communities of color through separate finance company subsidiaries. Evidence in a case brought in Atlanta, for example, established that black borrowers were charged 11.06% in up front fees by Fleet Finance Co. (a subsidiary of Fleet Bank). White borrowers were charged 8.26%.

6]“The Asset-Backed Securities Market: The Effects of Weakened Consumer Loan Quality,” FDIC Regional Outlook, Second Quarter 1997.

7] Daniel Immergluck and Marti Wiles, Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development, at 12, Woodstock Institute (Nov. 1999).

8]Glenn B. Canner, Thomas A. Durkin, and Charles A. Luckett, Recent Developments in Home Equity Lending, 84 Fed. Res. Bull. 241, 250 (April 1998); U.S. Census Bureau, Statistical Abstract of the United States: 1999, Table No.820 (this table reveals that by 1998, $411 billion worth of mortgage loans were held by private mortgage conduits, including securitized loans; table does not distinguish between prime and subprime lenders, however).

9] *Id.*

10] *Id.*

11][11] For an excellent article on the rise of the subprime mortgage market and the resulting abuses, see Cathy Lesser Mansfield, The Road to Subprime “Hel” Was Paved with Good Congressional Intentions: Usury Deregulation and the Subprime Home Equity Market, 51 S.C.L. Rev. ____(2000).

12] Given the proclivity of many of us to want to minimize our weaknesses, we can safely assume that some additional number of mortgage borrowers were also confused, but were too embarrassed to admit it.

13] According to a survey commissioned by the Mortgage Bankers of America, “4 out of 10 borrowers indicate some level of confusion with the loan process" and "31% of all borrowers stated that the biggest hurdle of the process was understanding and completing the paperwork, while 17% had difficulty determining how much their loan would cost." **Homebuyers and the Loan Settlement Process: A Yankelovich CNN Study,** ***prepared for the Mortgage Bankers Association of America March 5, 1997, at 48.***

14] **See,** ***Joint Report of the Congress Concerning Reform to the Truth In Lending Act and the Real Estate Settlement Procedures Act, July 18, 1998.***

15]These problems have been illustrated in the hearings before the House Committee on Banks House Committee on Banking and Financial Services regarding the Increase in Predatory Lending and Appropriate Remedial Actions, May 24, 2000; in the hearings before the Senate Special Committee on Aging, Mar. 16, 1998. They have been documented at the

hearings currently just recently completed before the Department of Housing and Urban Development and the Treasury Department in five cities around the nation. (Atlanta, Los Angeles, New York, Baltimore, and Chicago.)

16] **Also see, e.g. *CBS Evening News* – Eye on America*, March 16, 1998;* Profiting from Fine Print with Wall Street's Help," *New York Times, March 15, 2000.***

17] National Adult Literacy Survey, National Center for Education Statistics, 1992, at xiv. It was noted that the number of functionally illiterate Americans was between 23 million and 27 million adults. The most difficult tasks that an estimated 90 million adults can perform include calculating the difference in price of two items and filing out a Social Security form . . . .These adults cannot write a brief letter explaining an error on a credit card bill, figure out a Saturday departure on a bus schedule or use a calculator to determine the difference between a sale price and a regular price.

18] In 2000, the U.S. Department of Health and Human Services poverty level for a family of four is $17,050. *Federal Register*, Vol. 65, No. 31, February 15, 2000, pp. 7555-7557.

19] American Housing Survey for Selected Metropolitan Areas, 1991-1994.

20] Dozens of examples were raised in the variety of Congressional hearings held on these issues which lead to the passage of HOEPA. *Problems in Community Development Banking, Mortgage Lending Discrimination, Reverse Redlining, and Home Equity Lending: Hearings Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 103d Cong., 1st Sess. 258, 260 (Feb. 17, 1993); *Hearing on S.924 Home Ownership and Equity Protection Act, Before the Senate Banking Committee,* 103d Cong., 1st Sess. (May 19, 1993); *The Home Equity Protection Act of 1993, Hearings on H.R. 3153 Before the Subcommittee on Consumer Credit and Insurance of the House Committee on Banking, Finance and Urban Affairs,* 103d Cong., 2d Sess. (March 22, 1994); *Hearing on Community Development Institutions, 103-2, before the House Subcommittee on Financial Institutions Supervision, Regulation and Deposit Insurance*, 103d Cong., 1st Sess. (Feb 2-4, 1993).

21] At the end of 1980 there were 150,165 homes in foreclosure, at the end of 1998 there were 577,566. *See* Table No. 823, Mortgage Delinquency and Foreclosure Rates: 1980 to 1998, U.S. Census Bureau, Statistical Abstract of the United States, Banking, Finance and Insurance, 1999.

22] *See*, Appendix 1..

23]HUD estimates that over 50% of all mortgage loans involve a broker. *See* HUD News Release of Sept. 17, 1997 accompanying HUD's announcement of proposed changes to Regulation X regarding broker fees proposed in 62 Fed. Reg. 53912 (Oct. 16, 1997). In over 50% of mortgages loans, closing costs includes a broker's fee. OTS' regulation on predatory mortgages should include in the upfront fees all fees paid to brokers, both those paid directly by the borrower, and those paid by the lender. In the interests of simplicity of this example, we have not identified and included either broker's fee.

24] *See e.g.* ANPRM at 24.

25] *See, e.g. National Home Equity Mortgage Association vs. Face,* 64 F. Supp. 2d 584 (E.D.Va. 1999) and *Shinn v. Encore Mortgage Services*, 2000 WL 55863 (D.N.J.).

26] 12 U.S.C. § 3801(b).

27] 12 C.F.R. §§ 560.333-.35, 560.220.

28]We have simply summarized OTS' six stated goals for any new OTS regulations: 1) encourage safe and sound lending practices; 2) encourage innovation in meeting customers' needs; 3) discourage practices that prey upon lack of knowledge or options; 4) enable thrifts to compete with other lenders; 5) have a uniform system of regulation for savings associations; and 6) minimize regulatory burden. *ANPRM* at 4,5.

29]OTS' regulations govern thrifts and housing creditors. 12 C.F.R. § 560 *et seq.* The OCC's regulations govern nationally and state chartered banks. 12 C.F.R. §§ 34.1 *et seq.*. 43.24. NCUA governs federal and state credit unions. 12 C.F.R. § 701.21.

30] A new law passed in North Carolina, substantive regulations in New York, city council regulations in Chicago, as well as serious legislative consideration of anti-predatory lending bills in California, Illinois, Maryland, Massachusetts, Missouri, and West Virginia.

31] Cite to cases holding state UDAP laws import federal regulations for definition of unfairness.

32] Based upon research conducted by the Center for Community Self-Help and NCLC, the following states prohibit or restrict prepayment penalties: Ala. Code § 5-19-4 (1999), Alaska Stat. Ann. § 45.45.010 (Lexis 1998), Conn. Gen. Stat. Ann. §§ 36a-265(c), 519 (West 1996 & Supp. 2000), D.C. Code Ann. § 28-3301 (1996), Ind. Code Ann. §§ 28-1-13-7.1, -15-11-14, -15-11-16 (Michie 1996 & Supp. 1999), §§ 535.9 (West 1997), § 528.4 (West 1993), La. Rev. Stat. Ann. § 9:3509, 32, § 9:3532, § 6:1097, § 6:1224 (West Supp. 2000), Me. Rev. Stat. Ann. tit. 9-A, § 9-308 (West 1997), Mass. Ann. Laws ch. 140, § 90A (Law. Co-op. 1995), ch. 183, § 56 (Law. Co-op. 1996), Minn. Stat. Ann. § 47.20, Miss. Code Ann. § 75-17-31, § 89-1-317 (1999), Mo. Ann. Stat. § 408.036 (West Supp. 2000), Neb. Rev. Stat. Ann. § 8-330 (Michie 1995), N.J. Stat. Ann. § 46:10B-2 (West 1989), N.M. Stat. Ann. § 56-8-30 (Michie 1996), N.Y. Real Prop. Law 49 § 254-a (McKinney 1989), N.C. Gen. Stat. § 24-.1A(b), 41 Pa. Stat. Ann. § 405 (1999), R.I. Gen. Laws § 34-23-5 (Supp. 1999), Tex. Financial Code Ann. § 302.102 (West Supp. 2000), Va. Code Ann. § 6.1-330.83 (Michie 1999), W. Va. Code § 47-6-5b (1999), Wis. Stat. Ann. § 138.051 (West Supp. 1999).

33] As Western Union did when its efforts to become a major conduit for federal electronic payments were frustrated by Treasury regulations.

34] For example, Nationsbank Credit could do business through its Bank of America branches, etc.

35] For national banks, in the area of mortgage lending, OCC regulations specifically allow those lenders to: Use any loan-to-value ratio; charge prepayment penalties on adjustable rate mortgage loans, which penalty which can be no greater than the principal balance due plus the interest that would have been collected over the remainder of the loan; use any schedule for repayment (e.g., balloons); and make a loan for any term. 12 C.F.R. §§ 34.1 et seq. In addition, to these explicit preemptions, the OCC maintains the option of preempting any state laws which apply to other aspects of real estate lending by national banks. For state chartered banks, the OCC invoked AMPTA to allow them to make ARM loans in accordance with the same provisions that apply to national banks. 12 C.F.R. § 43.24.

36] Credit unions cannot charge a prepayment penalty nor can they charge interest in excess of 18% per annum. 12 C.F.R. § 701.21.

37] 15 U.S.C. § 1602(AA)(1)(B).

38]The points and fees trigger must include all points, fees, and insurance charges, but the prohibition on financing more than 3% also applies to *all* points and fees. Under current HOEPA law, there are confusing rules to determine which fees and insurance charges are included in the trigger for up-front costs. For example, under current law, the trigger excludes "reasonable" charges if they are not retained by the creditor and are not paid to a third party affiliated with the creditor. Fees for appraisals performed by unaffiliated third parties would not be counted if only the direct cost is passed on to the borrower. On the other hand, such a fee is counted if the cost is padded. Determining what is a "reasonable" for purposes of triggering coverage, however, is a difficult burden for consumers to meet. The closing costs trigger should include all points and all fees for closing costs.

Points and fees must be defined as: (a) all items listed in 15 U.S.C. § 1605(a)(1) through (4), except interest or the time-price differential; (b) all charges listed in 15 U.S.C. § 1605(e); (c) all compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction; (d) the cost of all premiums financed by the lender, directly or indirectly for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the lender directly or indirectly for any debt cancellation or suspension agreement or contract, except insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender. Total loan amount means the principal of the loan minus the points and fees.

39]The Federal Reserve Board and HUD specifically endorsed this proposal in their Report to Congress in July, 1998. Board of Governors of the Federal Reserve System, Department of Housing and Urban Development, *Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act*, July, 1998, at 74.

40] For individual borrowers, the costs of a credit insurance policy are huge in relation to the loan amount. For example, a Georgia homeowner paid $2,200 for a credit life insurance policy sold to her in connection with a home-secured loan with a principal of $40,606.26. The cost of this insurance added over 5% to cost of the loan. Nevertheless, this loan is not covered by HOEPA because the credit insurance premiums are allowed to be excluded from the closing cost trigger in HOEPA under current law.

41] *Credit Life Insurance Hearing Before the Subcommittee on Antitrust, Monopoly and Business Rights of the Senate Committee on the Judiciary*, 96th Cong., 1st Sess. 48 (1979) (statement of Robert Sable).

42] *Id.* at 3.

43]*Id.* at 7 (testimony of James Hunt). *Credit Life Insurance: The Nation's Worst Insurance Rip Off*, Statement of Consumer Federation of America and National Insurance Consumer Organization (June 4, 1990), updated (May 20, 1992 and July 25, 1995).

44] Allegations of coercion in the sale of what is suppose to be a "voluntary" product have been the subject of federal enforcement cases and private litigation. *In re US LIFE Credit Corp. & US LIFE Corp.*, 91 FTC 984 (1978), *modified on other grounds* 92 FTC 353 (1978), *rev'd* 599 F.2d 1387 (5th Cir. 1979); *Lemelledo v. Beneficial Management*, 674 A.2d 582 (N.J. Super. Ct. App. Div. 1996).

45] **CITES**

46] 15 U.S.C. § 1639(l).

47] Refinancing of mortgages accounted for 50% of all originations in 1998. 65 Fed. Reg. 12631, 12637 (March 9, 2000). Neither Fannie Mae nor Freddie Mac is limited to buying purchase money mortgages on the secondary market. See 12 U.S.C. §§ 1717 (Fannie), 1454 (Freddie). HUD has not limited the GSE housing goals to purchase money mortgages.

[48] Exhibits providing the evidence for the loans detailed below were presented to the Federal Reserve Board at hearings regarding the Home Ownership and Equity Protection Act, Docket No. R-0969, June 17, 1997, by Elizabeth Renuart, Staff Attorney, National Consumer Law Center.

[49]The loans prior to 1996 contained a provision purporting to rebate unearned points. Application of the formula, however, never results in a rebate unless the prepayment occurs within the first year of the loan.

[50] The homeowner could no longer afford to make the monthly payments that increased with each refinance and was forced to sell his home. He paid off the lender in February 1997.

51]The 10 points were calculated on the principal amount of the loan. If, instead, the amount financed is used, the number of points charged is 11.

[52] One homeowner reports that she did not receive all of the cash allegedly disbursed by the second loan even after the closing costs from the first loan were paid.