

BUREAU OF CONSUMER FINANCIAL PROTECTION  
12 CFR 1004  
[Docket No. CFPB—2011—0004]<sup>1</sup>  
RIN 3170-AAO4

**Alternative Mortgage Transaction Parity (Regulation D)**

Comments of the

**National Consumer Law Center**  
on behalf of its low-income clients and  
**Americans for Financial Reform**  
**Consumer Federation of America**  
**Consumers Union**  
**National Association of Consumer Advocates**  
**U.S. Public Interest Research Group**

The National Consumer Law Center<sup>2</sup> ("NCLC") respectfully submits the following comments on behalf of its low income clients, as well as for Americans for Financial Reform, Consumer Federation of America, Consumers Union, the National Association of Consumer Advocates, and the U.S. Public Interest Research Group<sup>3</sup> on the Interim Final rule interpreting the changes to the Alternative Mortgage Transaction Parity Act ("AMTPA").

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<sup>1</sup> 76 Fed. Register 44226 (July 22, 2011).

<sup>2</sup> The **National Consumer Law Center, Inc. (NCLC)** is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of eighteen practice treatises and annual supplements on consumer credit laws, including *Truth In Lending* (7th ed. 2010), *The Cost of Credit: Regulation, Preemption, and Industry Abuses* (4th ed. 2009), and *Foreclosures* (3<sup>rd</sup> ed. 2010), as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted training for thousands of legal services and private attorneys on the law and litigation strategies to address predatory lending and other consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC's attorneys have been closely involved with the enactment of the all federal laws affecting consumer credit since the 1970s, and regularly provide extensive comments to the federal agencies on the regulations under these laws. These comments were written by NCLC attorneys Carolyn Carter and Margot Saunders.

<sup>3</sup> **Americans for Financial Reform** is a coalition of more than 250 consumer, labor, civil rights, senior, community, business, academic, and other groups working together to hold Wall Street accountable and reforming our financial system so it serves our families and our communities. AFR played a leading role in strengthening and winning passage of the Dodd-Frank Consumer Protection Act, and is now focused on tough and effective implementation to fulfill the promise of that legislation, and on continuing efforts to transform our financial system.

**Consumer Federation of America** ("CFA") is a nonprofit association of some 300 national, state, and local pro-consumer organizations created in 1968 to represent the consumer interest through research, advocacy, and education.

**Consumers Union** of United States, Inc., publisher of Consumer Reports®, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications and services have a combined paid circulation of approximately 8.3 million.

We appreciate the complexity of these new regulations based on the revisions to AMTPA. We agree with the Consumer Financial Protection Board (“CFPB”) that the changes made by the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>4</sup> necessitated the issuance of this Interim Final rule on the first day the CFPB came into legal existence. We also agree with many of the interpretations of the new AMTPA provided by the CFPB, and we applaud the CFPB’s requirement that all variable rate indexes be beyond the control of the creditor.

However, in several, quite serious, matters the rule misinterprets both the clear language in the new AMTPA and Congressional intent. We urge the CFPB to move quickly to issue a clarifying Interim Final rule correcting these misinterpretations.

The misinterpretations of the language in Dodd-Frank amending AMTPA include:

1. Extending the preemptive effects of AMTPA to renewable balloon transactions and shared appreciation loans.
2. Permitting the purchase or enforcement of alternative mortgages to be free of state law restrictions.
3. Preempting state laws that require sound underwriting for adjustable rate transactions or that merely restrict, rather than prohibit, adjustable rate transactions.
4. Failing to require that all of the Truth in Lending Act’s (“TILA”) variable rate disclosures for closed end loans and other substantive protections be required as a condition for the preemptive effect of AMTPA to apply to variable rate loans.

### **I. There is no authority for extending AMTPA preemption to renewable balloon notes or loans with shared appreciation features.**

The Dodd-Frank Act made three relevant changes to AMTPA. First, it narrowed the definition of “alternative mortgage transaction” in 12 U.S.C. § 3802(1) so that renewable balloon notes and shared equity/shared appreciation mortgages are no longer included in the definition. The amended definition includes *only* loans “in which the interest rate or finance charge may be adjusted or renegotiated.” Second, the same amendment removed language that extended the scope of preemption to non-traditional loan terms other than adjustable rates. And, third, Dodd-Frank revised 12 U.S.C. § 3803(c) to make clear that only state laws that “prohibit” alternative mortgage transactions—now defined just to include loans with adjustable rates—are preempted.

Nonetheless, the Interim Final rule and the Official Commentary define *all* renewable balloon notes and *all* shared equity/shared appreciation mortgages as alternative mortgage transactions to which AMTPA’s preemption provisions apply. This position is contrary to Dodd-

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The **National Association of Consumer Advocates** (“NACA”) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students, whose primary focus involves the protection and representation of consumers. NACA’s mission is to promote justice for all consumers.

The **U.S. Public Interest Research Group** is the national lobbying office for state PIRGs, which are non-profit, non-partisan consumer advocacy groups with half a million citizen members around the country.

<sup>4</sup> Pub. L. No. 111-203, tit. X, § 1083, 1100H, 124 Stat. 2080, 2113 (July 21, 2010) (hereinafter cited as Dodd-Frank).

Frank, which clearly excludes those terms from the – now very short list – of terms which define an “alternative mortgage transaction.”

## A. Balloon Loans

The language that *used to be* in 12 U.S.C. § 3802(1)(B), and which has now been deleted, defined “alternative mortgage transaction” to include a loan or credit sale --

B) involving a fixed-rate, but which implicitly permits rate adjustments by having the debt mature at the end of an interval shorter than the term of the amortization schedule.

By deleting this language, Dodd-Frank clearly rejected loans in which the “debt mature[s] at the end of an interval shorter than the term of the amortization” from the list of alternative mortgages. Having the debt mature before the loan is fully amortized is another way of defining a balloon note. Yet the Official Commentary lists as an example of an alternate mortgage transaction:

Balloon transactions in which payments are based on an amortization schedule and a large final payment is due after a shorter term, where the creditor makes a commitment to renew the transaction at specified intervals throughout the amortization period, but the interest rate may be renegotiated at renewal.<sup>5</sup>

This Commentary provision is contrary to Dodd-Frank and should be deleted.

A promise to renew the balloon loan does not make it any less of a balloon note. It is true that a series of renewable balloon notes can function somewhat like an adjustable rate mortgage – albeit a more cumbersome, confusing, dangerous, and costly version. However, this is not a reason to extend AMTPA preemption to these transactions, even if it were legal to do so. Since AMTPA ensures that creditors can make variable rate loans, there is no need for them to use the workaround of renewable balloon loans. Further, renewable balloon notes are significantly different than variable rate loans. With a variable rate loan, the only change is in the interest rate and the payment – there is no huge sum (the balloon) required to be paid to avoid foreclosure.

Fostering the use of balloon loans by preempting state laws would also be bad policy. Balloon loans are dangerous instruments which cause trouble to homeowners, and precipitate home loss. When a balloon payment is due, the homeowner must either make an early payment of a large sum or face foreclosure on the home. Balloon payments were limited in HOEPA loans just because of these problems.<sup>6</sup> This well-recognized danger is why most states have laws prohibiting or at least restricting balloon loans.<sup>7</sup>

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<sup>5</sup> Official Commentary § 1104.2(a)-2(iii).

<sup>6</sup> 15 U.S.C. § 1639(e)..

<sup>7</sup> Alaska Stat. § 06.20.250(d); Ariz. Rev. Stat. § 6-114; Ark. Code Ann. § 23-53-104(f); Cal. Fin. Code § 4973(b); Colo. Rev. Stat. § 5-3.5-102(a); Conn. Gen. Stat. Ann. § 36a-746c(1); Conn. Gen. Stat. Ann. § 36a-760e; D.C. Code Ann. § 26-1152.02(a)(3); D.C. Code Ann. § 26-1152.13; Fla. Stat. § 494.00791(3); Fla. Stat. § 697.05; Ga. Code Ann. § 7-6A-5(2); Ind. Code § 24-9-4-3; Iowa Code Ann. § 534.205; Kan. Stat. Ann. § 16-207(i); Ky. Rev. Stat. Ann. § 360.100(2)(c); Me. Rev. Stat. Ann. tit. 9-A, § 8-206-H(1)(B)(2); Mich. Comp. Laws § 445.1635; N.J. Stat. Ann. § 46:10B-26(a); N.J. Stat. Ann. § 46:10B-12; N.Y. Banking Law § 6-l(2)(b); N.C. Gen. Stat. § 24-1.1E(b)(2); Okla. Stat. tit. 14A, § 3-402; 63 Pa.

Moreover, “renewing” a balloon loan carries significant transaction costs and may even require refinancing. Refinancing mortgage loans is a costly and time-consuming process, and often an ordeal for the homeowner. A balloon loan that must be renewed every five years in a thirty year amortization would involve six separate transactions, and could require six separate sets of closing costs. Multiple loan renewals are far different from simply adjusting the interest rate on a loan.

Congress amended AMTPA deliberately to remove balloon loans from its coverage *so that states’ laws protecting consumers from alternative terms (all except variable rates) would once again be applicable*. The regulations should not foster these dangerous loans by treating them as alternative mortgage transactions.

Even if it were consistent with Dodd-Frank to include renewable balloon notes in the definition of “alternative mortgage transaction,” the safeguards that the rule proposes for these loans are wholly inadequate. For example, the proposed safeguards allow the creditor not to renew the balloon note if:

any action or inaction by the consumer [which] materially and adversely affects the creditor’s security for the transaction or any right of the creditor in such security;<sup>8</sup>

A creditor could use this section to deny the refinancing because of some failure on the borrower’s part to maintain the home, or obtain insurance. It is conceivable that this language could be used – also improperly -- by a lender to deny a renewal if the borrower’s credit score dropped. The borrower’s only remedy against such arbitrary actions would be to file a lawsuit against the creditor, arguing that the borrower’s failure was not material or not adverse. These lawsuits would be difficult, if not impossible, to prosecute, with no clear damages and no attorney’s fees. Hence the promise of renewal for these balloon loans becomes virtually impossible to police and enforce.

## **B. Shared Appreciation Loans**

Congress also amended AMTPA to exclude shared appreciation and shared equity loans from the definition of “alternative mortgage transactions” that are subject to preemption. *Former* subparagraph (1)(C) defined “alternative mortgage transaction to include a loan or credit sale –

C) involving any similar type of rate, method of determining return, term, repayment, or other variation not common to traditional fixed-rate, fixed-term transactions, including without limitation, transactions that involve the sharing of equity or appreciation.

Congress deleted this entire paragraph. As a result, AMTPA’s definition of “alternative mortgage transaction” *no longer* “include[s], without limitation, transactions that involve the sharing of equity or

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Stat. Ann. § 456.511(a); R.I. Gen. Laws § 34-25.2-6(c); S.C. Code Ann. § 37-23-30(2); Tenn. Code Ann. § 45-20-103(10); Tex. Fin. Code Ann. § 343.202; Utah Code Ann. § 61-2d-104; Wis. Stat. § 428.203(1); Wyo. Stat. Ann. § 40-14-333. (May be an incomplete list).

<sup>8</sup> Regulation D, § 1004.4(b)(1).

appreciation.” Yet the Official Commentary to the Interim Final Rule does exactly that. It includes all shared equity and shared appreciation loans in the definition of alternative mortgage transaction, without limitation, providing that “Examples of alternative mortgage transactions include . . . iv. Transactions in which the creditor and the consumer agree to share some or all of the appreciation in the value of the property (shared equity/shared appreciation).”<sup>9</sup>

We do not quarrel with the view that a shared equity or shared appreciation mortgage *can be* an alternative mortgage transaction *to the extent that it includes an adjustable interest rate*. But only the variable rate part of the transaction can avoid a state prohibition. If a state law prohibits share equity terms in home mortgages, even if the loan has a variable rate, the shared equity term of the loan would be covered – and thus barred – by state law.

Congress’s amendment unequivocally shows an intent *not* to define all shared equity and shared appreciation mortgages as alternative mortgage transactions, without regard to whether they carry adjustable rates. We therefore do not understand why these terms are included as alternative mortgages.

Given the changes to AMTPA in both sections 3802(1) – deleting the reference to alternative payment methods generally and shared appreciation plans specifically – and 3803(c) – making it clear that other state rules are still applicable to alternative mortgages, there is no justification for extending the preemption to shared appreciation mortgages.

## **II. There is no authority for the CFPB to allow the purchase or enforcement of alternative mortgages to be free of state law restrictions.**

In writing the section of the regulations actually preempting state law – section 1004.3 – the rule has improperly gone well beyond what AMTPA allows. Section 1004.3 of the regulation impermissibly provides that a state housing creditor “may make, purchase, and enforce alternative mortgage transaction . . . notwithstanding state law.”<sup>10</sup>

However, both the old version of 12 U.S.C. § 3803(c) and the new version only preempt state law regarding the *making* of alternative mortgage transactions. There is no provision in 12 U.S.C. § 3803(c) for preemption of state laws regarding the *purchase and enforcement* of these alternative mortgages:

### **(c) Preemption of State constitutions, laws or regulations**

An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law or regulation that prohibits an alternative mortgage transaction. . . . (Emphasis added).<sup>11</sup>

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<sup>9</sup> Official Commentary, § 1004.2(a)-2(iv).

<sup>10</sup> Regulation D, § 1004.3.

<sup>11</sup> 12 U.S.C. § 3803(c).

Moreover, there was no attempt even by the OTS to preempt the application of state laws to the purchase and enforcement of alternative mortgages. In the previous version of the AMTPA regulations, issued by OTS, only the *making* of the alternative mortgage was subject to preemption of state law. Section 560.220, entitled “Alternative Mortgage Parity Act,” provided that non-federally chartered housing creditors –

may make alternative mortgage transactions as defined by [12 U.S.C. § 3803] and further defined and described by applicable regulations identified in this section, notwithstanding any state constitution, law, or regulation.<sup>12</sup>

The only possible relevance of AMTPA to the purchase and enforcement of alternative mortgages is found in the first section of section 3803(a), stating that state-chartered housing creditors can make, purchase and enforce mortgages to the extent allowed by various regulators. But this section of the statute does not say or even suggest that they are not bound by state law when they purchase or enforce such mortgages. The preemptive language itself – section 3803(c) – explicitly only permits the preemption of laws limiting the “making” of alternative mortgages.

It would be dangerous and confusing to consumers and investors, to remove the application of state law to the purchase and enforcement of alternative mortgages. State law now governs the servicing and the collection of alternative mortgages. State foreclosure law unequivocally covers the enforcement even of mortgages made by federally chartered institutions. The CFPB has not proposed – nor does it have the authority to propose – an alternative federal scheme regarding the enforcement and purchase of alternative mortgages. The extraneous and dangerous additions of the “purchase and enforcement” of alternative mortgages should be deleted.

### **III. The rules should clearly state that all requirements of state law are applicable to alternative mortgages except those that would have the effect of prohibiting the variable rates.**

The rule preempts more state law applicable to alternative mortgages than was intended by Congress. Section 1004.3 of the regulations purports to preempt any state law that “restricts the ability of the housing creditor to adjust or renegotiate an interest rate or finance charge . . . .” And in the Official Commentary, “underwriting requirements that address the adjustment or renegotiation of the interest rate” are specifically identified as being preempted.<sup>13</sup>

Yet, this goes significantly beyond what the CFPB has the authority to preempt. The new language regarding which state laws are preempted is specific:

#### **(c) Preemption of State constitutions, laws or regulations**

An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law or regulation that prohibits an alternative mortgage transaction. For purposes, of this subsection, a State constitution, law or regulation that prohibits an alternative

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<sup>12</sup> 12 C.F.R. § 560.220.

<sup>13</sup> Appendix A to Part 1004 – Official Commentary on Regulation D, § 1004.3-2(iv).

mortgage transaction does not include any State constitution, law or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.<sup>14</sup>

Congress did *not* preempt state laws that “restrict.” It only preempted laws that “prohibit.” There are very significant differences between the meanings of the two words. According to the dictionary, “restrict” means “to place limits on.”<sup>15</sup> State underwriting requirements do not prohibit, but they do restrict, variable rate mortgages.

Moreover, the new sentence added to section 3803(c) specifically excludes from preemption any state rule “that regulates mortgage transaction generally.” State requirements on underwriting are intended to ensure that the creditor evaluates and ascertains the borrower’s ability to repay all mortgages. These rules are general in nature, as they apply equally to fixed rate and adjustable rate loans. As a result, these underwriting rules would squarely fall within the protections of the new last sentence of section 3803(c) and cannot be preempted.

State housing creditors are intended by Congress to enjoy parity with federally chartered institutions in one area, and one area only – the making of variable rate home mortgages. If Congress had intended to preempt state requirements for sound underwriting of mortgage loans, the language allowing preemption would have been much more analogous.

The CFPB has ignored the distinction drawn in the new version of AMTPA between specific lending laws and laws of general application.<sup>16</sup> However, that distinction is a critical part of the new language added by Congress. Congress meant what it said – only the laws that *prohibit* alternative mortgages are to be preempted. Restrictions and limitations which are applied to both variable rate loans and fixed rate loans are *not* preempted.

Extending AMTPA’s preemption to underwriting requirements is not only not justified by the new statute, it is very poor policy. This nation is still suffering from the drastic consequences of the mortgage crisis. This crisis was largely caused by the huge numbers of mortgage loans made to homeowners who had no ability to repay these loans. Dodd-Frank, which included the important changes to AMTPA at issue in this rulemaking, was a direct response to this repeated and standard

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<sup>14</sup> 12 U.S.C. § 3803(c).

<sup>15</sup> Webster's Online Dictionary, available at <http://www.websters-online-dictionary.org/definitions/restrict>.

<sup>16</sup> See, e.g. “Although the amendments to 12 U.S.C. 3803(c) indicate that state laws that regulate mortgage transactions generally are not preempted, the CFPB believes that narrowly focusing on whether a state law is by its terms general or specific would undermine the key determination of whether a state law prohibits an alternative mortgage transaction's adjustment or renegotiation of an interest rate or finance charge or changes to payments as a result of the adjustment or renegotiation. . . . Finally, focusing solely on whether a state law is specific to alternative mortgage transactions or more general in its terms could lead to anomalous results if, for example, one state prohibited certain conduct in a statute that specifically applied to alternative mortgage transactions while another state prohibited the same conduct in a statute that applied generally to all mortgage transactions. For these reasons, the CFPB believes that it would be inconsistent with the goals of the Dodd-Frank Act amendments to make AMTPA preemption determinations based solely on whether a state law was specific or general by its terms.” 76 Fed. Register 44226 , 44236 (July 22, 2011).

The problem with the CFPB’s analysis here is that this is *exactly* the point of limiting the preemptive effects of AMTPA: state laws *will* apply. States have enacted different laws, which protect their citizens in different ways. That is the nature of a republic, and the purpose of limiting the preemptive effects of AMTPA.

failure of mortgage creditors to ascertain that borrowers would be able to repay their mortgages. Many states have adopted ability-to-repay requirements – in an attempt to protect not just homeowners, but whole communities, from the irresponsibility of the mortgage lending industry. There is no policy or legal justification for preempting these important state law consumer protections.<sup>17</sup>

#### **IV. All of the TILA disclosures applicable to variable rate mortgage loans should be required for AMTPA compliance.**

AMTPA’s regulatory scheme requires that creditors making alternative mortgages under AMTPA, rather than state law, must comply with the regulations specified by the agency, instead of the state law being preempted on the same subject.<sup>18</sup> As was explained by the Fourth Circuit –

The practical effect of the statutory scheme is to permit a non-federally chartered housing creditor to make a loan either under state law, in which case the loan transaction remains subject to the full range of state regulations, or under federal law, in which case the loan transaction becomes subject to federal regulations governing similar loans by federally chartered lending institutions. Non-federally chartered housing creditors exercise this regulatory “option” by affirmatively complying with substantive federal regulations identified by the Office of Thrift Supervision. In return for exercising this option, the non-federally chartered housing creditor is promised parity with federally chartered lenders. See 12 U.S.C. § 3803.<sup>19</sup> (Emphasis added).

Compliance with the rules required by the agency – now the CFPB, rather than the OTS – becomes the legal prerequisite to take advantage of the preemption. Courts have held that compliance with these federal regulations must be pleaded by the creditor who seeks a finding that the state laws did not apply.<sup>20</sup> As a result, it is very important for the CFPB to require compliance with *all* applicable Truth in Lending (“TILA”) rules as a condition precedent for the housing creditor to enjoy preemption from some state laws.

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<sup>17</sup> Ark. Code Ann. § 23-53-104(l); Cal. Fin. Code § 4973(f); Colo. Rev. Stat. § 38-40-105; Colo. Rev. Stat. § 12-61-904.5; Conn. Gen. Stat. Ann. § 36a-746e(5); D.C. Code Ann. § 26-1152.02; Fla. Stat. § 494.00791(6); Ga. Code Ann. § 7-6A-5(8); 815 Ill. Comp. Stat. Ann. § 137/15; 205 Ill. Comp. Stat. Ann. § 635/5-6; Ind. Code § 24-9-4-8; Ky. Rev. Stat. Ann. § 360.100; Me. Rev. Stat. Ann. tit. 9-A, § 8-206-H(1)(A)(9); Me. Rev. Stat. Ann. tit. 9-A, § 8-206-I; Md. Code Ann., Com. Law § 12-127(b); Md. Code Ann., Com. Law § 12-409.1; Mass. Gen. Laws Ann. ch. 183C, § 4; Minn. Stat. § 58.13(1)(a)(24); Nev. Rev. Stat. § 598D.100(1)(b); N.M. Stat. § 58-21A-4(C), (D); N.Y. Banking Law § 6-l(2)(k); N.Y. Banking Law § 6-m(4); N.C. Gen. Stat. § 24-1.1E(c)(2); Ohio Rev. Code Ann. § 1345.031(B)(2); Ohio Rev. Code Ann. § 1349.27(D); 63 Pa. Stat. Ann. § 456.512(b); R.I. Gen. Laws § 34-25.2-6(h); S.C. Code Ann. § 37-23-40(2); Tenn. Code Ann. § 45-20-103(6); Wis. Stat. § 428.203(6). (This may not be a complete list.)

<sup>18</sup> 12 U.S.C. § 3803(a).

<sup>19</sup> National Home Equity Mortg. Ass'n v. Face, 239 F.3d 633 at 635-636 (4<sup>th</sup> Cir. 2001).

<sup>20</sup> See, e.g. McCarthy v. Option One Mortgage Corp., 362 F.3d 1008 (7<sup>th</sup> Cir. 2004) (preemption is an affirmative defense and the proponent of preemption must show “substantial” compliance with the relevant OTS regulations; evidence of office procedures to ensure compliance with OTS regulations, a cover letter indicating that certain variable-rate disclosures were sent to the borrower, signed acknowledgment of receipt, and no evidence to the contrary was sufficient).

The Interim Final rule includes very important protections regarding variable rate indexes. It requires *all* adjustable rate mortgages to use a rate index that is readily available to and verifiable by the borrower, and beyond the control of the creditor.<sup>21</sup> The Truth in Lending Act has a similar requirement, but it applies only to home equity lines of credit. Allowing creditors to use variable rate indexes that they control exposes the consumer to unpredictable, arbitrary rate increases and creates the potential for instability in the housing market. We applaud the CFPB for including this important protection.

However, the CFPB should go farther and require alternative mortgage transactions to comply with all of the provisions of the Truth in Lending Act. As currently written, the Interim Final rule requires compliance – as applicable – with HOEPA’s provisions and the prohibitions against unfair practices contained in Regulation Z.<sup>22</sup> However, there is no specific, and unequivocal, requirement that state housing creditors making alternative mortgages comply with all other federal laws, including all of Truth in Lending’s disclosure and substantive requirements (such as the new ability to repay requirements mandated by Dodd-Frank<sup>23</sup>).

There is no reason to include only some of TILA’s disclosure requirements. There is certainly no reason to include only some of the substantive protections applicable to home loans. It may be too complex to list all of the rules. Rather, there should be a general requirement that in order for a state housing creditor to enjoy the preemption provided in these regulations, under AMTPA, compliance with all applicable Truth in Lending and Real Estate Settlement Procedures Act rules is a condition precedent.

## **Conclusion**

Unfortunately, this Interim final rule leaves homeowners vulnerable to overreaching creditors and unsustainable mortgages in several significant ways. It also departs from the clear mandate of Congress in amending AMTPA. We urge the CFPB to revise the rule at the earliest moment, before industry practices become ingrained.

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<sup>21</sup> Regulation D, § 1004.4(a)(1), (2).

<sup>22</sup> Regulation D, § 1004.4(c).

<sup>23</sup> *See, e.g.* Dodd-Frank § 1412; Regulation Z: Docket No. R- 1417; 76 Fed. Register 27390 (May 11, 2011).