

KANSAS

Franklin W. Nelson
Bank Commissioner

Sonya L. Allen
General Counsel

BILL GRAVES
GOVERNOR



OFFICE OF THE
STATE BANK COMMISSIONER

34

Judi M. Stork
Deputy Bank Commissioner

Kevin C. Glendening
Deputy Commissioner
Consumer and Mortgage

FACSIMILE TRANSMITTAL SHEET

Date 7/5/00 Time 2:30pm

TO: Manager, Dissemination Branch Fax number (202) 906-7755
Info Mgt & Services Division, OTS

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FROM: Kevin Glendening

OFFICE OF THE STATE BANK COMMISSIONER, TOPEKA, KANSAS

Voice phone number: (785) 296-2266 FAX phone number: (785) 296-0168

2000 JUL -5 PM 3:00
DISSEMINATION

- for your comments
- as we discussed
- as you requested
- review and forward
- please call me about this
- information only

Other message: Attn: Docket No. 2000-34, Comments
on ANPR on Responsible Alternative Mortgage
Lending

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STATE BANK COMMISSIONER

July 5, 2000

Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G. Street, N.W.
Washington, D.C. 20552

RE: Comments on Docket No. 2000-34

Dear Sir or Madam:

This letter is submitted in response to the Office of Thrift Supervision (OTS)'s Advance Notice of Proposed Rulemaking ("ANPR") on Responsible Alternative Mortgage Lending, which was issued on April 5, 2000. The Office of the State Bank Commissioner, Division of Consumer and Mortgage Lending, has responsibility for regulation and supervision of persons and companies offering mortgage products to Kansas consumers. We regulate mortgage brokers and mortgage lenders. In our role as regulator, we also receive and respond to numerous consumer inquiries and complaints regarding registered entities. We play a role in educating consumers both on a one-on-one basis, and also through various partnerships with consumer credit counseling and consumer education associations located within our state.

It is our opinion that the Alternative Mortgage Transaction Parity Act of 1982 ("AMTPA") and the OTS implementing regulations have inadvertently contributed to significant growth in predatory lending practices by allowing state "housing creditors" to access the OTS regulations regarding alternative mortgage transactions and thereby preempt state law. Many states, including Kansas, have enacted statutes designed to protect their citizens from abusive lending practices. Following are some examples of laws in our state that appear to be preempted by AMTPA and the OTS's implementing regulations.

First, pursuant to 12 C.F.R. §560.34, state housing creditors are authorized to charge prepayment penalties without limitation. Two Kansas statutes are preempted by that regulation. K.S.A. 16-207 prohibits a prepayment penalty after the first six months on a note secured by a real estate mortgage. A provision in the Kansas Consumer Credit Code, K.S.A. 16a-2-509, prohibits a prepayment penalty of any type on all second and certain high loan-to-value (over 100% of the appraised value) first mortgage loans. Both of these Kansas statutes are designed to allow borrowers to seek refinancing on better terms without undue penalties being imposed. Complaints regarding high prepayment penalties are some of the most common complaints received. Based on the consumers' loans we have reviewed where a prepayment penalty is being assessed, there appear to be no particular benefits conferred upon the borrower in exchange for imposition of such a penalty.

Office of Thrift Supervision (Comments on Docket No. 2000-34)

July 5, 2000

Page 2

Second, according to AMTPA and OTS rules and regulations, notes with balloon payments and negative amortization fall within the definition of an "alternative mortgage transaction". K.S.A. 16a-3-308a prohibits balloon payments or negative amortization on non-purchase money, high rate (a floating rate; for June it was 13.58%) or high loan-to-value loans secured by a mortgage. Many times, the disadvantages of balloon payments and negative amortization are not well understood by the borrowers. K.S.A. 16a-3-308a is designed to restrict such terms on the types of loans that we traditionally see being offered to the most unsophisticated and most over-extended borrowers. Unfortunately, our law is not particularly effective, as housing creditors routinely use AMTPA and the OTS regulations to preempt it.

Next, under regulations promulgated by OTS (12 C.F.R. §560.33), there are no limits on the amount of late fees that may be charged. The Kansas Code provision routinely preempted by this regulation is found at K.S.A. 16a-2-502. Generally, this statute would limit delinquency charges to 5% of the unpaid amount of the installment, or \$25.00, whichever is less. We believe it may also be appropriate for the OTS to consider including some limitations on late fees in any revision of its regulations.

Finally, we believe the OTS should consider incorporating credit counseling requirements for mortgage loans with particularly onerous features, including loans resulting in negative amortization and high loan-to-value loans. We recognize this may be a double-edged sword, as the fact that credit counseling was provided and/or made available could be used against a borrower who later claims a misunderstanding of the loan terms. However, we believe the benefits outweigh the possible negatives.

Thank you for the opportunity to comment on this important area of regulation. We commend the OTS for choosing to consider regulatory changes to address predatory lending practices. It is our opinion that including restrictions in the OTS regulations such as the ones found in our statutes and other states' statutes; or in the alternative, revising OTS regulations and opinions regarding preemption of state laws, would help to curb predatory lending practices.

Sincerely,



Kevin C. Glendening
Deputy Commissioner
Consumer and Mortgage Lending Division

KCG:SLA:jr