

consumer or a person authorized by the consumer to obtain such information.

**(u) Pre-loan counseling**

**(1) In general**

A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of Housing and Urban Development, or at the discretion of the Secretary, a State housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be employed by the creditor or an affiliate of the creditor or be affiliated with the creditor.

**(2) Disclosures required prior to counseling**

No counselor may certify that a consumer has received counseling on the advisability of the high-cost mortgage unless the counselor can verify that the consumer has received each statement required (in connection with such loan) by this section or the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] with respect to the transaction.

**(3) Regulations**

The Board<sup>4</sup> may prescribe such regulations as the Board determines to be appropriate to carry out the requirements of paragraph (1).

**(v) Corrections and unintentional violations**

A creditor or assignee in a high-cost mortgage who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to have violated such requirement if the creditor or assignee establishes that either—

(1) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

(A) make the loan satisfy the requirements of this part; or

(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial to the consumer so that the loan will no longer be a high-cost mortgage; or

(2) within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

(A) make the loan satisfy the requirements of this part; or

(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage.

(Pub. L. 90-321, title I, § 129, as added Pub. L. 103-325, title I, § 152(d), Sept. 23, 1994, 108 Stat. 2191; amended Pub. L. 111-8, div. D, title VI, § 626(c), Mar. 11, 2009, 123 Stat. 679; Pub. L. 111-203, title X, § 1100A(2), (9), title XIV, §§ 1432, 1433, July 21, 2010, 124 Stat. 2107, 2109, 2160.)

<sup>4</sup>So in original. Probably should be "Bureau".

REFERENCES IN TEXT

Section 1602(aa) of this title, referred to in text, was redesignated section 1602(bb) of this title by Pub. L. 111-203, title X, § 1100A(1)(A), July 21, 2010, 124 Stat. 2107.

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (u)(2), is Pub. L. 93-533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 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 2601 of Title 12 and Tables.

PRIOR PROVISIONS

A prior section 1639, Pub. L. 90-321, title I, § 129, May 29, 1968, 82 Stat. 156, related to consumer loans not under open end credit plans, prior to repeal by Pub. L. 96-221, title VI, § 614(d)(1), Mar. 31, 1980, 94 Stat. 180. Repeal effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96-221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

AMENDMENTS

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

Subsec. (c)(2). Pub. L. 111-203, § 1432(a), struck out par. (2) which related to exception to prepayment penalty prohibition.

Subsec. (e). Pub. L. 111-203, § 1432(b), amended subsec. (e) generally. Prior to amendment, text read as follows: "A mortgage referred to in section 1602(aa) of this title having a term of less than 5 years may not include terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance."

Subsecs. (j) to (l). Pub. L. 111-203, § 1433(a)(2), added subsecs. (j) to (l). Former subsecs. (j) to (l) redesignated (n) to (p), respectively.

Subsec. (m). Pub. L. 111-203, § 1433(a)(2), added subsec. (m). Former subsec. (m) redesignated (q).

Pub. L. 111-203, § 1100A(9), added subsec. (m) and struck out former subsec. (m). Prior to amendment, text read as follows: "For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Federal Reserve Board pursuant to subsection (l)(2) of this section shall be treated as a violation of a rule promulgated under section 57a of this title regarding unfair or deceptive acts or practices."

Subsecs. (n) to (q). Pub. L. 111-203, § 1433(a)(1), redesignated former subsecs. (j) to (m) as (n) to (q), respectively.

Subsecs. (r) to (v). Pub. L. 111-203, § 1433(b)-(f), added subsecs. (r) to (v).

2009—Subsec. (m). Pub. L. 111-8 added subsec. (m).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2), (9) 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 1432 and 1433 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.

**§ 1639a. Duty of servicers of residential mortgages**

**(a) In general**

Notwithstanding any other provision of law, whenever a servicer of residential mortgages

agrees to enter into a qualified loss mitigation plan with respect to 1 or more residential mortgages originated before May 20, 2009, including mortgages held in a securitization or other investment vehicle—

(1) to the extent that the servicer owes a duty to investors or other parties to maximize the net present value of such mortgages, the duty shall be construed to apply to all such investors and parties, and not to any individual party or group of parties; and

(2) the servicer shall be deemed to have satisfied the duty set forth in paragraph (1) if, before December 31, 2012, the servicer implements a qualified loss mitigation plan that meets the following criteria:

(A) Default on the payment of such mortgage has occurred, is imminent, or is reasonably foreseeable, as such terms are defined by guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.].

(B) The mortgagor occupies the property securing the mortgage as his or her principal residence.

(C) The servicer reasonably determined, consistent with the guidelines issued by the Secretary of the Treasury or his designee, that the application of such qualified loss mitigation plan to a mortgage or class of mortgages will likely provide an anticipated recovery on the outstanding principal mortgage debt that will exceed the anticipated recovery through foreclosures.

**(b) No liability**

A servicer that is deemed to be acting in the best interests of all investors or other parties under this section shall not be liable to any party who is owed a duty under subsection (a)(1), and shall not be subject to any injunction, stay, or other equitable relief to such party, based solely upon the implementation by the servicer of a qualified loss mitigation plan.

**(c) Standard industry practice**

The qualified loss mitigation plan guidelines issued by the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.] shall constitute standard industry practice for purposes of all Federal and State laws.

**(d) Scope of safe harbor**

Any person, including a trustee, issuer, and loan originator, shall not be liable for monetary damages or be subject to an injunction, stay, or other equitable relief, based solely upon the cooperation of such person with a servicer when such cooperation is necessary for the servicer to implement a qualified loss mitigation plan that meets the requirements of subsection (a).

**(e) Reporting**

Each servicer that engages in qualified loss mitigation plans under this section shall regularly report to the Secretary of the Treasury the extent, scope, and results of the servicer's modification activities. The Secretary of the Treasury shall prescribe regulations or guidance specifying the form, content, and timing of such reports.

**(f) Definitions**

As used in this section—

(1) the term “qualified loss mitigation plan” means—

(A) a residential loan modification, workout, or other loss mitigation plan, including to the extent that the Secretary of the Treasury determines appropriate, a loan sale, real property disposition, trial modification, pre-foreclosure sale, and deed in lieu of foreclosure, that is described or authorized in guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.]; and

(B) a refinancing of a mortgage under the Hope for Homeowners program;

(2) the term “servicer” means the person responsible for the servicing for others of residential mortgage loans (including of a pool of residential mortgage loans); and

(3) the term “securitization vehicle” means a trust, special purpose entity, or other legal structure that is used to facilitate the issuing of securities, participation certificates, or similar instruments backed by or referring to a pool of assets that includes residential mortgages (or instruments that are related to residential mortgages such as credit-linked notes).

**(g) Rule of construction**

No provision of subsection (b) or (d) shall be construed as affecting the liability of any servicer or person as described in subsection (d) for actual fraud in the origination or servicing of a loan or in the implementation of a qualified loss mitigation plan, or for the violation of a State or Federal law, including laws regulating the origination of mortgage loans, commonly referred to as predatory lending laws.

(Pub. L. 90-321, title I, §129A, as added Pub. L. 110-289, div. A, title IV, §1403, July 30, 2008, 122 Stat. 2809; renumbered §129 and amended Pub. L. 111-22, div. A, title II, §201(b), May 20, 2009, 123 Stat. 1638; renumbered §129A, Pub. L. 111-203, title XIV, §1402(a)(1), July 21, 2010, 124 Stat. 2138.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsecs. (a)(2)(A), (c), (f)(1)(A), is div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 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 5201 of Title 12 and Tables.

AMENDMENTS

2009—Pub. L. 111-22 amended section generally. Prior to amendment, section related to fiduciary duty of servicers of pooled residential mortgages without providing for date limitation for implementing modifications or workout plans.

FINDINGS

Pub. L. 111-22, div. A, title II, §201(a), May 20, 2009, 123 Stat. 1638, provided that: “Congress finds the following:

“(1) Increasing numbers of mortgage foreclosures are not only depriving many Americans of their homes, but are also destabilizing property values and negatively affecting State and local economies as well as the national economy.

“(2) In order to reduce the number of foreclosures and to stabilize property values, local economies, and the national economy, servicers must be given—

“(A) authorization to—

“(i) modify mortgage loans and engage in other loss mitigation activities consistent with applicable guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.]; and

“(ii) refinance mortgage loans under the Hope for Homeowners program; and

“(B) a safe harbor to enable such servicers to exercise these authorities.”

## § 1639b. Residential mortgage loan origination

### (a) Finding and purpose

#### (1) Finding

The Congress finds that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

#### (2) Purpose

It is the purpose of this section and section 1639c of this title to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.

### (b) Duty of care

#### (1) Standard

Subject to regulations prescribed under this subsection, each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law—

(A) be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable State or Federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [12 U.S.C. 5101 et seq.]; and

(B) include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.

#### (2) Compliance procedures required

The Bureau shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [12 U.S.C. 5106].

### (c) Prohibition on steering incentives

#### (1) In general

For any residential mortgage loan, no mortgage originator shall receive from any person and no person shall pay to a mortgage originator, directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal).

## (2) Restructuring of financing origination fee

### (A) In general

For any mortgage loan, a mortgage originator may not receive from any person other than the consumer and no person, other than the consumer, who knows or has reason to know that a consumer has directly compensated or will directly compensate a mortgage originator may pay a mortgage originator any origination fee or charge except bona fide third party charges not retained by the creditor, mortgage originator, or an affiliate of the creditor or mortgage originator.

### (B) Exception

Notwithstanding subparagraph (A), a mortgage originator may receive from a person other than the consumer an origination fee or charge, and a person other than the consumer may pay a mortgage originator an origination fee or charge, if—

(i) the mortgage originator does not receive any compensation directly from the consumer; and

(ii) the consumer does not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or originator), except that the Bureau may, by rule, waive or provide exemptions to this clause if the Bureau determines that such waiver or exemption is in the interest of consumers and in the public interest.

### (3) Regulations

The Bureau shall prescribe regulations to prohibit—

(A) mortgage originators from steering any consumer to a residential mortgage loan that—

(i) the consumer lacks a reasonable ability to repay (in accordance with regulations prescribed under section 1639c(a) of this title); or

(ii) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms);

(B) mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage (as defined in section 1639c(b)(2) of this title) to a residential mortgage loan that is not a qualified mortgage;

(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age; and

(D) mortgage originators from—

(i) mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer;

(ii) mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit; or

(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not