

Alternative Mortgage Transaction Parity Act

Summary Conclusion: Certain closed-end mortgages secured by residential real property are "alternative mortgage transactions" under the Alternative Mortgage Transaction Parity Act (AMTPA), but are not "variable rate transactions" under OTS's variable rate disclosure regulation.

Date: December 2, 2003

Subjects: Alternative Mortgage Transaction Parity Act

P-2003-9



Office of Thrift Supervision
Department of the Treasury

Chief Counsel

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6251

December 2, 2003

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Re: Alternative Mortgage Transaction Parity Act

Dear []:

This responds to your letter on behalf of [] ("Corporation"), a mortgage banking subsidiary of []. We apologize for our delay in responding.

Your letter describes two new types of closed-end mortgages secured by residential real property that the Corporation is considering offering. You refer to these loans as "Interest Only Fixed Rate Mortgages" and "One Time Rate Reduction Fixed Mortgages." You ask whether these mortgages will be "alternative mortgage transactions" under the Alternative Mortgage Transaction Parity Act ("AMTPA")¹ and "variable rate transactions" under OTS's variable rate disclosure regulation.²

The answer to your question in part turns on the proper interpretation of OTS regulations. Thus, we are providing you this interpretive guidance in furtherance of our

¹ 12 U.S.C.A. § 3801 *et seq.* (West 2001 & Supp. 2003). AMTPA authorizes state chartered housing creditors to make, purchase, and enforce alternative mortgage transactions without regard to any state constitution, law, or regulation. To rely on AMTPA, a housing creditor that is not a commercial bank, a credit union, or a federal savings association must comply with regulations on alternative mortgage transactions issued by OTS. (To rely on AMTPA, state chartered commercial banks and state chartered credit unions must comply with regulations of the Office of the Comptroller of the Currency ("OCC") and the National Credit Union Administration ("NCUA"), respectively.) AMTPA directed the Federal Home Loan Bank Board, OTS's predecessor agency, OCC, and NCUA to identify, describe, and publish those portions of their regulations that are inappropriate for, and thus inapplicable to, these respective state chartered housing creditors. *See* 67 Fed. Reg. 60,542, 60,542-43 (September 26, 2002) (explaining AMTPA). You represent that the Corporation is a "housing creditor" as that term is defined in section 803 of AMTPA. 12 U.S.C.A. § 3802 (West 2001). Thus, OTS's regulations and interpretations of AMTPA would apply to alternative mortgage transactions the Corporation makes.

² 12 C.F.R. § 560.210 (2003).

responsibilities under section 804(a) of AMTPA.³ We conclude that the mortgages will be alternative mortgage transactions but not variable rate transactions.

AMTPA authorizes non-depository institution lenders that meet the definition of “housing creditor” to engage in “alternative mortgage transactions,” even if such transactions are not permitted under state law, provided the transactions are in conformity with certain federal lending regulations that OTS has identified in 12 C.F.R. § 560.220.⁴ To be an “alternative mortgage transaction,” a loan must meet the statutory definition of that term in section 803(1) of AMTPA.⁵ In contrast, to be a “variable rate transaction” under OTS’s regulation on disclosures for variable rate transactions, a loan must meet the regulatory definition of that term in Regulation Z (Truth In Lending).⁶ Under Regulation Z, a “variable rate transaction” is a loan with a term greater than one year secured by the consumer’s principal dwelling “[i]f the annual percentage rate may *increase* after consummation.”⁷

The Interest Only Fixed Rate Mortgages you describe will be alternative mortgage transactions. The borrower will only pay interest (not principal) for years 1-5 of the loan. Only in year 6 will the loan begin to fully amortize. In years 6-30 the borrower will pay principal and interest. While the interest rate will not change during the life of the loan, the borrower’s payment will increase after year 5 when the payments will begin to include principal. A loan that has some payments calculated to include only interest and others calculated to include both principal and interest payments is a loan with a repayment variation “not common to traditional fixed-rate, fixed-term transactions,” as used in section 803(1)(C) of AMTPA.⁸

The One Time Rate Reduction Fixed Mortgages you describe will also be alternative mortgage transactions. The loan documents will provide that if, as of a loan’s second, third,

³ 12 U.S.C.A. § 3803(a) (West 2001).

⁴ See 12 U.S.C.A. §§ 3801(b) and 3803 (West 2001). We note that AMTPA gave states three years following its enactment to override, or to “opt out” of, its federal preemption. 12 U.S.C.A. § 3804 (West 2001). You do not indicate whether any of the states in which the Corporation will make these loans have opted out of AMTPA and this analysis does not address that possibility.

⁵ 12 U.S.C.A. § 3802(1) (West 2001); 12 C.F.R. § 560.220(a) (2003). Under OTS’s revised AMTPA rules, alternative mortgage transactions must also comply with OTS’s regulation in 12 C.F.R. § 560.35 on adjustments to home loans. 67 Fed. Reg. at 60,554 (promulgating 560.220). You do not ask, and we do not opine, about whether loans made under the two mortgage programs described will comply with this regulation.

⁶ 12 C.F.R. § 560.210 (2003).

⁷ 12 C.F.R. § 226.19(b) (2003) (emphasis added); accord 12 C.F.R. § 226.20(c) (2003).

⁸ 12 U.S.C.A. § 3802(1)(C) (West 2001). Cf. 67 Fed. Reg. at 60,549 (discussing other alternative mortgage transactions with that feature).

or fourth anniversary date, the borrower has made 24 consecutive payments without being more than 30 days late the interest rate will be reduced by a specified amount (1%). The interest rate reduction will yield a corresponding reduction in the borrower's payment. Thus, the interest rate on the loan "may be adjusted" as used in section 803(1)(A) of AMTPA.⁹ Further, the loan's timely payment rate also constitutes a "variation" that affects the interest rate and that is "not common to traditional fixed-rate, fixed-term transactions" as used in section 803(1)(C) of AMTPA.¹⁰

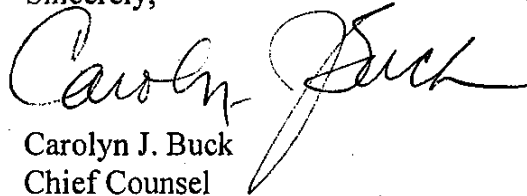
Neither Interest Only Fixed Rate Mortgages nor One Time Rate Reduction Fixed Mortgages you describe will be variable rate transactions. Neither meets the Regulation Z definition of a variable rate transaction, which the OTS definition incorporates. As discussed above, the former will not involve any change in the interest rate. The latter will not involve any *increase* in the interest rate, only the possibility of a *decrease*.

Finally, please note that OTS revised its AMTPA regulations effective July 1, 2003, eliminating AMTPA preemption of state laws on prepayments and late charges for affected state housing creditors engaging in alternative mortgage transactions.¹¹ As a result, the Corporation must comply with those state laws when engaging in these transactions.

In reaching the foregoing conclusions, we have relied on the factual representations contained in the materials you submitted to us and in a subsequent discussion with a lawyer on your staff, as summarized herein. Our conclusions depend on the accuracy and completeness of these representations. Any material change in facts from those set forth herein could result in different conclusions.

We trust that this responsive to your inquiry. If you have further questions, please contact Richard Bennett, Counsel (Banking and Finance), at (202) 906-7409.

Sincerely,



Carolyn J. Buck
Chief Counsel

cc: Regional Directors
Regional Counsel

⁹ 12 U.S.C.A. § 3802(1)(A) (West 2001).

¹⁰ 12 U.S.C.A. § 3802(1)(C) (West 2001).

¹¹ See 67 Fed. Reg. at 60,554 (promulgating § 560.220); 67 Fed. Reg. 76,304 (December 12, 2002) (delaying effective date).