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### TITLE 12 - BANKS AND BANKING

### CHAPTER 39 - ALTERNATIVE MORTGAGE TRANSACTIONS

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CHAPTER 39—ALTERNATIVE MORTGAGE TRANSACTIONS

Sec.
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§ 3801. Findings and purpose

(a) The Congress hereby finds that—

(1) increasingly volatile and dynamic changes in interest rates have seriously impaired the ability of housing creditors to provide consumers with fixed-term, fixed-rate credit secured by interests in real property, cooperative housing, manufactured homes, and other dwellings;

(2) alternative mortgage transactions are essential to the provision of an adequate supply of credit secured by residential property necessary to meet the demand expected during the 1980’s; and

(3) the Comptroller of the Currency, the National Credit Union Administration, and the Director of the Office of Thrift Supervision have recognized the importance of alternative mortgage transactions and have adopted regulations authorizing federally chartered depository institutions to engage in alternative mortgage financing.

(b) It is the purpose of this chapter to eliminate the discriminatory impact that those regulations have upon nonfederally chartered housing creditors and provide them with parity with federally chartered institutions by authorizing all housing creditors to make, purchase, and enforce alternative mortgage transactions so long as the transactions are in conformity with the regulations issued by the Federal agencies.

Footnotes

1 So in original. Probably should be “impaired”.


Amendments


Short Title

Section 801 of title VIII of Pub. L. 97–320 provided that: “This title [enacting this chapter] may be cited as the ‘Alternative Mortgage Transaction Parity Act of 1982’.”

Effective Date

Section 807(a) of Pub. L. 97–320 provided that: “This title [enacting this chapter] shall be effective upon enactment [Oct. 15, 1982].”

Identification, Description and Publication of Regulations Inapplicable To, or Conformation of Regulations for Use Of Nonfederally Chartered Housing Creditors

Section 807(b) of Pub. L. 97–320 provided that: “Within sixty days of the enactment of this title [Oct. 15, 1982], the Comptroller of the Currency, the National Credit Union Administration, and the Federal Home Loan Bank Board shall identify, describe, and publish those portions or provisions of their respective regulations that are inappropriate for
(and thus inapplicable to), or that need to be conformed for the use of, the nonfederally chartered housing creditors
to which their respective regulations apply, including without limitation, making necessary changes in terminology to
conform the regulatory and disclosure provisions to those more typically associated with various types of transactions
including credit sales.”

§ 3802. Definitions

As used in this chapter—

(1) the term “alternative mortgage transaction” means a loan or credit sale secured by an interest in
residential real property, a dwelling, all stock allocated to a dwelling unit in a residential cooperative
housing corporation, or a residential manufactured home (as that term is defined in section 5402 (6)
of title 42), in which the interest rate or finance charge may be adjusted or renegotiated, described and
defined by applicable regulation; and

(2) the term “housing creditor” means—

(A) a depository institution, as defined in section 501(a)(2) of the Depository Institutions
Deregulation and Monetary Control Act of 1980;

(B) a lender approved by the Secretary of Housing and Urban Development for participation in
any mortgage insurance program under the National Housing Act [12 U.S.C. 1701 et seq.];

(C) any person who regularly makes loans, credit sales, or advances secured by interests in
properties referred to in paragraph (1); or

(D) any transferee of any of them.

A person is not a “housing creditor” with respect to a specific alternative mortgage transaction if,
except for this chapter, in order to enter into that transaction, the person would be required to comply
with licensing requirements imposed under State law, unless such person is licensed under applicable
State law and such person remains, or becomes, subject to the applicable regulatory requirements and
enforcement mechanisms provided by State law.


References in Text

(2)(A), is section 501(a)(2) of Pub. L. 96–221, title V, Mar. 31, 1980, 94 Stat. 161, which is set out as a note under
section 1735f–7 of this title.

The National Housing Act, referred to in par. (2)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified
principally to chapter 13 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see section
1701 of this title and Tables.

Amendments

2010—Par. (1). Pub. L. 111–203 substituted “section 5402 (6) of title 42), in which the interest rate or finance charge
may be adjusted or renegotiated, described and defined by applicable regulation; and” for “section 5402 (6) of title
42)—

“(A) in which the interest rate or finance charge may be adjusted or renegotiated;

“(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; or

“(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;

described and defined by applicable regulation; and”.

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§ 3803. Alternative mortgage authority

(a) General authority; compliance by banks, credit unions and all other housing creditors with applicable regulations

In order to prevent discrimination against State-chartered depository institutions, and other nonfederally chartered housing creditors, with respect to making, purchasing, and enforcing alternative mortgage transactions, housing creditors may make, purchase, and enforce alternative mortgage transactions, except that this section shall apply—

(1) with respect to banks, only to transactions made on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5582], in accordance with regulations governing alternative mortgage transactions as issued by the Comptroller of the Currency for national banks, to the extent that such regulations are authorized by rulemaking authority granted to the Comptroller of the Currency with regard to national banks under laws other than this section;

(2) with respect to credit unions, only to transactions made on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010, in accordance with regulations governing alternative mortgage transactions as issued by the National Credit Union Administration Board for Federal credit unions, to the extent that such regulations are authorized by rulemaking authority granted to the National Credit Union Administration with regard to Federal credit unions under laws other than this section;

(3) with respect to all other housing creditors, including without limitation, savings and loan associations, mutual savings banks, and savings banks, only to transactions made on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010, in accordance with regulations governing alternative mortgage transactions as issued by the Director of the Office of Thrift Supervision for federally chartered savings and loan associations, to the extent that such regulations are authorized by rulemaking authority granted to the Director of the Office of Thrift Supervision with regard to federally chartered savings and loan associations under laws other than this section; and

(4) with respect to transactions made after the designated transfer date, only in accordance with regulations governing alternative mortgage transactions, as issued by the Bureau of Consumer Financial Protection for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Bureau of Consumer Financial Protection with regard to federally chartered housing creditors under provisions of law other than this section.

(b) Transactions deemed in compliance with applicable regulations
For the purpose of determining the applicability of this section, an alternative mortgage transaction shall be deemed to be made in accordance with the applicable regulation notwithstanding the housing creditor’s failure to comply with the regulation, if—

(1) the transaction is in substantial compliance with the regulation; and
(2) within sixty days of discovering any error, the housing creditor corrects such error, including making appropriate adjustments, if any, to the account.

(c) Preemption of State law

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 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.

(d) Bureau actions

The Bureau of Consumer Financial Protection shall—

(1) review the regulations identified by the Comptroller of the Currency and the National Credit Union Administration, as those rules exist on the designated transfer date, as applicable under paragraphs (1) through (3) of subsection (a);
(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of the Consumer Financial Protection Act of 2010; and
(3) promulgate regulations under subsection (a)(4) after the designated transfer date.

(e) Designated transfer date

As used in this section, the term “designated transfer date” means the date determined under section 1062 of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5582].

Footnotes

1 So in original. The comma probably should not appear.


References in Text


Amendments

2010—Subsec. (a)(1), (2), (3). Pub. L. 111–203, § 1083(a)(2)(A)(i), inserted “on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010,” after “transactions made”.


Subsec. (c). Pub. L. 111–203, § 1083(a)(2)(B), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: “An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation.”

Subsecs. (d), (e). Pub. L. 111–203, § 1083(a)(2)(C), added subsecs. (d) and (e).

§ 3804. Applicability of preemption provisions

(a) The provisions of section 3803 of this title shall not apply to any alternative mortgage transaction in any State made on or after the effective date (if such effective date occurs on or after October 15, 1982, and prior to a date three years after October 15, 1982) of a State law or a certification that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the preemption provided in section 3803 of this title to apply with respect to alternative mortgage transactions (or to any class or type of alternative mortgage transaction) subject to the laws of such State, except that section 3803 of this title shall continue to apply to—

(1) any alternative mortgage transaction undertaken on or after such date pursuant to an agreement to undertake such alternative mortgage transaction which was entered into on or after October 15, 1982, and prior to such later date (the “preemption period”); and

(2) any renewal, extension, refinancing, or other modification of an alternative mortgage transaction that was entered into during the preemption period.

(b) An alternative mortgage transaction shall be deemed to have been undertaken during the preemption period to which this section applies if it—

(1) is funded or extended in whole or in part during the preemption period, regardless of whether pursuant to a commitment or other agreement therefor made prior to that period; or

(2) is a renewal, extension, refinancing, or other modification of an alternative mortgage transaction entered into before the preemption period and such renewal, extension, or other modification is made during such period with the written consent of any person obligated to repay such credit.


Amendments

1983—Subsec. (a). Pub. L. 98–181 inserted “(or to any class or type of alternative mortgage transaction)”.

Effective Date

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97–320, set out as a note under section 3801 of this title.

§ 3805. Applicability of consumer protection provisions

Section 501(c)(1) of the Depository Institutions Deregulation and Monetary Control Act of 1980 shall not apply to transactions which are subject to this chapter.

§ 3806. Adjustable rate mortgage caps

(a) In general
Any adjustable rate mortgage loan originated by a creditor shall include a limitation on the maximum interest rate that may apply during the term of the mortgage loan.

(b) Regulations
The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section.

(c) Enforcement

(d) Definitions
For the purpose of this section—

(1) the term “creditor” means a person who regularly extends credit for personal, family, or household purposes; and

(2) the term “adjustable rate mortgage loan” means any consumer loan secured by a lien on a one-to four-family dwelling unit, including a condominium unit, cooperative housing unit, or mobile home, where the loan is made pursuant to an agreement under which the creditor may, from time to time, adjust the rate of interest.

(e) Effective date
This section shall take effect upon the expiration of 120 days after August 10, 1987.