

(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.

(Pub. L. 97-320, title VIII, §803, Oct. 15, 1982, 96 Stat. 1545; Pub. L. 111-203, title X, §1083(a)(1), July 21, 2010, 124 Stat. 2080.)

REFERENCES IN TEXT

Section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980, referred to in par. (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”.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title X, §1083(b), July 21, 2010, 124 Stat. 2081, provided that: “This section [amending this section and section 3803 of this title and enacting provisions set out as a note under this section] and the amendments made by this section shall become effective on the designated transfer date.”

[For definition of “designated transfer date”, see section 5481 of this title.]

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.

CONSTRUCTION OF 2010 AMENDMENT

Pub. L. 111-203, title X, §1083(c), July 21, 2010, 124 Stat. 2081, provided that: “The amendments made by subsection (a) [amending this section and section 3803 of this title] shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on or before the designated transfer date.”

[For definition of “designated transfer date”, see section 5481 of this title.]

§ 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 accord-

ance 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,¹ (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].

(Pub. L. 97-320, title VIII, § 804, Oct. 15, 1982, 96 Stat. 1546; Pub. L. 101-73, title VII, § 744(c), Aug. 9, 1989, 103 Stat. 438; Pub. L. 111-203, title X, § 1083(a)(2), July 21, 2010, 124 Stat. 2080.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (d)(2), is title X of Pub. L. 111-203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§ 5481 et seq.) of chapter 53 of this title and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

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

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. (a)(4). Pub. L. 111-203, § 1083(a)(2)(A)(ii)–(iv), added par. (4).

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).

1989—Subsec. (a)(3). Pub. L. 101-73 substituted “Director of the Office of Thrift Supervision” for “Federal Home Loan Bank Board” wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1083(b) of Pub. L. 111-203, set out as a note under section 3802 of this title.

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.

§ 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.