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CFPB Rule for Alternative Mortgage Transaction Parity Act

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On July 22, 2011, the Consumer Financial Protection Bureau (CFPB) issued an interim final rule which preserved the ability of state housing creditors to make alternative mortgage transactions notwithstanding state law prohibitions. However, the rule incorporates amendments to the Alternative Mortgage Transaction Parity Act (AMTPA), required by the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank) and implemented in Regulation D, which significantly change aspects of the alternative mortgage transaction landscape. These changes include a revised definition of an "alternative mortgage transaction" as well as the narrowing of the scope of AMTPA's preemption provisions.

In order to avoid a regulatory gap the provisions of this rule are effective immediately; however, compliance with the new provisions governing the origination of alternative mortgage transactions are only effective immediately for those state housing creditors relying on AMTPA's preemption provisions to make, purchase or

enforce alternative mortgage transactions prohibited by state law. In addition, certain transactions such as fixed-rate loans with interest-only payments no longer fall within AMTPA's definition of "alternative mortgage transactions". Consequently, all state housing creditors making such transactions (beginning with applications received on or after July 22, 2011) must comply with any state law applicable to that transaction.

These CFPB rules are also applicable to federal housing creditors as authority with respect to alternative mortgage transactions transferred to the CFPB from the OCC (and OTS) and NCUA on July 21, 2011. For federal housing creditors, there is a one year grace period for compliance with this interim final rule, during which time compliance with previously applicable federal laws governing alternative mortgage transactions is deemed sufficient. The following are key points regarding the CFPB's interim final rule, industry comments may be submitted until September 22, 2011.

Alternative Mortgage Transaction Definition:

For application received by creditors on or after July 22, 2011, a transaction qualifies as an "alternative mortgage transaction" if the loan, credit sale or account is: (1) secured by an interest in a residential structure containing one-four units, if it is used as a residence; (2) made

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primarily for personal, family, or housed purposes; and (3) a transaction in which the interest rate or finance charge may be adjusted or renegotiated.

Transactions such as adjustable rate mortgages, shared equity and shared appreciation mortgages, and fixed-rate balloon loans where the creditor has made a commitment to renew but reserved discretion to adjust the interest rate at renewal continue to be "alternative mortgage transactions" under the revised definition. HELOCs and subordinate lien mortgages which otherwise meet the revised definition also qualify as alternative mortgage transactions. However, the new alternative mortgage transaction definition excludes formerly covered transactions such as fixed-rate loans with an interest-only period; negative amortization; or graduated payment features, and fixed-rate balloon loans where the lender does not make a commitment to renew the loan. Therefore, state housing creditors must comply with any state laws applicable to such transactions.

Preemption Provisions:

Even for loans which are considered alternative mortgage transactions under the revised definition, state housing creditor obligations have changed as a result of the narrowing of AMTPA preemption standards.

Under this new standard, state housing creditors may make, purchase, and enforce alternative mortgage transactions notwithstanding any provision of state law that restricts the ability of the housing creditor to adjust or renegotiate an interest rate or finance charge so long as the transaction is made in accordance with the CFPB's substantive requirements governing alternative mortgage transactions. The rule also clarifies that the state housing creditors may also change the amount of interest or finance charges included in regular periodic payments as necessary following such adjustment or renegotiation.

State laws which regulate mortgage transactions generally, including restricting prepayment penalties or late charges, but do not prohibit state housing creditors from adjusting or renegotiating rates or finance charges are no longer preempted by AMTPA and are now applicable to all transactions made, purchased and enforced by state housing creditors. Likewise, state housing creditors must now comply with state law disclosure requirements regardless of whether the law applies specifically to alternative mortgage transactions, since such requirements do not prohibit the state housing creditor from adjusting or renegotiating an interest rate or finance charge.

CFPB Rules Applicable to Alternative Mortgage Transactions:

Following the transfer of authority regarding alternative mortgage transactions to the CFPB, both federal housing creditors and state housing creditors relying on AMTPA's provisions to make alternative mortgage transactions must satisfy the CFPB's substantive requirements governing the origination of such transactions.

Creditors making alternative mortgage transactions must adjust interest rates in accordance with either an index outside the creditor's control or a formula or schedule identifying the amount by which the interest rate or finance charge may increase and under what circumstances the change may be made. For open-end HELOCs, creditors must comply with the requirements set forth in Regulation Z section 226.5b.

In addition, for renewable balloon-payment mortgages creditors must provide a written commitment to renew the transaction at specified intervals throughout the amortization period. The rule does provide for limited instances in which a creditor would not be required to renew the transaction in spite of the existence of this written commitment. If an alternative mortgage transaction is also a high cost or higher priced mortgage loan, creditors must comply with Regulation Z sections 226.32 and 226.35.

Federal and state housing creditors must also comply with Regulation Z restrictions with respect to prepayment penalties. As discussed above, state laws governing prepayment penalties are no longer preempted under AMTPA, thus state housing creditors may need to comply with both Regulation Z and state law prepayment penalty provisions in certain circumstances.

Creditors may always decrease the interest rate or finance charge on an alternative mortgage transaction.

Timing for Compliance with CFPB's Requirements for Origination of Alternative Mortgage Transactions:

Since this rule was effective prior to the opportunity for public comment, the CFPB provides federal housing creditors with a one-year grace period, until July 22, 2012, for compliance with its new standards for originating alternative mortgage transactions, so long as such transactions are made consistent with other applicable federal laws, including any requirements imposed by chartering agencies and TILA high-cost and higher-priced mortgage loan requirements. In addition, state housing creditors which do not rely on AMTPA preemption provisions for the authority to make, purchase or enforce alternative mortgage transactions may continue to make such loans in accordance with other applicable federal law and state law during the one year grace period for compliance.

State housing creditors making alternative mortgage transactions in reliance upon AMTPA's preemption authority however, must comply with the CFPB's standards for origination of alternative mortgage transactions immediately.

The CFPB's interim final rule is available in its entirety here:

<http://www.gpo.gov/fdsys/pkg/FR-2011-07-22/pdf/2011-18676.pdf>