

Article Title: ARCHIVE | Legal Criteria: U.S. Legal Criteria Revised for the Securitization of Prepayment Penalties Data: Given the increasing number of inquiries pertaining to the manner in which Standard & Poor's applies prepayment penalties in U.S. RMBS transactions, it has become important for Standard & Poor's to reassess the criteria it originally established in August 2000 and reaffirmed in May 2002 for transactions involving the securitization of prepayment penalties. The original criteria articles, "NIMS Analysis: Valuing Prepayment Penalty Fee Income," published Jan. 3, 2001; and "Legal Criteria Reaffirmed for the Securitization of Prepayment Penalties," published May 29, 2002; are available on RatingsDirect, Standard & Poor's Web-based credit analysis system, at www.ratingsdirect.com. They are also available on Standard & Poor's Web site at www.standardandpoors.com. Under Credit Ratings, select Credit Ratings Criteria. At the time Standard & Poor's originally developed its criteria, prepayment penalties were new to Standard & Poor's rated transactions, and Standard & Poor's requested legal comfort appropriate to any new asset type. In light of the past two and a half years of transactional experience with this asset type, Standard & Poor's is revising its criteria to adapt to current market trends and still provide the legal comfort it deems necessary for the protection of investors' interests. Background In general, if an issuer wishes to include prepayment penalties in a securitization, Standard & Poor's requests additional comfort if a transaction is structured without an appropriately rated guarantor, the desired rating on the securities is investment grade, and the issuer is seeking to reduce the discount to the servicer's prepayment penalty historical collection data that Standard & Poor's would otherwise apply. New Criteria Effective July 1, 2003 Effective July 1, 2003, Standard & Poor's is revising the form of comfort it will request for the securitization of prepayment penalties. Rather than the legal opinions and certificates previously required, Standard & Poor's will now request comfort in the form of a representation and warranty to the effect that the prepayment penalties included in the transaction are enforceable and were originated in compliance with all applicable federal, state, and local laws. As with all other representations and warranties relating to origination and enforceability matters, Standard & Poor's will rely on issuers to stay informed as to legal requirements governing prepayment penalties. In particular, Standard & Poor's notes that on July 1, 2003, a rule issued by the Office of Thrift Supervision (OTS) is scheduled to become effective. Under this OTS rule, as a general matter, certain nonfederally chartered mortgage lenders will no longer be able to have the preemption protection of the Alternative Mortgage Transaction Parity Act of 1982 in charging prepayment penalties, but rather will be subject to state and local laws regarding the charging of such penalties. Standard & Poor's understands that the applicability of these state and local laws may depend on such factors as (i) the amount, interest rate, or lien priority of or on the loan; (ii) the licensing status of the originating lender; and (iii) the particular state or local law under which the loan is made. Several states have multiple laws governing prepayment penalties, sometimes with inconsistent limitations, so the specific terms and conditions of a particular loan will determine which laws apply. Standard & Poor's will continue to publish its criteria to keep market participants informed of any new approaches in this area.