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Bureau of Consumer Financial Protection Narrows Federal Preemption of Mortgage Lending Laws

Among the many changes made by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") were changes to the Alternative Mortgage Transaction Parity Act ("AMTPA"). AMTPA, a federal law that has been in place for many years, had previously preempted a number of state laws that placed restrictions on certain residential mortgage loans. Without AMTPA, those state laws would have put state-chartered residential lenders at an unfair disadvantage against federally-chartered lenders in those states that limited loan terms in areas such as interest rate changes, negative amortization, and balloon payments. AMTPA refers to these types of loans as alternative mortgage transactions ("AMTs"). Dodd-Frank amended AMTPA effective July 21, 2011 to narrow the scope of the federal preemption on AMTs as outlined below.

Dodd-Frank also required that once the AMTPA amendments became effective, state-chartered lenders could only take advantage of the new federal preemption rules for AMTs if those loans were made in compliance with rules issued by the Bureau of Consumer Financial Protection (the "Bureau"). This created a problem, because while Dodd-Frank amended AMTPA effective July 21, 2011, it did not give the Bureau the authority to issue regulations interpreting the changes until that same day. The Bureau concluded that it was not the intent of Congress to place state-chartered lenders at a disadvantage to federally-chartered lenders as to existing AMTs, and as a result on July 22, 2011 the Bureau issued an interim final rule that became immediately effective rather than going through the typical proposal and comment period.

Among the more significant provisions of this new rule are the following:

- AMTs are now limited to consumer purpose loans secured by one- to four-residential properties that serve as the residence of the borrower and have some type of variable rate feature. This significantly narrows the scope of federal preemption under AMTPA.
- The new regulation only applies to loans for which the application was taken on or after July 22, 2011. The old preemption rules will continue to apply for AMTs with applications taken prior to that date, even if the loan is subsequently modified, extended, or renewed. However, AMTs that are refinanced on or after July 22, 2011 are subject to the new regulation.
- Rate change provisions for AMTs that are HELOCs must continue to comply with the existing requirements of Regulation Z. All other rate change requirements for AMTs must be based either on an index that is readily available to the borrower and outside of the lender's control, or on a stated formula or schedule.
- AMTs subject to Sections 32 or 35 of Regulation Z must comply with the applicable provisions of those sections.
- Other state laws such as limitations on late charges, negative amortization, or prepayment penalties, will now apply to AMTs with applications taken on or after July 22, 2011.

A final note of caution. For years lenders have been familiar with the Federal Reserve Board's "alphabet soup" of compliance – Reg B, Reg C, Reg Z, and so on. This new regulation has been designated as Regulation D by the Bureau. It should not be confused

with the Federal Reserve Board's Regulation D, which deals with deposit accounts and continues to be effective. The Bureau's Regulation D is an interim final rule and is subject to change. In fact, the Bureau is seeking comment on a number of issues relating to federal preemption under AMTPA.

If you have any questions about new Regulation D or how it might affect your institution, please contact [T. Wayne Hood](mailto:t.wood@millermartin.com) at thood@millermartin.com or (615) 744-8421, [Scott Simmons](mailto:ssimmons@millermartin.com) at (423) 785-8475 or ssimmons@millermartin.com, or any member of Miller & Martin's [Financial Services Practice Group](#).

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