



230

June 24, 2002

**VIA FACSIMILE at 202/906-6518**

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552

RE: Alternative Mortgage Transaction Parity Act; Preemption  
67 FR 20468 (April 25, 2002)

To Whom It May Concern:

The Wisconsin Bankers Association (WBA) is a statewide trade association comprised of nearly 350 state and federally chartered banks, savings banks and savings and loan associations located throughout Wisconsin. WBA welcomes the opportunity to comment on the proposed rule issued by the Office of Thrift Supervision (OTS) that would amend the current rule identifying the OTS rules that apply to state housing creditors under the Alternative Mortgage Transaction Parity Act (Parity Act).

Every day, WBA thrift members rely on the Parity Act when making residential mortgage loans. These financial institutions would be significantly impacted if the proposed rule is finalized as drafted. WBA strongly recommends that the OTS continue providing, pursuant to the Parity Act, state savings associations with the benefit of the federal preemption of state laws on prepayment penalties and late payment charges.

The purpose of the Parity Act should be preserved by continuing to allow federal preemption of state laws on prepayment penalties and late charges.

In 1982, Congress enacted the Parity Act as part of broader financial services legislation. The purpose of the Parity Act was to permit state-chartered lenders to offer alternative mortgage instruments under a system of uniform federal rules. Alternative mortgage instruments include variable rate loans and loans that provide for balloon payments. The statute permits Wisconsin chartered or licensed housing lenders (state housing creditors) to follow OTS rules, rather than Wisconsin law, with respect to alternative mortgage instruments.

In issuing this proposed rule, the OTS seeks to amend the regulation identifying its regulations that apply to state housing creditors under the Parity Act. The regulations that would no longer apply to state housing creditors are those on prepayment penalties and late charges. While WBA is aware that prepayment penalties are frequently on the list of loan terms that certain groups identify as potentially abusive, both prepayment penalty provisions and late charges serve necessary, useful purposes. For example, if a loan has a

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Office of Thrift Supervision  
June 24, 2002  
Page Two

prepayment penalty, the interest rate may be lower, thus enabling the borrower to afford a loan that he or she may not otherwise be able to afford. The OTS itself even admits that providing the option to have loans with prepayment penalties and late fees helps to promote safe and sound operations. WBA strongly agrees with this statement.

**Abuses in the charging of such fees should be corrected through enforcement rather than a wholesale change affecting all state housing creditors.**

If OTS is aware of abuses in the charging of prepayment penalties and late charges by state housing creditors, then additional enforcement of state housing creditors and education should be utilized to more effectively combat such abuses. Making such a drastic, wholesale change as to disallow federal preemption of prepayment penalties and late charges for all state housing creditors is an unnecessary overreaction to correct a relatively small problem occurring in parts of the country other than Wisconsin.

**Most state housing creditors, particularly depository institutions, are not the source of the problem.** The focus of any regulation correcting abuses in this area should be on enhancing systems to detect and deter deception and fraud, without restricting the availability of credit for any potential homeowner. Pursuant to the terms of the law, OTS should work to ensure that both new and current rules that attempt to curb alleged predatory lending practices are applied equally to federally insured savings associations and state licensed and chartered housing lenders that can choose to follow federal, rather than state, law under the Parity Act. WBA encourages OTS to work closely with state officials and the Federal Trade Commission to ensure that OTS and other federal regulations apply in fact, as well as in theory, to state-licensed lenders. This will help avoid a situation where state law is preempted but federal regulations are not enforced.

**OTS should treat state-chartered savings associations different from other state housing creditors.**

WBA strongly believes that there are significant and important differences between state-chartered savings associations and other state housing creditors that reasonably justify regulatory distinctions. State chartered savings associations are subject to the regulation and supervision of a state banking authority as well as the regular examination and supervision of the OTS. WBA believes that state-chartered savings associations should be treated like federal associations in this matter as they are in others. Since 1989, they have been subject to substantially similar regulatory schemes with the additional layer of state regulation. These are not the institutions for which WBA believes there should be additional oversight unless it is warranted for safety and soundness reasons. Other state housing creditors simply do not undergo the close, regular scrutiny of two regulatory bodies. Consequently, OTS should treat state-chartered savings associations differently under the Parity Act and designate sections 563.33 and 563.34 for state housing creditors that are depository institutions but not for other types of state housing creditors.

Office of Thrift Supervision  
June 24, 2002  
Page Three

**Prepayment penalties and late charges help promote safe and sound lending and, therefore, there is no justifiable reason to exclude them from the federal preemption provisions under the Parity Act.**

Both prepayment penalties and late charges should be viewed as helping to promote safe and sound operations. Prepayment penalties help lenders to manage the risk of loan prepayment. Loans prepay at a much faster rate in 2002 than they did in 1982, injecting more risk in the process of originating mortgage loans. In addition, the role of the secondary market and investors in establishing loan pricing and risk characteristics is much more highly developed. Late payment charges are useful for safety and soundness reasons. As the OTS points out in the proposed rule, late payment charges encourage the timely payment of loans and allow financial institutions to recover costs associated with late payments. Providing the option to lenders to offer a loan with a prepayment penalty and late fee charges provide lenders and borrowers with important choices in today's mortgage environment. Consequently, it is completely appropriate for OTS to continue to apply these preemption rules to state-chartered housing lenders that are depository institutions.

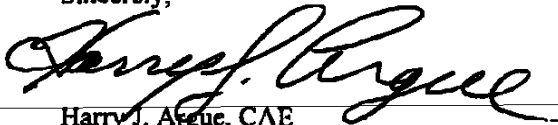
**Conclusion**

WBA certainly supports the provisions in the proposed rule that retain parity for state housing creditors with federal thrifts by continuing to designate sections 560.35 and 560.210 as appropriate and applicable for state housing creditors.

However, WBA strongly disagrees with OTS' proposed deletion of the prepayment and late charge regulations from the list of regulations that apply to state chartered housing lenders that are depository institutions under the Parity Act. WBA believes that it is appropriate and within OTS' jurisdiction to distinguish between state-chartered housing lenders that are depository institutions and other state-chartered housing creditors. WBA strongly recommends that OTS make such a distinction in finalizing these proposed rules.

WBA appreciates the opportunity to comment on the proposed rules.

Sincerely,



Harry J. Argue, CAE  
Executive Vice President/CEO

Cc: America's Community Bankers