

Stat. 154; Pub. L. 103-325, title III, §345, Sept. 23, 1994, 108 Stat. 2239; Pub. L. 104-208, div. A, title II, §2103(a), Sept. 30, 1996, 110 Stat. 3009-399; Pub. L. 111-203, title X, §1098(4), title XIV, §1463, July 21, 2010, 124 Stat. 2104, 2182.)

#### PRIOR PROVISIONS

A prior section 2605, Pub. L. 93-533, §6, Dec. 22, 1974, 88 Stat. 1726, related to advanced itemized disclosure of settlement costs by the lender and liability of the lender for failure to comply, prior to repeal by Pub. L. 94-205, §5, Jan. 2, 1976, 89 Stat. 1158.

#### AMENDMENTS

2010—Subsec. (e)(1)(A). Pub. L. 111-203, §1463(c)(1), substituted “5 days” for “20 days”.

Subsec. (e)(2). Pub. L. 111-203, §1463(c)(2), substituted “30 days” for “60 days” in introductory provisions.

Subsec. (e)(4). Pub. L. 111-203, §1463(c)(3), added par. (4).

Subsec. (f)(1)(B), (2)(B). Pub. L. 111-203, §1463(b)(1), substituted “\$2,000” for “\$1,000”.

Subsec. (f)(2)(B)(i). Pub. L. 111-203, §1463(b)(2), substituted “\$1,000,000” for “\$500,000”.

Subsec. (g). Pub. L. 111-203, §1463(d), inserted at end “Any balance in any such account that is within the servicer’s control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.”

Subsec. (j)(3). Pub. L. 111-203, §1098(4), substituted “Bureau” for “Secretary” and struck out “, by regulations that shall take effect not later than April 20, 1991,” before “establish”.

Subsecs. (k) to (m). Pub. L. 111-203, §1463(a), added subsecs. (k) to (m).

1996—Subsec. (a). Pub. L. 104-208 amended heading and text of subsec. (a) generally. Prior to amendment, text consisted of pars. (1) to (3) relating to requirements for lenders of federally related mortgage loans to disclose to applicants whether servicing of such loan may be assigned, sold, or transferred, directed Secretary to develop model disclosure statement, and required signature of applicant on all such disclosure statements.

1994—Subsec. (a)(1)(B). Pub. L. 103-325 substituted “(B) at the choice of the person making a federally related mortgage loan—

“(i) for each of the most recent”  
for “(B) for each of the most recent”, redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and realigned margins, substituted “or” for “and” at end of subcl. (II), and added cl. (ii).

1991—Subsec. (j). Pub. L. 102-27 added subsec. (j).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1098(4) 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 section 1463 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 Title 15, Commerce and Trade.

### § 2606. Exempted transactions

#### (a) In general

This chapter does not apply to credit transactions involving extensions of credit—

- (1) primarily for business, commercial, or agricultural purposes; or
- (2) to government or governmental agencies or instrumentalities.

#### (b) Interpretation

In prescribing regulations under section 2617(a) of this title, the Bureau shall ensure

that, with respect to subsection (a) of this section, the exemption for credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, as provided in subsection (a)(1)<sup>1</sup> of this section shall be the same as the exemption for such credit transactions under section 1603(1) of title 15.

(Pub. L. 93-533, §7, as added Pub. L. 103-325, title III, §312, Sept. 23, 1994, 108 Stat. 2221; amended Pub. L. 104-208, div. A, title II, §2103(b), Sept. 30, 1996, 110 Stat. 3009-399; Pub. L. 111-203, title X, §1098(5), July 21, 2010, 124 Stat. 2104.)

#### REFERENCES IN TEXT

Subsection (a)(1) of this section, referred to in subsec. (b), was in the original “section 7(1) of the Real Estate Settlement Procedures Act of 1974”, and was translated as referring to section 7(a)(1) of that Act to reflect the probable intent of Congress.

#### PRIOR PROVISIONS

A prior section 2606, Pub. L. 93-533, §7, Dec. 22, 1974, 88 Stat. 1727, related to seller or his agent confirming that information concerning an existing residence was disclosed to buyer in writing before a commitment for a mortgage loan was made, prior to repeal by Pub. L. 94-205, §6, Jan. 2, 1976, 89 Stat. 1158.

#### AMENDMENTS

2010—Subsec. (b). Pub. L. 111-203 substituted “Bureau” for “Secretary”.

1996—Pub. L. 104-208 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by 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.

### § 2607. Prohibition against kickbacks and unearned fees

#### (a) Business referrals

No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

#### (b) Splitting charges

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

#### (c) Fees, salaries, compensation, or other payments

Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or (C) by a lender to its duly appointed agent for services actually performed in the making of a loan, (2) the pay-

<sup>1</sup> See References in Text note below.

ment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed, (3) payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers, (4) affiliated business arrangements so long as (A) a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred (i) in the case of a face-to-face referral or a referral made in writing or by electronic media, at or before the time of the referral (and compliance with this requirement in such case may be evidenced by a notation in a written, electronic, or similar system of records maintained in the regular course of business); (ii) in the case of a referral made by telephone, within 3 business days after the referral by telephone,<sup>1</sup> (and in such case an abbreviated verbal disclosure of the existence of the arrangement and the fact that a written disclosure will be provided within 3 business days shall be made to the person being referred during the telephone referral); or (iii) in the case of a referral by a lender (including a referral by a lender to an affiliated lender), at the time the estimates required under section 2604(c) of this title are provided (notwithstanding clause (i) or (ii)); and any required written receipt of such disclosure (without regard to the manner of the disclosure under clause (i), (ii), or (iii)) may be obtained at the closing or settlement (except that a person making a face-to-face referral who provides the written disclosure at or before the time of the referral shall attempt to obtain any required written receipt of such disclosure at such time and if the person being referred chooses not to acknowledge the receipt of the disclosure at that time, that fact shall be noted in the written, electronic, or similar system of records maintained in the regular course of business by the person making the referral), (B) such person is not required to use any particular provider of settlement services, and (C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship, or (5) such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Bureau, after consultation with the Attorney General, the Secretary of Veterans Affairs, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Secretary of Agriculture. For purposes of the preceding sentence, the following shall not be considered a violation of clause (4)(B): (i) any arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or (ii) any arrangement where an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of

title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

**(d) Penalties for violations; joint and several liability; treble damages; actions for injunction by Bureau and Secretary and by State officials; costs and attorney fees; construction of State laws**

(1) Any person or persons who violate the provisions of this section shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(2) Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.

(3) No person or persons shall be liable for a violation of the provisions of subsection (c)(4)(A) of this section if such person or persons proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adapted to avoid such error.

(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.].

(5) In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorneys fees.

(6) No provision of State law or regulation that imposes more stringent limitations on affiliated business arrangements shall be construed as being inconsistent with this section.

(Pub. L. 93-533, § 8, Dec. 22, 1974, 88 Stat. 1727; Pub. L. 94-205, § 7, Jan. 2, 1976, 89 Stat. 1158; Pub. L. 98-181, title I [title IV, § 461(b), (c)], Nov. 30, 1983, 97 Stat. 1231; Pub. L. 100-242, title V, § 570(g), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 102-54, § 13(d)(4), June 13, 1991, 105 Stat. 275; Pub. L. 104-208, div. A, title II, § 2103(c)(2), (d), Sept. 30, 1996, 110 Stat. 3009-400; Pub. L. 111-203, title X, § 1098(6), (7), July 21, 2010, 124 Stat. 2104.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (d)(4), is title X of Pub. L. 111-203, July 21, 2010, 124 Stat. 1955. Subtitle B of the Act is classified generally to part B (§ 5511 et seq.) of subchapter V of chapter 53 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

AMENDMENTS

2010—Subsec. (c)(5). Pub. L. 111-203, § 1098(6), which directed substituting “Bureau” for “Secretary”, was executed by making the substitution for “Secretary” the

<sup>1</sup> So in original.

first time appearing, to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 111-203, §1098(7)(A), inserted “Bureau and” before “Secretary” in heading that had been supplied editorially.

Subsec. (d)(4). Pub. L. 111-203, §1098(7)(B), added par. (4) and struck out former par. (4) which read as follows: “The Secretary, the Attorney General of any State, or the insurance commissioner of any State may bring an action to enjoin violations of this section.”

1996—Subsec. (c)(4). Pub. L. 104-208, §2103(c)(2), substituted “affiliated business arrangements” for “controlled business arrangements”.

Subsec. (c)(4)(A). Pub. L. 104-208, §2103(d), amended subcl. (A) generally. Prior to amendment, subcl. (A) read as follows: “at or prior to the time of the referral a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with the referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred, except that where a lender makes the referral, this requirement may be satisfied as part of and at the time that the estimates of settlement charges required under section 2604(c) of this title are provided.”

Subsec. (d)(6). Pub. L. 104-208, §2103(c)(2), substituted “affiliated business arrangements” for “controlled business arrangements”.

1991—Subsec. (c)(5). Pub. L. 102-54 substituted “Secretary of Veterans Affairs” for “Administrator of Veterans Affairs”.

1988—Subsec. (c)(5). Pub. L. 100-242 substituted “clause (4)(B)” for “clause 4(B)”.

1983—Subsec. (c). Pub. L. 98-181, §461(b), redesignated cl. (4) as (5), added cl. (4) and provisions following cl. (5), as so redesignated, relating to arrangements which shall not be considered a violation of cl. (4)(B).

Subsec. (d)(2). Pub. L. 98-181, §461(c), substituted provisions setting forth the liability of persons violating the prohibitions or limitations of this section for provisions setting forth liability, in addition to penalties provided in par. (1), of persons violating subsecs. (a) and (b) of this section, plus costs and attorney’s fees.

Subsec. (d)(3) to (6). Pub. L. 98-181, §461(c), added pars. (3) to (6).

1976—Subsec. (c). Pub. L. 94-205 added cls. (3) and (4).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by 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.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 effective Jan. 1, 1984, see section 461(f) of Pub. L. 98-181, set out as a note under section 2602 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-205 effective Jan. 2, 1976, see section 12 of Pub. L. 94-205, set out as a note under section 2602 of this title.

#### TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of this title.

### § 2608. Title companies; liability of seller

(a) No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.

(b) Any seller who violates the provisions of subsection (a) of this section shall be liable to

the buyer in an amount equal to three times all charges made for such title insurance.

(Pub. L. 93-533, §9, Dec. 22, 1974, 88 Stat. 1728.)

### § 2609. Limitation on requirement of advance deposits in escrow accounts

#### (a) In general

A lender, in connection with a federally related mortgage loan, may not require the borrower or prospective borrower—

(1) to deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property, in connection with the settlement, an aggregate sum (for such purpose) in excess of a sum that will be sufficient to pay such taxes, insurance premiums and other charges attributable to the period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and ending on the due date of its first full installment payment under the mortgage, plus one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period; or

(2) to deposit in any such escrow account in any month beginning with the first full installment payment under the mortgage a sum (for the purpose of assuring payment of taxes, insurance premiums and other charges with respect to the property) in excess of the sum of (A) one-twelfth of the total amount of the estimated taxes, insurance premiums and other charges which are reasonably anticipated to be paid on dates during the ensuing twelve months which dates are in accordance with the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, plus (B) such amount as is necessary to maintain an additional balance in such escrow account not to exceed one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period: *Provided, however,* That in the event the lender determines there will be or is a deficiency he shall not be prohibited from requiring additional monthly deposits in such escrow account to avoid or eliminate such deficiency.

#### (b) Notification of shortage in escrow account

If the terms of any federally related mortgage loan require the borrower to make payments to the servicer (as the term is defined in section 2605(i) of this title) of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall notify the borrower not less than annually of any shortage of funds in the escrow account.