

Richard D. Marsico  
Professor of Law  
New York Law School  
47 Worth St., New York, NY 10013

247

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

Attention: Docket No. 2002-17

To Whom it May Concern:

As a member of the National Community Reinvestment Coalition, I strongly support the proposed changes to the Office of Thrift Supervision's regulations implementing the Alternative Mortgage Transaction Parity Act (AMPTA). I have been studying predatory lending for several years. Prepayment penalties and stiff late fees are two characteristics of abusive loans. The current AMPTA regulations have facilitated the proliferation of prepayment penalties and late fees in predatory loans.

The AMPTA regulations have outlived their usefulness. Congress passed AMPTA in 1992 during a high interest rate environment in order to provide state-chartered institutions the ability to offer adjustable rate mortgages (ARMs) and other alternative mortgages. At that time, many states had outlawed ARMs. From 1983 to 1996, the Federal Home Loan Bank Board and then the OTS granted state-chartered thrifts and non-depository institutions preemption under AMPTA from state laws on alternative mortgages so they could offer ARMs. During this period, however, the Bank Board and the OTS did not grant preemption from state laws on alternative mortgages that limited prepayment penalties and late fees. In 1996, the OTS inexplicably reversed course and allowed institutions to preempt state limits regarding prepayment penalties and late fees on alternative mortgages.

This single change in the OTS regulations during 1996 significantly contributed to the dramatic increase in predatory lending of the last few years. Non-depository institutions and mortgage companies that were state-chartered applied prepayment penalties at such a high rate that the great majority of subprime borrowers (about eighty percent) now have prepayment penalties. In contrast, according to Standard and Poor's, only two percent of prime borrowers have prepayment penalties on their loans. This huge difference in the presence of prepayment penalties suggests that prepayment penalties trap subprime borrowers into abusive loans, and that subprime borrowers do not freely accept prepayment penalties as a means of lowering their interest rates.

The OTS correctly notes in its proposal that prepayment penalties and late fees are not integral elements of alternative mortgages. The OTS also reports that all states but one now allow ARMs, meaning that AMPTA is no longer needed. Instead, predatory lenders are using AMPTA and the existing OTS regulations to evade state law on alternative mortgages and prey upon unsuspecting and vulnerable borrowers. I cannot emphasize enough how urgent it is to remove AMPTA's preemption of state limits regarding prepayment penalties and late fees on alternative mortgages.

I note that the OTS could have made its proposal stronger. The AMPTA statute provides OTS with the discretion to prescribe general limits on loan terms and conditions. The OTS could have adopted a two-year limitation on prepayment penalties for the alternative mortgages issued by all the institutions it regulates including federally chartered thrifts, state-chartered thrifts, and non-depository institutions. The limitation would also stipulate the maximum amount of the prepayment penalty at one percent of the loan amount. Currently, victims of predatory lending are confronted with paying about five percent or higher of the loan amount as a prepayment penalty.

Limiting prepayment penalties across the board would have achieved a greater degree of uniformity in the regulatory framework for different institutions. If the OTS does not adopt a more prescriptive approach, I strongly urge the OTS to stick with its proposal and to resist industry calls to weaken its proposed regulatory changes.

I applaud the OTS for proposing this change to the AMPTA regulations and ask the OTS to implement this change as quickly as possible after the close of the public comment period.

Yours truly,

Richard Marsico