

## COMMONWEALTH OF VIRGINIA

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## STATE CORPORATION COMMISSION

July 5, 2000

Manager, Dissemination Branch  
Information Management and Services Division  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, D.C. 20552  
Attn: Docket No. 2000-34

Re: Responsible Alternative Mortgage Lending; Advance Notice of Proposed Rulemaking (65 FR 15526)

Ladies and Gentlemen:

The Bureau of Financial Institutions of the Virginia State Corporation Commission appreciates this opportunity to comment on the Office of Thrift Supervision's ("OTS") Advance Notice of Proposed Rulemaking ("ANPR"). The ANPR announces the OTS' intention to review the effect of its mortgage lending regulations on state-licensed "housing creditors" and their customers, as well as on federal savings associations.

The ANPR acknowledges a lack of OTS enforcement authority over such state-licensed mortgage lenders, many of which may be making alternative mortgage transactions in reliance on the Alternative Mortgage Transactions Parity Act ("AMTPA") and certain OTS regulations. Congressman John LaFalce properly noted -- at the House Banking Committee's May 24, 2000, hearing on predatory lending -- that federal laws, such as AMTPA, should be construed as deferring to state consumer protection in the absence of explicit Congressional preemption.

We believe the OTS should revisit its 1996 interpretation and rulemaking, which effectively broadened the scope of state laws purportedly preempted by AMTPA. The goal of statutory interpretation should be to discern the intent of the legislature in enacting the law in question.

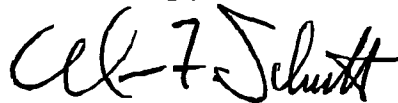
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Correctly understood, AMTPA preempted only those state laws that the Federal Home Loan Bank Board had already preempted for the benefit of federal savings associations by regulations in force at the time AMTPA was passed. Congress thus sought simply to enable alternative mortgage transactions in states where they were effectively barred.

Section 807 of AMTPA directed the Federal Home Loan Bank Board to identify and publish those of its already-adopted regulations that "housing creditors" might follow in order to be enabled to make alternative mortgage transactions. Changes within the scope of the regulations so designated would apply to all housing lenders, but AMTPA gave no authority to expand -- later -- the scope of the regulations so designated, for use by housing creditors. This was done in 1996 by the OTS. That error should be rectified, and AMTPA should be properly construed.

A letter dated April 14, 2000, from Commissioner of Financial Institutions E. J. Face, Jr. to OTS Director Ellen Seidman summarizes the Bureau's position on appeal of National Home Equity Mortgage Association v. Face, 647 F. Supp.2d 584, to the U.S. Circuit Court of Appeals for the Fourth Circuit. The Bureau and I continue to stand ready to discuss AMTPA preemption issues with OTS Staff, or to furnish written support for the Bureau's position, upon request.

Sincerely,



William F. Schutt  
Senior Counsel

WFS:nel

cc: E. J. Face, Jr.  
William H. Chambliss, General Counsel