

# RESCINDED

Office of Thrift Supervision  
Department of the Treasury

December 17, 2002

**Transmittal**  
**TR-310**

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**Number TR-310**

The attached final rule; delay of effective date regarding Alternative Mortgage Transaction Parity Act; Preemption Delay of Effective Date was published in the Federal Register on December 12, 2002.

the contract for contracts involving the sale for cash of securities that are priced after 4:30 p.m. Eastern Standard Time on the date the securities are priced and are sold by an issuer to an underwriter under a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, or are sold by you to an initial purchaser participating in the offering;

(2) Such other time as the SEC specifies by rule (*see* SEC Rule 15c6-1, 17 CFR 240.15c6-1); or

(3) Such time as the parties expressly agree at the time of the transaction. The parties to a contract are deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities under a firm commitment offering, if the managing underwriter and the issuer have agreed to the date for all securities sold under the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

(b) The deadlines in paragraph (a) of this section do not apply to the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association.

#### Subpart D—Securities Trading Policies and Procedures

##### § 551.140 What policies and procedures must I maintain and follow for securities transactions?

If you effect securities transactions for customers, you must maintain and follow policies and procedures that meet all of the following requirements:

(a) Your policies and procedures must assign responsibility for the supervision of all officers or employees who:

(1) Transmit orders to, or place orders with, registered broker-dealers;

(2) Execute transactions in securities for customers; or

(3) Process orders for notice or settlement purposes, or perform other back office functions for securities transactions that you effect for customers. Policies and procedures for personnel described in this paragraph (a)(3) must provide supervision and reporting lines that are separate from supervision and reporting lines for personnel described in paragraphs (a)(1) and (2) of this section.

(b) Your policies and procedures must provide for the fair and equitable allocation of securities and prices to accounts when you receive orders for

the same security at approximately the same time and you place the orders for execution either individually or in combination.

(c) Your policies and procedures must provide for securities transactions in which you act as agent for the buyer and seller (crossing of buy and sell orders) on a fair and equitable basis to the parties to the transaction, where permissible under applicable law.

(d) Your policies and procedures must require your officers and employees to file the personal securities trading reports described at § 551.150, if the officer or employee:

(1) Makes investment recommendations or decisions for the accounts of customers;

(2) Participates in the determination of these recommendations or decisions; or

(3) In connection with their duties, obtains information concerning which securities you intend to purchase, sell, or recommend for purchase or sale.

##### § 551.150 How do my officers and employees file reports of personal securities trading transactions?

An officer or employee described in § 551.140(d) must report all personal transactions in securities made by or on behalf of the officer or employee if he or she has a beneficial interest in the security.

(a) *Contents and filing of report.* The officer or employee must file the report with you within ten business days after the end of each calendar quarter. The report must include the following information:

(1) The date of each transaction, the title and number of shares, the interest rate and maturity date (if applicable), and the principal amount of each security involved.

(2) The nature of each transaction (*i.e.*, purchase, sale, or other type of acquisition or disposition).

(3) The price at which each transaction was effected.

(4) The name of the broker, dealer, or other intermediary effecting the transaction.

(5) The date the officer or employee submitted the report.

(b) *Report not required for certain transactions.* Your officer or employee is not required to report a transaction if:

(1) He or she has no direct or indirect influence or control over the account for which the transaction was effected or over the securities held in that account;

(2) The transaction was in shares issued by an open-end investment company registered under the Investment Company Act of 1940;

(3) The transaction was in direct obligations of the government of the United States;

(4) The transaction was in bankers' acceptances, bank certificates of deposit, commercial paper or high quality short term debt instruments, including repurchase agreements; or

(5) The officer or employee had an aggregate amount of purchases and sales of \$10,000 or less during the calendar quarter.

(c) *Alternate report.* When you act as an investment adviser to an investment company registered under the Investment Company Act of 1940, an officer or employee that is an "access person" may fulfill his or her reporting requirements under this section by filing with you the "access person" personal securities trading report required by SEC Rule 17j-1(d), 17 CFR 270.17j-1(d).

Dated: December 2, 2002.

By the Office of Thrift Supervision.

**James E. Gilleran,**

*Director.*

[FR Doc. 02-31005 Filed 12-11-02; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Parts 560, 590 and 591

[No. 2002-59]

RIN 1550-AB51

#### Alternative Mortgage Transaction Parity Act; Preemption Delay of Effective Date

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** The Alternative Mortgage Transaction Parity Act (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, certain state chartered housing creditors must comply with regulations issued by the Office of Thrift Supervision (OTS). OTS recently revised its rule identifying the OTS regulations that apply under AMTPA. This document delays the effective date of that revised rule.

**EFFECTIVE DATE:** This amendment modifies the effective date of the final rule published September 26, 2002 at 67 FR 60542. The effective date of the revision to 12 CFR 560.220 is delayed until July 1, 2003. The effective date of

amendments to 12 CFR 590.4 and 591.2 remains January 1, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Theresa Stark, Senior Project Manager, Compliance Policy, (202) 906-7054; Karen Osterloh, Special Counsel, (202) 906-6639, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

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, however, certain state chartered housing creditors must comply with designated OTS regulations on alternative mortgage transactions. On September 26, 2002, OTS published a final rule revising 12 CFR 560.220, which identifies the OTS regulations that apply to state housing creditors making alternative mortgage transactions under AMTPA.<sup>1</sup> Under the final rule, OTS will no longer identify its regulations on prepayments and late charges as applicable to state housing creditors. As a result, alternative mortgage transactions made by state chartered housing creditors under AMTPA will become subject to state and local laws on these subjects. The rule was to become effective on January 1, 2003.

In late November and early December 2002, several representatives of financial service trade associations (petitioners) filed written requests for extensions of the January 1, 2003 effective date. The petitioners argued that the three-month delayed effective date did not provide a sufficient time for the industry to address implementation issues.

**II. Discussion**

*A. Implementation Issues*

Upon reconsideration, OTS believes that an extension is warranted to provide state housing creditors with additional time to adapt to newly applicable state and local requirements.<sup>2</sup> Specifically, OTS believes that a delay is necessary to permit state housing creditors to: (1) Determine applicable legal

requirements; (2) reprogram systems and rewrite documents; and (3) conduct training.

Under the revised OTS rule, state housing creditors that engage in alternative mortgage transactions under AMTPA will become subject to state laws on prepayment penalties and late charges. During the last six years, state housing creditors have been able to rely on AMTPA to avoid these state limitations. As a result, many will have little recent experience with applicable state laws on prepayment penalties and late charges. Because state prepayment penalty and late charge restrictions for alternative mortgage transactions frequently differ substantially from restrictions on fixed-rate products, any experience that a state housing creditor may have with applicable restrictions on fixed-rate mortgages may be irrelevant.

Thus, as a result of the final rule, state housing creditors will be required to conduct an in-depth review of applicable state laws to ensure that their alternative mortgage transactions will not violate these laws—a significant endeavor for state housing creditors that operate nationwide or in multiple jurisdictions.

In addition to ascertaining the scope of applicable restrictions on prepayment penalties and late charges, state housing creditors will be required to undertake the following significant modifications to systems and documents to ensure compliance with state law: (1) Rewrite promissory notes and loan agreements; (2) prepare and program newly required disclosures, including disclosures to be delivered at or prior to origination and disclosures required during loan servicing; (3) modify loan origination systems to accurately reflect legal requirements and applicable codes; (4) modify servicing systems; and (5) develop audit and quality control programs.

Finally, state housing creditors will have to retrain their employees and agents on the new legal requirements for their various loan products and on the use of the updated systems and documents. Such activities may require the production of appropriate training materials and conducting training sessions for employees.

*B. New Effective Date*

In determining the effective date for new regulations that impose additional requirements on insured depository institutions, OTS must consider, consistent with the principles of safety and soundness and the public interest, any administrative burdens that the regulation would place on depository

institutions and customers of depository institutions, and the benefits of the regulation.<sup>3</sup>

Based on the administrative burdens described by petitioners, OTS believes that the original January 1, 2003 effective date was inadequate to permit state housing creditors, including insured depository institutions, to perform all of the tasks necessary to respond to the new regulatory environment in a coherent manner.<sup>4</sup> OTS is reluctant to place state housing creditors in a position where they are unable to comply or are forced to put unready or untested systems into operation. Such an action could result in borrowers receiving loans that do not meet the requirements under state law. This may harm consumers to the extent that they are charged prepayment penalties that are prohibited under state law, or are precluded from electing a lower rate in return for a prepayment penalty where such penalties are permitted. In addition, such an action could result in lawsuits, which could undermine consumer confidence in the mortgage industry. Accordingly, OTS will extend the effective date of the AMTPA rule.

Almost three months have passed since the issuance of the September 26, 2002 final rule. By now, OTS anticipates that most state housing creditors have researched and analyzed the applicable law and are beginning to update their operating systems and documents and take other steps toward compliance with the revised regulatory environment. OTS believes that a delay of an additional six months, as requested by several petitioners, will be sufficient for state housing creditors, including companies with regional or national operations, to complete good faith efforts to implement the remaining changes required by the revised rule. OTS notes that this extended date is more than nine months after the publication of the final rule on September 26, 2002.

OTS also considered whether to extend the effective date to January 1, 2004, as requested by some petitioners. However, OTS believes that this effective date raises other issues, including new implementation issues. As one commenter observed, changes required by the end of a calendar year are particularly problematic because so many functions must be performed at the year-end that sufficient staff is often

<sup>1</sup> 67 FR 60542 (Sept. 26, 2002).

<sup>2</sup> The September 26, 2002 final rule also made unrelated revisions to 12 CFR part 590 (Preemption of State Usury Laws) and 12 CFR part 591 (Preemption of State Due-on-Sale Laws). OTS is not revising the effective date of these other rule changes. Therefore, the changes to parts 590 and 591 will be effective on January 1, 2003.

<sup>3</sup> 12 U.S.C. 4802.

<sup>4</sup> While commenters on the proposed rule addressed various compliance burdens, the effective date of the rule was not identified as a significant issue in the comments or discussed at any length.

not available to make the changes, test the changes, and train other employees. OTS believes that this factor weighs against an effective date of January 1, 2004. Moreover, a January 1, 2004 effective date will unreasonably delay, and thus deny, consumers the protections accorded under state law with regard to prepayment penalties and late charges on loans made by state housing creditors. In the final rule, OTS examined the AMTPA rule's impact on predatory lending and concluded that the widespread use of prepayment penalties may deter consumers from seeking to refinance high cost loans with burdensome provisions and may have other adverse consequences for sub-prime borrowers. OTS further concluded that state laws on prepayment penalties and late charges are a key component in states' regulation of predatory lending, and that its current AMTPA rules may frustrate these state efforts. OTS is disinclined to thwart these efforts to combat predatory lending by unnecessarily extending the implementation period.

In light of these factors, OTS will extend the effective date of the revised AMTPA rule for six additional months until July 1, 2003.<sup>5</sup>

### III. Regulatory Analyses

To the extent that this extension of the effective date is deemed to be a rule under the Administrative Procedure Act (APA), OTS makes the following regulatory findings.

#### A. Administrative Procedure Act

Under the APA, an agency may suspend general notice-and-comment rulemaking procedures if the agency "for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). OTS finds that it has good cause to delay the effective date without first soliciting comment concerning this action. Because the effective date of the final rule (January 1, 2003) is fast approaching, it is impracticable to seek further public

<sup>5</sup> Thus, loans consummated on or after July 1, 2003 will be governed by revised § 560.220. However, if a loan is made pursuant to a legally binding loan commitment made before July 1, 2003, the loan will be governed by the prior OTS rule. Where a prospective borrower pays no fee for a commitment, state housing creditors should closely review the loan commitment to determine if a legally binding commitment exists. These agreements typically contain broad provisions permitting the lenders to decline to fund the loan on subjective grounds that effectively render the commitment unenforceable and therefore not legally binding.

comment before issuing this amendment delaying the effective date of those rules. In addition, such a delay is in the public interest for the reasons explained above. For similar reasons, OTS also finds that this action delaying the effective date of the final rule must take effect on January 1, 2003, which is less than 30 days after publication of this amendment to the final rules.

#### B. Regulatory Flexibility Act

Under section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604), a final regulatory flexibility analysis is required only for notice-and-comment rulemakings conducted under section 553 of the APA. Since OTS has found that there is "good cause" under the APA for not proceeding with notice-and-comment rulemaking for this amendment to the effective date for the final rules, the RFA does not require that a final regulatory flexibility analysis be provided for this amendment. Moreover, OTS provided a regulatory flexibility analysis in the preamble to the final rule published on September 26, 2002 (67 FR 60551-60554). In that regulatory flexibility analysis, OTS considered the likely impact of the final rule on small entities.

#### C. Executive Order 12866

The OTS determination that the final rule does not constitute a "significant regulatory action" (67 FR 60551) applies to the rule, as amended by this effective date revision.

#### D. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMA) applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, OTS has determined, for good cause, that this amendment to the final rule may be issued without prior notice and comment. Accordingly, OTS has concluded that the UMA does not require an unfunded mandates analysis of this amendment to the final rules. Moreover, OTS provided an UMA analysis in connection with the final rule. 67 FR 60551.

#### E. Executive Order 13132—Federalism

As described in the preamble to the final rule (67 FR 60554), Executive Order 13132 imposes certain requirements on an agency when it formulates and implements policies that have federalism implementations. In accordance with those requirements, OTS consulted with the Conference of Bank Supervisors and the National

Association of Attorneys General concerning this amendment to delay the effective date of the rule.

Dated: December 6, 2002.

By the Office of Thrift Supervision.

**James E. Gilleran,**

*Director.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2002-13819; Airspace Docket No. 02-AGL-10]

#### Establishment of Class E Airspace; Milbank, SD

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Milbank, SD. An area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 has been developed for Milbank Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action establishes controlled airspace for Milbank Municipal Airport.

**EFFECTIVE DATE:** 0901 UTC, January 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

#### SUPPLEMENTARY INFORMATION:

##### History

On Friday, August 16, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Milbank, SD (67 FR 53533). The proposal was to establish controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace area extending