NATIONAL ASSOCIATION OF REALTORS®

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September 24, 2009

The Honorable Dave Stevens
Assistant Secretary of Housing/ FHA Commissioner
Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

Dear Commissioner Stevens:

As you know, amendments to the Federal Reserve's Regulation Z, designed to protect consumers from certain unfair, abusive, or deceptive lending and servicing practices, are scheduled to become effective on October 1, 2009.[1] This regulation will prohibit any first-lien higher-priced mortgage loan[2] from charging a prepayment penalty, with limited exceptions. NAR has long argued that FHA's policy of requiring borrower to pay interest through the end of the month when prepaying a loan is a prepayment penalty. Apparently, the Federal Reserve agrees. This requirement amounts to a prepayment penalty since FHA rules provide for borrowers to pay interest charges based on an outstanding principal loan amount that has already been fully paid. There is a significant risk that starting next week FHA lenders will stop making FHA higher-priced mortgage loans to avoid significant potential liability for violating the revised Reg Z.[3]

In 2004, FHA informed NAR that they could not change this policy as it is a Ginnie Mae (GNMA) requirement. However, VA loans, which are also securitized under GNMA, do not have this policy, which suggests that GNMA has administrative flexibility to apply the same approach for FHA loans that it uses for VA loans. I have enclosed previous correspondence with GNMA on this issue, as well as the analysis we conducted of the costs to FHA borrowers. Based on that analysis (conducted using HUD's own 2000-2003 data), only 16% of FHA borrowers were able to avoid the penalty, and the average cost was $528 per borrower. As homeowners face high housing and closing costs, this penalty places an unreasonable and often unexpected burden on FHA consumers. The goal of the FHA program is to assist low- to moderate-income families. Imposing interest penalties on FHA borrowers contradicts this goal.

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[1] See 73 Fed. Reg. 44522 (July 30, 2008).
[2] A first lien higher-priced mortgage loan is a loan with an interest rate that exceeds by at least 1.5 percentage points the Average Prime Offer Rate (APOR) threshold published by the Federal Reserve Board.

FHA's prepayment policy unfairly penalizes the American consumer. Effective October 1, 2009, Regulation Z will make this practice illegal for higher-priced mortgage loans and severely restrict the number of FHA loans lenders will be willing to make. We urge FHA to eliminate this requirement for its borrowers, who make up a growing and significant share of the market today. According to our previous analysis, 40% of borrowers closed on the first 10 days of the month. In just the three years between 2000 and 2003, FHA borrowers paid over $1.375 billion in excess interest payments. If HUD would provide us the necessary data, we would be pleased to run this analysis again, to update these numbers.

Thank you for the opportunity to weigh in on this important issue. We urge FHA to use the opportunity provided by Regulation Z to eliminate this requirement, and bring fairness to FHA borrowers. In fact, we believe, Regulation Z virtually compels that this prepayment penalty be abolished in order to avoid a serious unintended consequence of removing the only mortgage option many American families have.

Sincerely,

Charles McMillan

Charles McMillan, CIPS, GRI
2009 President, National Association of REALTORS®

Attachment: letter to GNMA, dated January 30, 2004

cc: Thomas R. Weakland, Acting Executive Vice President, Ginnie Mae

NATIONAL ASSOCIATION OF REALTORS®

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REGULATORY & INDUSTRY
RELATIONS DEPARTMENT

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Joseph M. Ventrone
Managing Director

January 30, 2004

The Honorable Ronald A. Rosenfeld
President
Government National Mortgage Association
Department of Housing and Urban Development
Room 6100
451 Seventh Street, SW
Washington, DC 20410

Dear Mr. Rosenfeld:

On behalf of NAR, I want to express our appreciation for your continued communication and thoughtfulness concerning the issue of prepaid FHA interest that I brought to your attention in June of last year. In response to your request of December 12, 2003, NAR also appreciates Ginnie Mae's desire to know the analytical basis from which we conclude that FHA's prepayment policy unfairly penalizes the American consumer. We hope that the Department will use this information to make an "informed decision" on whether or not FHA's loan payoff policy needs to be changed or the status quo will remain in place.

Before delving into the statistical analysis, I would like to take this opportunity to reiterate what I believe to be the facts, maybe filled with anecdotes on my part, but still the facts to the average consumer:

- Whether the homebuyer closes one day before the end of the month or any amount of days before the end of the month, they continue to pay interest on a loan, which has been paid off. No other loans of any type that I know of in the consumer arena are handled in such a manner. For example, the VA, which is also securitized under Ginnie Mae, does not charge their borrowers interest beyond the payoff date. Since Ginnie Mae does not object to having borrowers pay the interest; this allows lenders the leeway to charge this interest to the consumer.

- Although lenders may lose interest (which they are not entitled to) on the previous house, they start charging interest on the new loan on the day of closing. It does not start at the beginning of the next month (i.e. - a loan payoff of $150,000 at 6.5% interest paid off 10 days before closing is $267.12 of interest penalty and if the new loan is $200,000 at 6% interest the 10 days would be $328.76, both paid by the consumer at the time of closing on FHA loans only).

- Some may argue that if most loans close near the end of the month anyway, why would you need to change current policy? In actuality, how many people would be helped by changing FHA's loan payoff policy? Setting aside the fairness issue, I would argue first, that even if it helps a few consumers that could use the extra funds to purchase their next home, this is good for the economy. If we based all of our efforts on only assisting a critical mass, there would be a number of existing programs and assistance avenues that would never have been started in the first place. Secondly, as will be discussed in the analysis, more than 40% of borrowers close in the first 10 days of the month.

- Others may contend that if the FHA loan payoff policy were changed so consumers do not have to pay the prepayment penalty then lenders would no longer offer FHA financing or they would price it in to the cost of the loan. I would argue that the free market system in this country would take care of this. If a number of lenders made a financial decision to not participate in the FHA program, there would be astute lenders who would step in and see the opportunity to continue to meet this portion of the mortgage market. The FHA mortgage product has uses in the marketplace that the conventional mortgage cannot fill and thus will continue to be used by the consumer especially first time homebuyers. In addition, lenders continue to offer the VA loan product, which does not have this penalty. And based on a cursory analysis of current lending rates, VA loans price the same, or lower than FHA loans, so there does not appear to be an impact on loan rates.

- Finally, I bring it back to this; the economic gainer or loser in this situation is the one who least can afford it, the consumer. Neither myself, my fellow REALTORS® nor NAR will receive any financial gain in this. It is an issue whether visceral or not of simple fairness.

The attached analysis, which is based on HUD's own data, clearly illustrates how much of a financial burden the consumer has to bear because of the prepayment penalty. The data is self-explanatory but I would like to point out a few facts:

- In 2003, 55% of FHA borrowers paid an average of $528 in excess interest fees.
- In 2003, over 425,000 FHA borrowers paid an average of $622 in excess interest fees.
- In 2003, only 16% of loans were prepaid on the last 5 days of the month.
- Every year for the last three years, approximately 25% of FHA loans were prepaid on the first 5 days of the month.
- In 2003, FHA borrowers paid a cumulative $587,425,543 in excess interest fees.
- Since January of 2000, FHA borrowers have paid over $1.375 BILLION in excess interest payments.

NAR would hope that a decision that directly impacts the ability of the home buying public to purchase a home would not be solely based on empirical data. Making an "informed" and deliberate decision entails weighing the tangible and intangible consequences, but the ultimate decision has to be based on fundamental fairness. On behalf of NAR, I want to thank you for the opportunity to present our views on why FHA's payoff policy should be changed. We look forward to continuing our good working relationship and if you have any questions you can contact me at 763-535-1471 or Peter Morgan at 202-383-1233.

Sincerely,

John W. Anderson
2003 Chair, Federal Housing Policy Committee
NATIONAL ASSOCIATION OF REALTORS®

cc: The Honorable John C. Weicher
Assistant Secretary
Housing/FHA Commissioner

Attachment: FHA Single Family Mortgage Insurance: Loan Characteristics By Day of Month of Mortgage Prepayment.

Attachment

FHA Single Family Mortgage Insurance

Loan Characteristics By
Day of Month of Mortgage Prepayment

Period		Day of Month of Mortgage Pay-Off						
FY 2000		1-5	6-10	11-15	16-20	21-25	26-31	Grand Total
	Number of Loans[a]	149,847	100,023	87,382	82,504	81,782	115,414	616,952
	Share of Loans[b]	24.3%	16.2%	14.2%	13.4%	13.3%	18.7%	100.0%
	Average Unpaid Balance[a]	$ 65,901	$ 63,630	$ 57,976	$ 59,965	$ 59,216	$ 60,424	$ 61,706
	Average Monthly Payment[a]	$ 544	$ 528	$ 479	$ 498	$ 495	$ 499	$ 511
	Average Interest Rate[a]	7.90	7.93	8.05	8.00	7.97	7.99	7.97
	Average Age at Payoff in Years[a]	7.9	8.6	9.8	9.2	9.6	9.3	8.9
	Average Age at Payoff in Months[b]	95	103	118	111	116	111	107
	Interest Share of Payment[b,c]	82.6%	81.7%	80.3%	81.0%	80.3%	81.0%	81.4%
	Average Daily Interest[b,d]	$ 14.96	$ 14.39	$ 12.83	$ 13.44	$ 13.25	$ 13.46	$ 13.86
	Average Excess Interest to Month-end[b,e]	$ 404	$ 316	$ 218	$ 175	$ 93	$ 40	$ 219
	Total Excess Interest to Month-end[b,f]	**$ 60,585,968**	**$ 31,678,179**	**$ 19,069,423**	**$ 13,306,091**	**$ 7,592,638**	**$ 3,107,413**	**$ 135,339,712**
FY 2001								
	Number of Loans	257,056	131,875	117,575	135,864	108,704	169,134	920,208
	Share of Loans	27.9%	14.3%	12.8%	14.8%	11.8%	18.4%	100.0%
	Average Unpaid Balance	$ 82,312	$ 76,398	$ 72,018	$ 72,468	$ 72,584	$ 74,279	$ 76,070
	Average Monthly Payment	$ 722	$ 670	$ 627	$ 636	$ 635	$ 649	$ 666
	Average Interest Rate	7.74	7.81	7.85	7.81	7.88	7.88	7.81
	Average Age at Payoff in Years	6.3	7.3	8.0	7.9	7.9	7.6	7.3
	Average Age at Payoff in Months	76	88	96	95	95	92	88
	Interest Share of Payment	84.0%	83.0%	82.2%	82.2%	82.4%	82.7%	83.0%
	Average Daily Interest	$ 20.22	$ 18.52	$ 17.18	$ 17.42	$ 17.44	$ 17.90	$ 18.42
	Average Excess Interest to Month-end	$ 546	$ 407	$ 292	$ 226	$ 122	$ 54	$ 300
	Total Excess Interest to Month-end	**$ 140,431,516**	**$ 53,788,147**	**$ 34,361,865**	**$ 28,420,941**	**$ 13,290,752**	**$ 6,062,374**	**$ 276,355,595**
FY 2002								
	Number of Loans	329,098	155,951	147,297	160,730	156,955	215,602	1,165,633
	Share of Loans	28.2%	13.4%	12.6%	13.8%	13.5%	18.5%	100.0%
	Average Unpaid Balance	$ 86,146	$ 80,555	$ 79,179	$ 78,483	$ 77,958	$ 80,957	$ 81,398
	Average Monthly Payment	$ 767	$ 717	$ 707	$ 700	$ 694	$ 722	$ 725
	Average Interest Rate	7.77	7.85	7.85	7.83	7.87	7.85	7.83
	Average Age at Payoff in Years	6.2	6.9	7.2	7.1	7.3	6.8	6.8
	Average Age at Payoff in Months	74	83	86	85	88	82	82
	Interest Share of Payment	84.3%	83.7%	83.4%	83.4%	83.2%	83.8%	83.7%
	Average Daily Interest	$ 21.55	$ 20.00	$ 19.64	$ 19.46	$ 19.25	$ 20.16	$ 20.23
	Average Excess Interest to Month-end	$ 582	$ 440	$ 334	$ 253	$ 135	$ 60	$ 323
	Total Excess Interest to Month-end	**$ 191,713,623**	**$ 68,604,886**	**$ 49,151,872**	**$ 37,527,323**	**$ 21,157,886**	**$ 8,697,863**	**$ 376,853,454**
FY 2003								
	Number of Loans	425,301	236,818	245,627	230,854	235,416	268,790	1,642,806
	Share of Loans	25.9%	14.4%	15.0%	14.1%	14.3%	16.4%	100.0%
	Average Unpaid Balance	$ 92,076	$ 89,701	$ 91,833	$ 87,612	$ 86,563	$ 87,098	$ 89,465
	Average Monthly Payment	$ 823	$ 807	$ 829	$ 788	$ 780	$ 783	$ 804
	Average Interest Rate	7.51	7.56	7.63	7.56	7.59	7.61	7.57
	Average Age at Payoff in Years	5.6	5.9	5.8	6.1	6.3	6.3	6.0
	Average Age at Payoff in Months	67	71	69	73	75	76	72
	Interest Share of Payment	84.0%	83.8%	84.3%	83.6%	83.5%	83.5%	83.8%
	Average Daily Interest	$ 23.05	$ 22.53	$ 23.29	$ 21.95	$ 21.71	$ 21.78	$ 22.44
	Average Excess Interest to Month-end	$ 622	$ 496	$ 396	$ 285	$ 152	$ 65	$ 358
	Total Excess Interest to Month-end	**$ 264,558,184**	**$ 117,358,314**	**$ 97,266,694**	**$ 60,787,588**	**$ 35,744,576**	**$ 11,710,188**	**$ 587,425,543**

Notes:

[a] Data provided by U.S. Department of Housing and Urban Development, Office of Evaluation in the Office of Finance and Budget in the Office of Housing

[b] NATIONAL ASSOCIATION OF REALTORS® calculations based on HUD data

[c] Interest Share of Average Monthly Payment calculated based on Average Age at Payoff in Months and Average Interest Rate

[d] Average Daily Interest calculated as interest portion of Average Monthly Payment divided by 30 days

[e] Average Excess Interest to Month-end calculated as Average Daily Interest multiplied by number of days to end of month from date of prepayment

[f] Total Excess Interest to Month-end calculated as Average Excess Interest to Month-end multiplied by Number of Loans