

(d) Liability for violations**(1) In general**

For purposes of providing a cause of action for any failure by a mortgage originator, other than a creditor, to comply with any requirement imposed under this section and any regulation prescribed under this section, section 1640 of this title shall be applied with respect to any such failure by substituting “mortgage originator” for “creditor” each place such term appears in each such subsection.¹

(2) Maximum

The maximum amount of any liability of a mortgage originator under paragraph (1) to a consumer for any violation of this section shall not exceed the greater of actual damages or an amount equal to 3 times the total amount of direct and indirect compensation or gain accruing to the mortgage originator in connection with the residential mortgage loan involved in the violation, plus the costs to the consumer of the action, including a reasonable attorney’s fee.

(e) Discretionary regulatory authority**(1) In general**

The Bureau shall, by regulations, prohibit or condition terms, acts or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section and section 1639c of this title, necessary or proper to effectuate the purposes of this section and section 1639c of this title, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower.

(2) Application

The regulations prescribed under paragraph (1) shall be applicable to all residential mortgage loans and shall be applied in the same manner as regulations prescribed under section 1604 of this title.

(f) Timeshare plans

This section and any regulations promulgated thereunder do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11.

(Pub. L. 90-321, title I, §129B, as added and amended Pub. L. 111-203, title X, §1100A(2), title XIV, §§1402(a)(2), 1403-1405(a), July 21, 2010, 124 Stat. 2107, 2139-2141.)

Editorial Notes

REFERENCES IN TEXT

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, referred to in subsec. (b)(1)(A), is title V of div. A of Pub. L. 110-289, July 30, 2008, 122 Stat. 2810, also known as the S.A.F.E. Mortgage Licensing Act of 2008, which is classified generally to chapter 51 (§5101 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of Title 12 and Tables.

¹ So in original. Probably should be “in such section.”

AMENDMENTS

2010—Pub. L. 111-203, §1100A(2), substituted “Bureau” for “Board” wherever appearing.

Subsec. (c). Pub. L. 111-203, §1403, added subsec. (c).

Subsec. (d). Pub. L. 111-203, §1404, added subsec. (d).

Subsecs. (e), (f). Pub. L. 111-203, §1405(a), added subsecs. (e) and (f).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2) of Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by sections 1403-1405(a) of Pub. L. 111-203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111-203, set out as a note under section 1601 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111-203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

RULE OF CONSTRUCTION

Pub. L. 111-203, title XIV, §1415, July 21, 2010, 124 Stat. 2153, provided that: “Except as otherwise expressly provided in section 129B or 129C of the Truth in Lending Act [15 U.S.C. 1639b, 1639c] (as added by this title), no provision of such section 129B or 129C shall be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of the Truth in Lending Act [15 U.S.C. 1601 et seq.] or any other provision of Federal or State law.”

[For definition of “State” as used in section 1415 of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

§ 1639c. Minimum standards for residential mortgage loans**(a) Ability to repay****(1) In general**

In accordance with regulations prescribed by the Bureau, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

(2) Multiple loans

If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance

(including mortgage guarantee insurance), and assessments.

(3) Basis for determination

A determination under this subsection of a consumer's ability to repay a residential mortgage loan shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan. A creditor shall determine the ability of the consumer to repay using a payment schedule that fully amortizes the loan over the term of the loan.

(4) Income verification

A creditor making a residential mortgage loan shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets. In order to safeguard against fraudulent reporting, any consideration of a consumer's income history in making a determination under this subsection shall include the verification of such income by the use of—

(A) Internal Revenue Service transcripts of tax returns; or

(B) a method that quickly and effectively verifies income documentation by a third party subject to rules prescribed by the Bureau.

(5) Exemption

With respect to loans made, guaranteed, or insured by Federal departments or agencies identified in subsection (b)(3)(B)(ii), such departments or agencies may exempt refinancings under a streamlined refinancing from this income verification requirement as long as the following conditions are met:

(A) The consumer is not 30 days or more past due on the prior existing residential mortgage loan.

(B) The refinancing does not increase the principal balance outstanding on the prior existing residential mortgage loan, except to the extent of fees and charges allowed by the department or agency making, guaranteeing, or insuring the refinancing.

(C) Total points and fees (as defined in section 1602(aa)(4)¹ of this title, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator) payable in connection with the refinancing do not exceed 3 percent of the total new loan amount.

(D) The interest rate on the refinanced loan is lower than the interest rate of the

original loan, unless the borrower is refinancing from an adjustable rate to a fixed-rate loan, under guidelines that the department or agency shall establish for loans they make, guarantee, or issue.

(E) The refinancing is subject to a payment schedule that will fully amortize the refinancing in accordance with the regulations prescribed by the department or agency making, guaranteeing, or insuring the refinancing.

(F) The terms of the refinancing do not result in a balloon payment, as defined in subsection (b)(2)(A)(ii).

(G) Both the residential mortgage loan being refinanced and the refinancing satisfy all requirements of the department or agency making, guaranteeing, or insuring the refinancing.

(6) Nonstandard loans

(A) Variable rate loans that defer repayment of any principal or interest

For purposes of determining, under this subsection, a consumer's ability to repay a variable rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

(B) Interest-only loans

For purposes of determining, under this subsection, a consumer's ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

(C) Calculation for negative amortization

In making any determination under this subsection, a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision.

(D) Calculation process

For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming—

(i) the loan proceeds are fully disbursed on the date of the consummation of the loan;

(ii) the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payment), in which case the calculation shall be made (I) in accordance with regulations prescribed by the Bureau, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subor-

¹ See References in Text note below.

dinate lien residential mortgage loan; or (II) using the contract's repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and

(iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

(E) Refinance of hybrid loans with current lender

In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which there would be a reduction in monthly payment and the mortgagor has not been delinquent on any payment on the existing hybrid loan, the creditor may—

(i) consider the mortgagor's good standing on the existing mortgage;

(ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and

(iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice.

(7) Fully-indexed rate defined

For purposes of this subsection, the term "fully indexed rate" means the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates.

(8) Reverse mortgages and bridge loans

This subsection shall not apply with respect to any reverse mortgage or temporary or bridge loan with a term of 12 months or less, including to any loan to purchase a new dwelling where the consumer plans to sell a different dwelling within 12 months.

(9) Seasonal income

If documented income, including income from a small business, is a repayment source for a residential mortgage loan, a creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

(b) Presumption of ability to repay

(1) In general

Any creditor with respect to any residential mortgage loan, and any assignee of such loan subject to liability under this subchapter, may presume that the loan has met the requirements of subsection (a), if the loan is a qualified mortgage.

(2) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Qualified mortgage

The term "qualified mortgage" means any residential mortgage loan—

(i) for which the regular periodic payments for the loan may not—

(I) result in an increase of the principal balance; or

(II) except as provided in subparagraph (E), allow the consumer to defer repayment of principal;

(ii) except as provided in subparagraph (E), the terms of which do not result in a balloon payment, where a "balloon payment" is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

(iii) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

(iv) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(v) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first 5 years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(vi) that complies with any guidelines or regulations established by the Bureau relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Bureau may determine relevant and consistent with the purposes described in paragraph (3)(B)(i);

(vii) for which the total points and fees (as defined in subparagraph (C)) payable in connection with the loan do not exceed 3 percent of the total loan amount;

(viii) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (3), such as in high-cost areas; and

(ix) in the case of a reverse mortgage (except for the purposes of subsection (a) of this section, to the extent that such mortgages are exempt altogether from those requirements), a reverse mortgage which meets the standards for a qualified mortgage, as set by the Bureau in rules that are consistent with the purposes of this subsection.

(B) Average prime offer rate

The term "average prime offer rate" means the average prime offer rate for a comparable transaction as of the date on which the interest rate for the transaction is set, as published by the Bureau.²

² So in original.

(C) Points and fees**(i) In general**

For purposes of subparagraph (A), the term “points and fees” means points and fees as defined by section 1602(aa)(4)¹ of this title (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator).

(ii) Computation

For purposes of computing the total points and fees under this subparagraph, the total points and fees shall exclude either of the amounts described in the following subclauses, but not both:

(I) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 1 percentage point the average prime offer rate.

(II) Unless 2 bona fide discount points have been excluded under subclause (I), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 2 percentage points the average prime offer rate.

(iii) Bona fide discount points defined

For purposes of clause (ii), the term “bona fide discount points” means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

(iv) Interest rate reduction

Subclauses (I) and (II) of clause (ii) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(D) Smaller loans

The Bureau shall prescribe rules adjusting the criteria under subparagraph (A)(vii) in order to permit lenders that extend smaller loans to meet the requirements of the presumption of compliance under paragraph (1). In prescribing such rules, the Bureau shall consider the potential impact of such rules on rural areas and other areas where home values are lower.

(E) Balloon loans

The Bureau may, by regulation, provide that the term “qualified mortgage” includes a balloon loan—

(i) that meets all of the criteria for a qualified mortgage under subparagraph (A) (except clauses (i)(II), (ii), (iv), and (v) of such subparagraph);

(ii) for which the creditor makes a determination that the consumer is able to

make all scheduled payments, except the balloon payment, out of income or assets other than the collateral;

(iii) for which the underwriting is based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into account all applicable taxes, insurance, and assessments; and

(iv) that is extended by a creditor that—

(I) operates in rural or underserved areas;

(II) together with all affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Bureau;

(III) retains the balloon loans in portfolio; and

(IV) meets any asset size threshold and any other criteria as the Bureau may establish, consistent with the purposes of this part.

(F) Safe harbor**(i) Definitions**

In this subparagraph—

(I) the term “covered institution” means an insured depository institution or an insured credit union that, together with its affiliates, has less than \$10,000,000,000 in total consolidated assets;

(II) the term “insured credit union” has the meaning given the term in section 1752 of title 12;

(III) the term “insured depository institution” has the meaning given the term in section 1813 of title 12;

(IV) the term “interest-only” means that, under the terms of the legal obligation, one or more of the periodic payments may be applied solely to accrued interest and not to loan principal; and

(V) the term “negative amortization” means payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation.

(ii) Safe harbor

In this section—

(I) the term “qualified mortgage” includes any residential mortgage loan—

(aa) that is originated and retained in portfolio by a covered institution;

(bb) that is in compliance with the limitations with respect to prepayment penalties described in subsections (c)(1) and (c)(3);

(cc) that is in compliance with the requirements of clause (vi) of subparagraph (A);

(dd) that does not have negative amortization or interest-only features; and

(ee) for which the covered institution considers and documents the debt, income, and financial resources of the consumer in accordance with clause (iv); and

(II) a residential mortgage loan described in subclause (I) shall be deemed

to meet the requirements of subsection (a).

(iii) Exception for certain transfers

A residential mortgage loan described in clause (ii)(I) shall not qualify for the safe harbor under clause (ii) if the legal title to the residential mortgage loan is sold, assigned, or otherwise transferred to another person unless the residential mortgage loan is sold, assigned, or otherwise transferred—

(I) to another person by reason of the bankruptcy or failure of a covered institution;

(II) to a covered institution so long as the loan is retained in portfolio by the covered institution to which the loan is sold, assigned, or otherwise transferred;

(III) pursuant to a merger of a covered institution with another person or the acquisition of a covered institution by another person or of another person by a covered institution, so long as the loan is retained in portfolio by the person to whom the loan is sold, assigned, or otherwise transferred; or

(IV) to a wholly owned subsidiary of a covered institution, provided that, after the sale, assignment, or transfer, the residential mortgage loan is considered to be an asset of the covered institution for regulatory accounting purposes.

(iv) Consideration and documentation requirements

The consideration and documentation requirements described in clause (ii)(I)(ee) shall—

(I) not be construed to require compliance with, or documentation in accordance with, appendix Q to part 1026 of title 12, Code of Federal Regulations, or any successor regulation; and

(II) be construed to permit multiple methods of documentation.

(3) Regulations

(A) In general

The Bureau shall prescribe regulations to carry out the purposes of this subsection.

(B) Revision of safe harbor criteria

(i) In general

The Bureau may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 1639b of this title, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

(ii) Loan definition

The following agencies shall, in consultation with the Bureau, prescribe rules defining the types of loans they insure,

or administer, as the case may be, that are qualified mortgages for purposes of paragraph (2)(A), and such rules may revise, add to, or subtract from the criteria used to define a qualified mortgage under paragraph (2)(A), upon a finding that such rules are consistent with the purposes of this section and section 1639b of this title, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections:

(I) The Department of Housing and Urban Development, with regard to mortgages insured under the National Housing Act [12 U.S.C. 1701 et seq.].

(II) The Department of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs.

(III) The Department of Agriculture, with regard³ loans guaranteed by the Secretary of Agriculture pursuant to section 1472(h) of title 42.

(IV) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.

(C) Consideration of underwriting requirements for Property Assessed Clean Energy financing

(i) Definition

In this subparagraph, the term “Property Assessed Clean Energy financing” means financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer.

(ii) Regulations

The Bureau shall prescribe regulations that carry out the purposes of subsection (a) and apply section 1640 of this title with respect to violations under subsection (a) of this section with respect to Property Assessed Clean Energy financing, which shall account for the unique nature of Property Assessed Clean Energy financing.

(iii) Collection of information and consultation

In prescribing the regulations under this subparagraph, the Bureau—

(I) may collect such information and data that the Bureau determines is necessary; and

(II) shall consult with State and local governments and bond-issuing authorities.

(c) Prohibition on certain prepayment penalties

(1) Prohibited on certain loans

(A) In general

A residential mortgage loan that is not a “qualified mortgage”, as defined under subsection (b)(2), may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

³ So in original. Probably should be followed by “to”.

(B) Exclusions

For purposes of this subsection, a “qualified mortgage” may not include a residential mortgage loan that—

- (i) has an adjustable rate; or
- (ii) has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 1454(a)(2) of title 12;

(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 1454(a)(2) of title 12; and

(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan.

(2) Publication of average prime offer rate and APR thresholds

The Bureau—

(A) shall publish, and update at least weekly, average prime offer rates;

(B) may publish multiple rates based on varying types of mortgage transactions; and

(C) shall adjust the thresholds established under subclause (I), (II), and (III) of paragraph (1)(B)(ii) as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

(3) Phased-out penalties on qualified mortgages

A qualified mortgage (as defined in subsection (b)(2)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

(B) During the 1-year period beginning after the period described in subparagraph (A), the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

(4) Option for no prepayment penalty required

A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

(d) Single premium credit insurance prohibited

No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that—

(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and

(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

(e) Arbitration**(1) In general**

No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

(2) Post-controversy agreements

Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor or any assignee to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

(3) No waiver of statutory cause of action

No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the

United States, or any other court of competent jurisdiction, pursuant to section 1640 of this title or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this subchapter, or any other Federal law.

(f) Mortgages with negative amortization

No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated—

(1) the creditor provides the consumer with a statement that—

(A) the pending transaction will or may, as the case may be, result in negative amortization;

(B) describes negative amortization in such manner as the Bureau shall prescribe;

(C) negative amortization increases the outstanding principal balance of the account; and

(D) negative amortization reduces the consumer's equity in the dwelling or real property; and

(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.

(g) Protection against loss of anti-deficiency protection

(1) Definition

For purposes of this subsection, the term “anti-deficiency law” means the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

(2) Notice at time of consummation

In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

(3) Notice before refinancing that would cause loss of protection

In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage origi-

nator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.

(h) Policy regarding acceptance of partial payment

In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

(1) the creditor's policy regarding the acceptance of partial payments; and

(2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.

(i) Timeshare plans

This section and any regulations promulgated under this section do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11.

(Pub. L. 90-321, title I, §129C, as added and amended Pub. L. 111-203, title X, §1100A(2), title XIV, §§1411(a)(2), 1412, 1414(a), (c), (d), July 21, 2010, 124 Stat. 2107, 2142, 2145, 2149, 2152; Pub. L. 114-94, div. G, title LXXXIX, §89003(1), Dec. 4, 2015, 129 Stat. 1800; Pub. L. 115-174, title I, §101, title III, §307, May 24, 2018, 132 Stat. 1297, 1347.)

Editorial Notes

REFERENCES IN TEXT

Section 1602(aa)(4) of this title, referred to in subsecs. (a)(5)(C) and (b)(2)(C)(i), was redesignated section 1602(bb)(4) of this title by Pub. L. 111-203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

This part, referred to in subsec. (b)(2)(E)(iv)(IV), was in the original “this subtitle”, and was translated as reading “this chapter”, meaning chapter 2 of title I of Pub. L. 90-321, to reflect the probable intent of Congress. Title I of Pub. L. 90-321 does not contain subtitles.

The National Housing Act, referred to in subsec. (b)(3)(B)(ii)(I), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The Mortgage Reform and Anti-Predatory Lending Act, referred to in subsec. (c)(2)(C), is title XIV of Pub. L. 111-203, July 21, 2010, 124 Stat. 2136. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 1601 of this title and Tables.

AMENDMENTS

2018—Subsec. (b)(2)(F). Pub. L. 115-174, §101, added subpar. (F).

Subsec. (b)(3)(C). Pub. L. 115-174, §307, added subpar. (C).

2015—Subsec. (b)(2)(E)(iv)(I). Pub. L. 114-94 struck out “predominantly” after “operates”.

2010—Pub. L. 111-203, §1100A(2), substituted “Bureau” for “Board” wherever appearing.

Subsec. (b). Pub. L. 111-203, §1412, added subsec. (b).

Subsecs. (c) to (f). Pub. L. 111-203, §1414(a), added subsecs. (c) to (f).

Subsec. (g). Pub. L. 111-203, §1414(c), added subsec. (g).

Subsecs. (h), (i). Pub. L. 111-203, §1414(d), added subsecs. (h) and (i).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2) of Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by sections 1412 and 1414(a), (c), (d) of Pub. L. 111-203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date, if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111-203, set out as a note under section 1601 of this title.

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111-203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

RULE OF CONSTRUCTION

Pub. L. 111-203, title XIV, §1411(a)(1), July 21, 2010, 124 Stat. 2142, provided that: “No regulation, order, or guidance issued by the Bureau under this title [see Tables for classification] shall be construed as requiring a depository institution to apply mortgage underwriting standards that do not meet the minimum underwriting standards required by the appropriate prudential regulator of the depository institution.”

[For definitions of “Bureau” and “depository institution” as used in section 1411(a)(1) of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking.]

§ 1639d. Escrow or impound accounts relating to certain consumer credit transactions

(a) In general

Except as provided in subsection (b), (c), (d), or (e), a creditor, in connection with the consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, shall establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance, and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, this section.

(b) When required

No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when—

- (1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

(2) a loan is made, guaranteed, or insured by a State or Federal governmental lending or insuring agency;

(3) the transaction is secured by a first mortgage or lien on the consumer’s principal dwelling having an original principal obligation amount that—

(A) does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 1454(a)(2) of title 12, and the annual percentage rate will exceed the average prime offer rate as defined in section 1639c of this title by 1.5 or more percentage points; or

(B) exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 1454(a)(2) of title 12, and the annual percentage rate will exceed the average prime offer rate as defined in section 1639c of this title by 2.5 or more percentage points; or

(4) so required pursuant to regulation.

(c) Exemptions

(1) In general

The Bureau may, by regulation, exempt from the requirements of subsection (a) a creditor that—

(A) operates in rural or underserved areas;

(B) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the Bureau;

(C) retains its mortgage loan originations in portfolio; and

(D) meets any asset size threshold and any other criteria the Bureau may establish, consistent with the purposes of this part.

(2) Treatment of loans held by smaller institutions

The Bureau shall, by regulation, exempt from the requirements of subsection (a) any loan made by an insured depository institution or an insured credit union secured by a first lien on the principal dwelling of a consumer if—

(A) the insured depository institution or insured credit union has assets of \$10,000,000,000 or less;

(B) during the preceding calendar year, the insured depository institution or insured credit union and its affiliates originated 1,000 or fewer loans secured by a first lien on a principal dwelling; and

(C) the transaction satisfies the criteria in sections 1026.35(b)(2)(iii)(A), 1026.35(b)(2)(iii)(D), and 1026.35(b)(2)(v) of title 12, Code of Federal Regulations, or any successor regulation.

(d) Duration of mandatory escrow or impound account

An escrow or impound account established pursuant to subsection (b) shall remain in existence for a minimum period of 5 years, beginning