

02-119

CHAPTER 119

Regulation #19

ALTERNATIVE MORTGAGE TRANSACTIONS

Joint Rule with Bureau of Consumer Credit Protection: Chapter 250 (Rule 250) ALTERNATIVE MORTGAGE TRANSACTIONS

SUMMARY:

This promulgation repeals and replaces the current Alternative Mortgage Transaction Joint Rule, Bureau of Financial Institutions Regulation 19 and Bureau of Consumer Credit Protection Rule 250. This promulgation permits creditors and financial institutions to offer certain alternative mortgage products that are secured by a first-lien on real estate and that are generally accepted on the national secondary market. It fosters an efficient approach to the regulation of alternative mortgage transactions and provides protection for consumer borrowers. An alternative mortgage transaction is, generally, a loan secured by an interest in residential property for which the mortgage interest rate or finance charge may be adjusted or renegotiated.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 authorized the creation of the federal Consumer Financial Protection Bureau ("CFPB"). The purpose of the CFPB is to promote fairness and transparency for mortgages and other consumer financial products. The CFPB was given authority over federal consumer laws including the Alternative Mortgage Transaction Parity Act of 1982 ("AMTPA")^[1] and the federal Truth-in-Lending Act ("TILA"). Since its inception, the CFPB has promulgated new consumer protections for mortgage borrowers. The CFPB has issued Regulation D, 12 C.F.R. §§ 1004.1-1004.4, to implement AMTPA and has made numerous changes to TILA regulations. The new federal protections found in TILA and TILA regulations have been incorporated into Maine law in Article VIII-A of the Consumer Credit Code and include a requirement that creditors consider a consumer's repayment ability, qualified mortgage incentives, restrictions on high-cost mortgages, and new integrated mortgage loan disclosure requirements under TILA and RESPA (the Real Estate Settlement Procedures Act). Given those new federal regulations, the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection find it appropriate to update their Joint Rule so that it is substantially aligned with Regulation D. This effort to align State with federal law and thereby ease compliance burdens is made pursuant to the Bureaus' broad authority to prohibit, by rule or order, acts or practices in connection with residential mortgages that are unfair, deceptive, or designed to evade truth-in-lending laws.

BACKGROUND

Major goals of AMTPA's passage were to create federal preemption of state regulation of alternative mortgage transactions and to allow state housing creditors to make alternative mortgage transactions in compliance with federal rather than state law. However, pursuant to a provision of AMTPA, 12 U.S.C. § 3804, federal preemption would not apply to alternative mortgage transactions subject to the laws of a state if such state, within three years of AMTPA's enactment, enacted its own law explicitly opting out of AMTPA's preemption. In 1983, the Maine Legislature responded by enacting legislation making the federal preemption inapplicable to the Maine Banking Code and Maine Consumer Credit Code.^[2] Further, by enactment of 9-B M.R.S. § 241(3) in 1983, the Legislature granted the Bureau of Financial Institutions (then the Bureau of Banking) specific authority to do rulemaking regarding alternative mortgage instruments; by enactment of 9-A M.R.S. 9-302 in 1987, the Legislature granted the Bureau of Consumer Credit Protection (then the Office of Consumer Credit Protection) the same specific authority. As a consequence, creditors and financial institutions making alternative mortgage transactions in Maine have been, and will continue to be, subject to the Bureaus' laws and regulations, including this promulgation.

The CFPB's AMTPA Regulation D applies to federal housing creditors and, in states that have not opted out of AMTPA, to those state housing creditors seeking to utilize AMTPA preemption to make alternative mortgage transactions pursuant to federal law. Regulation D works in conjunction with the new TILA regulations to protect borrowers in alternative mortgage transactions. Aligning Maine's alternative mortgage regulations with the federal regulations will level the playing field for State and federal financial institutions, while protecting Maine consumers in a manner similar to that of the CFPB.

Protection for alternative mortgage borrowers is found in this promulgation and in truth-in-lending regulations. Creditors and financial institutions are reminded that they are still subject to the provisions of the Maine Consumer Credit Code including, but not limited to, Article VIII-A (Truth-in-Lending), as applicable.

SECTION 1

1. Authority

This rule is promulgated pursuant to 9-A M.R.S. §§ 1-102(2), 1-110, 6-104(1)(E), 8-504, 8-507(1), 8-508, 9-302(1) and 9-B M.R.S. §§ 111, 215, and 241(3).

SECTION 2

1. Purpose

This rule repeals and replaces the former Alternative Mortgage Transactions Joint Rule (former Bureau of Financial Institutions Regulation 19 and former Bureau of Consumer Credit Protection Rule 250). The purpose of this rule is to regulate alternative mortgage transactions "made or entered into in this State," as that term is defined in 9-A M.R.S. §§ 1-201(1)(A) and 1-201(1)(B), by creditors and financial institutions in such manner as to:

- A.** Provide adequate and consistent consumer protections;
- B.** Align State regulation with federal regulation to ease compliance burdens;
- C.** Assure an adequate and consistent supply of funds to consumers for home mortgages;
- D.** Allow lenders and consumers to share the risk of rising interest rates to encourage mortgage lending; and
- E.** Permit fair mortgage lending instruments that are responsive to the needs of consumers and lenders.

SECTION 3

1. Definitions.

As used in this rule, the following terms have the following meanings, unless the context clearly requires otherwise:

- A.** "Alternative mortgage transaction" means a loan, credit sale, or account:
 - (1) That is secured by an interest in a residential structure that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence;
 - (2) That is made primarily for personal, family, or household purposes;
 - (3) In which the interest rate or finance charge may be adjusted or renegotiated; and
 - (4) That is secured by a first lien interest in the property, other than a first lien open-end credit plan.

- B.** "Creditor" means a supervised lender, other than a supervised financial organization, as those terms are defined by 9-A M.R.S. §§ 1-301(39) and 1-301(38), respectively.
- C.** "Financial Institution" means a financial institution or credit union as defined by 9-B M.R.S. §§ 131(17) and 131(12).

SECTION 4

1. Authorizations and limitations

- A.** Authorization to make alternative mortgages. A creditor or financial institution may engage in an alternative mortgage transaction subject to the requirements and limitations of this rule.
- B.** Mortgages with adjustable rates or finance charges. A creditor or financial institution that makes an alternative mortgage transaction with an adjustable rate or finance charge may only increase the interest rate or finance charge as follows:
 - (1) The creditor or financial institution shall use either:
 - a. An index to which changes in the interest rate are tied that is readily available to and verifiable by the borrower and beyond the control of the creditor or financial institution: or
 - b. A formula or schedule identifying the amount that the interest rate or finance charge may increase and the times at which, or circumstances under which, a change may be made.
- C.** Renegotiable rates for renewable balloon-payment mortgages. A creditor or financial institution that makes an alternative mortgage transaction with payments based on an amortization period and a large final payment due after a shorter term may negotiate an increase or decrease in the interest rate when the transaction is renewed only if the creditor or financial institution makes a written commitment to renew the transaction at specified intervals throughout the amortization period. However, the creditor or financial institution is not required to renew the transaction if:
 - (1) Any action or inaction by the consumer materially and adversely affects the creditor's or financial institution's security for the transaction or any right of the creditor or financial institution in such security;

- (2) There is a material failure by the consumer to meet the repayment terms of the transaction;
 - (3) There is fraud or a willful or knowing material misrepresentation by the consumer in connection with the transaction; or
 - (4) Federal or State law dealing with credit extended by a financial institution to its executive officers specifically requires that as a condition of the extension the credit shall become due and payable on demand, provided that the financial institution includes such a provision in the initial agreement.
- D.** Other requirements for and limitation on alternative mortgage transactions. Other requirements for and limitations on alternative mortgage transactions include, for creditors and financial institutions, applicable truth-in-lending laws found in the Maine Consumer Credit Code – Truth-in-Lending, 9-A M.R.S. Article VIII-A.
- E.** Reductions in interest rate or finance charge. Nothing in this section prohibits a creditor or financial institution from decreasing the interest rate or finance charge on an alternative mortgage transaction.
- F.** Right to prepay. A creditor or financial institution must allow borrowers to prepay in whole or in part without penalty at any time. Prepayments are a direct reduction on loan principal, unless otherwise agreed upon by the creditor or financial institution and borrower.

SECTION 5

1. ENFORCEMENT

This regulation shall be enforced by the Bureau of Consumer Credit Protection for creditors and the Bureau of Financial Institutions for financial institutions.

EFFECTIVE DATE: July 25, 2016

Primary Sources of information relied upon by the Bureau in adopting the rule: 12 CFR 1004.1 – 1004.4; 12 CFR 1026.1 et seq.; 12 USCS § 1551 et seq.; 12 USCS § 8304 et seq. ; Bureau of Financial Institutions/ Bureau of Consumer Credit Protection Joint Rule 19/250 ; 9-A M.R.S. §§ 1-102(2), 1-110, 6-104(1) (E), 8-504, 8-507(1), 8-508, 9-302; 9-B M.R.S. §§ 111, 215, 241(3)

BASIS STATEMENT

The purpose of this rulemaking is to substantially align the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection's Alternative Mortgage Transactions Joint Rule 19/250 with the federal Consumer Financial Protection Bureau's Alternative Mortgage Transaction Parity regulation known as Regulation D. The regulation is applicable to first-lien mortgage loans with adjustable rates and finance charges made by Maine financial institutions and creditors.

Comments and Responses to comments: The Bureau received no comments to this proposed rulemaking. Accordingly, there were no amendments made to the adopted rule following the comment period, except that an effective date has been included.

[1] The United States Garn-St. Germain Depository Institutions Act of 1982, Pub.L. 97-320, § 804, now codified at 12 U.S.C. §§ 3801-3806.

[2] P.L. 1983, ch.307. As it pertains to the Consumer Credit Code, the 1983 opt-out is codified at 9-A M.R.S. § 1-110(3); As it pertains to the Banking Code, the 1983 opt-out is codified at 9-B M.R.S. § 241(3)