

(2) Exception for safety and soundness

The appropriate Federal banking agency may require any insured depository institution to maintain risk-based capital in an amount greater than the amount determined under paragraph (1), if the agency determines, by regulation or order, that such higher amount is necessary for safety and soundness reasons.

(c) Coordination with section 1835(b) of this title

This section shall not be construed as superseding the applicability of section 1835(b) of this title.

(d) Definitions

For purposes of this section, the terms “appropriate Federal banking agency”, “Federal banking agency”, and “insured depository institution” have the same meanings as in section 1813 of this title.

(Pub. L. 103-325, title III, §350, Sept. 23, 1994, 108 Stat. 2242.)

§ 4809. “Plain language” requirement for Federal banking agency rules

(a) In general

Each Federal banking agency shall use plain language in all proposed and final rulemakings published by the agency in the Federal Register after January 1, 2000.

(b) Report

Not later than March 1, 2001, each Federal banking agency shall submit to the Congress a report that describes how the agency has complied with subsection (a) of this section.

(c) Definition

For purposes of this section, the term “Federal banking agency” has the meaning given that term in section 1813 of this title.

(Pub. L. 106-102, title VII, §722, Nov. 12, 1999, 113 Stat. 1471.)

CODIFICATION

Section was enacted as part of the Gramm-Leach-Bliley Act, and not as part of title III of Pub. L. 103-322 which comprises this chapter.

CHAPTER 49—HOMEOWNERS PROTECTION

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§ 4901. Definitions

In this chapter, the following definitions shall apply:

(1) Adjustable rate mortgage

The term “adjustable rate mortgage” means a residential mortgage that has an interest

rate that is subject to change. A residential mortgage that: (A) does not fully amortize over the term of the obligation; and (B) contains a conditional right to refinance or modify the unamortized principal at the maturity date of the term, shall be considered to be an adjustable rate mortgage for purposes of this chapter.

(2) Cancellation date

The term “cancellation date” means—

(A) with respect to a fixed rate mortgage, at the option of the mortgagor, the date on which the principal balance of the mortgage—

(i) based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 80 percent of the original value of the property securing the loan; or

(ii) based solely on actual payments, reaches 80 percent of the original value of the property securing the loan; and

(B) with respect to an adjustable rate mortgage, at the option of the mortgagor, the date on which the principal balance of the mortgage—

(i) based solely on the amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 80 percent of the original value of the property securing the loan; or

(ii) based solely on actual payments, first reaches 80 percent of the original value of the property securing the loan.

(3) Fixed rate mortgage

The term “fixed rate mortgage” means a residential mortgage that has an interest rate that is not subject to change.

(4) Good payment history

The term “good payment history” means, with respect to a mortgagor, that the mortgagor has not—

(A) made a mortgage payment that was 60 days or longer past due during the 12-month period beginning 24 months before the later of (i) the date on which the mortgage reaches the cancellation date, or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title; or

(B) made a mortgage payment that was 30 days or longer past due during the 12-month period preceding the later of (i) the date on which the mortgage reaches the cancellation date, or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title.

(5) Initial amortization schedule

The term “initial amortization schedule” means a schedule established at the time at which a residential mortgage transaction is consummated with respect to a fixed rate mortgage, showing—

(A) the amount of principal and interest that is due at regular intervals to retire the

principal balance and accrued interest over the amortization period of the loan; and

(B) the unpaid principal balance of the loan after each scheduled payment is made.

(6) Amortization schedule then in effect

The term “amortization schedule then in effect” means, with respect to an adjustable rate mortgage, a schedule established at the time at which the residential mortgage transaction is consummated or, if such schedule has been changed or recalculated, is the most recent schedule under the terms of the note or mortgage, which shows—

(A) the amount of principal and interest that is due at regular intervals to retire the principal balance and accrued interest over the remaining amortization period of the loan; and

(B) the unpaid balance of the loan after each such scheduled payment is made.

(7) Midpoint of the amortization period

The term “midpoint of the amortization period” means, with respect to a residential mortgage transaction, the point in time that is halfway through the period that begins upon the first day of the amortization period established at the time a residential mortgage transaction is consummated and ends upon the completion of the entire period over which the mortgage is scheduled to be amortized.

(8) Mortgage insurance

The term “mortgage insurance” means insurance, including any mortgage guaranty insurance, against the nonpayment of, or default on, an individual mortgage or loan involved in a residential mortgage transaction.

(9) Mortgage insurer

The term “mortgage insurer” means a provider of private mortgage insurance, as described in this chapter, that is authorized to transact such business in the State in which the provider is transacting such business.

(10) Mortgagee

The term “mortgagee” means the holder of a residential mortgage at the time at which that mortgage transaction is consummated.

(11) Mortgagor

The term “mortgagor” means the original borrower under a residential mortgage or his or her successors or assignees.

(12) Original value

The term “original value”, with respect to a residential mortgage transaction, means the lesser of the sales price of the property securing the mortgage, as reflected in the contract, or the appraised value at the time at which the subject residential mortgage transaction was consummated. In the case of a residential mortgage transaction for refinancing the principal residence of the mortgagor, such term means only the appraised value relied upon by the mortgagee to approve the refinance transaction.

(13) Private mortgage insurance

The term “private mortgage insurance” means mortgage insurance other than mort-

gage insurance made available under the National Housing Act [12 U.S.C. 1701 et seq.], title 38, or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

(14) Residential mortgage

The term “residential mortgage” means a mortgage, loan, or other evidence of a security interest created with respect to a single-family dwelling that is the principal residence of the mortgagor.

(15) Residential mortgage transaction

The term “residential mortgage transaction” means a transaction consummated on or after the date that is 1 year after July 29, 1998, in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against a single-family dwelling that is the principal residence of the mortgagor to finance the acquisition, initial construction, or refinancing of that dwelling.

(16) Servicer

The term “servicer” has the same meaning as in section 2605(i)(2) of this title, with respect to a residential mortgage.

(17) Single-family dwelling

The term “single-family dwelling” means a residence consisting of 1 family dwelling unit.

(18) Termination date

The term “termination date” means—

(A) with respect to a fixed rate mortgage, the date on which the principal balance of the mortgage, based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan; and

(B) with respect to an adjustable rate mortgage, the date on which the principal balance of the mortgage, based solely on the amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan.

(Pub. L. 105-216, §2, July 29, 1998, 112 Stat. 897; Pub. L. 106-569, title IV, §§402(a)(1), (b), 405(a), 406(b)–(d), Dec. 27, 2000, 114 Stat. 2956, 2958, 2959.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 105-216, July 29, 1998, 112 Stat. 897, known as the Homeowners Protection Act of 1998. For complete classification of this Act to the Code, see Short Title note below and Tables.

The National Housing Act, referred to in par. (13), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, 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.

The Housing Act of 1949, referred to in par. (13), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this

Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

AMENDMENTS

2000—Par. (1). Pub. L. 106-569, § 402(b), inserted at end “A residential mortgage that: (A) does not fully amortize over the term of the obligation; and (B) contains a conditional right to refinance or modify the unamortized principal at the maturity date of the term, shall be considered to be an adjustable rate mortgage for purposes of this chapter.”

Par. (2)(B)(i). Pub. L. 106-569, § 402(a)(1)(A), substituted “the amortization schedule then in effect” for “amortization schedules”.

Par. (4)(A). Pub. L. 106-569, § 405(a)(1), inserted “the later of (i)” before “the date on which the mortgage” and “, or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title” before the semicolon.

Par. (4)(B). Pub. L. 106-569, § 405(a)(2), inserted “the later of (i)” before “the date on which the mortgage” and “, or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title” before period at end.

Par. (6). Pub. L. 106-569, § 402(a)(1)(D), added par. (6). Former par. (6) redesignated (8).

Par. (7). Pub. L. 106-569, § 406(b), added par. (7). Former par. (7) redesignated (9).

Pars. (8) to (11). Pub. L. 106-569, § 402(a)(1)(C), redesignated pars. (6) to (9) as (8) to (11), respectively. Former pars. (10) and (11) redesignated (12) and (13), respectively.

Par. (12). Pub. L. 106-569, § 406(c), inserted “transaction” after “a residential mortgage” and inserted at end “In the case of a residential mortgage transaction for refinancing the principal residence of the mortgagor, such term means only the appraised value relied upon by the mortgagee to approve the refinance transaction.”

Pub. L. 106-569, § 402(a)(1)(C), redesignated par. (10) as (12). Former par. (12) redesignated (14).

Par. (13). Pub. L. 106-569, § 402(a)(1)(C), redesignated par. (11) as (13). Former par. (13) redesignated (15).

Par. (14). Pub. L. 106-569, § 406(d)(1), substituted “principal residence of the mortgagor” for “primary residence of the mortgagor”.

Pub. L. 106-569, § 402(a)(1)(C), redesignated par. (12) as (14). Former par. (14) redesignated (16).

Par. (15). Pub. L. 106-569, § 406(d)(2), substituted “principal residence of the mortgagor” for “primary residence of the mortgagor”.

Pub. L. 106-569, § 402(a)(1)(C), redesignated par. (13) as (15). Former par. (15) redesignated (17).

Par. (16). Pub. L. 106-569, § 402(a)(1)(C), redesignated par. (14) as (16). Former par. (16) redesignated (18).

Par. (16)(B). Pub. L. 106-569, § 402(a)(1)(B), substituted “the amortization schedule then in effect” for “amortization schedules”.

Pars. (17), (18). Pub. L. 106-569, § 402(a)(1)(C), redesignated pars. (15) and (16) as (17) and (18), respectively.

EFFECTIVE DATE

Pub. L. 105-216, § 13, July 29, 1998, 112 Stat. 908, provided that: “This Act [enacting this chapter and amending section 1088 of Title 20, Education], other than section 14 [enacting provisions set out as notes under sections 1441a and 1831q of this title and amending provisions set out as a note under section 1831q of this title], shall become effective 1 year after the date of enactment of this Act [July 29, 1998].”

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-569, title IV, § 401, Dec. 27, 2000, 114 Stat. 2956, provided that: “This title [amending this section and sections 4902, 4903, and 4905 of this title] may be cited as the ‘Private Mortgage Insurance Technical Corrections and Clarification Act.’”

SHORT TITLE

Pub. L. 105-216, § 1(a), July 29, 1998, 112 Stat. 897, provided that: “This Act [enacting this chapter, amending

section 1088 of Title 20, Education, enacting provisions set out as notes under sections 1441a and 1831q of this title, and amending provisions set out as a note under section 1831q of this title] may be cited as the ‘Homeowners Protection Act of 1998.’”

§ 4902. Termination of private mortgage insurance

(a) Borrower cancellation

A requirement for private mortgage insurance in connection with a residential mortgage transaction shall be canceled on the cancellation date or any later date that the mortgagor fulfills all of the requirements under paragraphs (1) through (4), if the mortgagor—

(1) submits a request in writing to the servicer that cancellation be initiated;

(2) has a good payment history with respect to the residential mortgage;

(3) is current on the payments required by the terms of the residential mortgage transaction; and

(4) has satisfied any requirement of the holder of the mortgage (as of the date of a request under paragraph (1)) for—

(A) evidence (of a type established in advance and made known to the mortgagor by the servicer promptly upon receipt of a request under paragraph (1)) that the value of the property securing the mortgage has not declined below the original value of the property; and

(B) certification that the equity of the mortgagor in the residence securing the mortgage is unencumbered by a subordinate lien.

(b) Automatic termination

A requirement for private mortgage insurance in connection with a residential mortgage transaction shall terminate with respect to payments for that mortgage insurance made by the mortgagor—

(1) on the termination date if, on that date, the mortgagor is current on the payments required by the terms of the residential mortgage transaction; or

(2) if the mortgagor is not current on the termination date, on the first day of the first month beginning after the date that the mortgagor becomes current on the payments required by the terms of the residential mortgage transaction.

(c) Final termination

If a requirement for private mortgage insurance is not otherwise canceled or terminated in accordance with subsection (a) or (b) of this section, in no case may such a requirement be imposed on residential mortgage transactions beyond the first day of the month immediately following the date that is the midpoint of the amortization period of the loan if the mortgagor is current on the payments required by the terms of the mortgage.

(d) Treatment of loan modifications

If a mortgagor and mortgagee (or holder of the mortgage) agree to a modification of the terms or conditions of a loan pursuant to a residential mortgage transaction, the cancellation date, termination date, or final termination shall be