

sumer becomes aware of the Y2K failure and the consumer's inability to accurately or timely fulfill his or her obligation to pay, of such failure and inability and shall provide to the servicer any available documentation with respect to the failure.

**(3) Actions may resume after grace period**

Notwithstanding paragraph (1), an action prohibited under paragraph (1) may be resumed, if the consumer's mortgage obligation has not been paid and the servicer of the mortgage has not expressly and in writing granted the consumer an extension of time during which to pay the consumer's mortgage obligation, but only after the later of—

(A) four weeks after January 1, 2000; or

(B) four weeks after notification is made as required under paragraph (2), except that any notification made on or after March 15, 2000, shall not be effective for purposes of this subsection.

**(4) Applicability**

This subsection does not apply to transactions upon which a default has occurred before December 15, 1999, or with respect to which an imminent default was foreseeable before December 15, 1999.

**(5) Enforcement of obligations merely tolled**

This subsection delays but does not prevent the enforcement of financial obligations, and does not otherwise affect or extinguish the obligation to pay.

**(6) Definition**

In this subsection—

(A) The term “consumer” means a natural person.

(B) The term “residential mortgage” has the meaning given the term “federally related mortgage loan” under section 2602 of title 12.

(C) The term “servicer” means the person, including any successor, responsible for receiving any scheduled periodic payments from a consumer pursuant to the terms of a residential mortgage, including amounts for any escrow account, and for making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage. Such term includes the person, including any successor, who makes or holds a loan if such person also services the loan.

**(i) Applicability to securities litigation**

In any Y2K action in which the underlying claim arises under the securities laws (as defined in section 78c(a) of this title), the provisions of this chapter, other than section 6612(b) of this title, shall not apply.

(Pub. L. 106-37, § 4, July 20, 1999, 113 Stat. 188.)

REFERENCES IN TEXT

The Year 2000 Information and Readiness Disclosure Act, referred to in subsec. (f), is Pub. L. 105-271, Oct. 19, 1998, 112 Stat. 2386, which was formerly set out as a note under section 1 of this title.

**§ 6604. Punitive damages limitations**

**(a) In general**

In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

**(b) Caps on punitive damages**

**(1) In general**

Subject to the evidentiary standard established by subsection (a) of this section, punitive damages permitted under applicable law against a defendant described in paragraph (2) in a Y2K action may not exceed the lesser of—

(A) three times the amount awarded for compensatory damages; or

(B) \$250,000.

**(2) Defendant described**

A defendant described in this paragraph is a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed \$500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, or organization, with fewer than 50 full-time employees.

**(3) No cap if injury specifically intended**

Paragraph (1) does not apply if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

**(c) Government entities**

Punitive damages in a Y2K action may not be awarded against a government entity.

**(d) Institutions of higher education**

**(1) In general**

Subject to paragraph (2), punitive damages in a Y2K action may not be awarded against an institution<sup>1</sup> of higher education as defined in section 1001(a) of title 20.

**(2) Exception**

Paragraph (1) shall not apply to an institution of higher education if the Y2K failure in the Y2K action occurred in a computer-based student financial aid system of that institution of higher education, and the institution—

(A) has passed Y2K data exchange testing with the Department of Education; or

(B) is not or was not in the process of performing data exchange testing with the Department of Education at the time the Department terminates such testing.

(Pub. L. 106-37, § 5, July 20, 1999, 113 Stat. 192; Pub. L. 106-113, div. B, § 1000(a)(4) [title III, § 311], Nov. 29, 1999, 113 Stat. 1535, 1501A-265.)

AMENDMENTS

1999—Subsec. (d). Pub. L. 106-113 added subsec. (d).

<sup>1</sup> So in original. Probably should be “institution”.

**§ 6605. Proportionate liability****(a) In general**

Except in a Y2K action that is a contract action, and except as provided in subsections (b) through (g) of this section, a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportionate responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

**(b) Proportionate liability****(1) Determination of responsibility**

In any Y2K action that is not a contract action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant (other than a defendant who has entered into a settlement agreement with the plaintiff)—

- (i) acted with specific intent to injure the plaintiff; or
- (ii) knowingly committed fraud.

**(2) Contents of special interrogatories or findings**

The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

**(3) Factors for consideration**

In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each such person and the damages incurred by the plaintiff.

**(c) Joint liability for specific intent or fraud****(1) In general**

Notwithstanding subsection (a) of this section, the liability of a defendant in a Y2K action that is not a contract action is joint and several if the trier of fact specifically determines that the defendant—

- (A) acted with specific intent to injure the plaintiff; or
- (B) knowingly committed fraud.

**(2) Fraud; recklessness****(A) Knowing commission of fraud described**

For purposes of subsection (b)(1)(B)(ii) of this section and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

**(B) Recklessness**

For purposes of subsection (b)(1)(B) of this section and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

**(3) Right to contribution not affected**

Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B) of this section, or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

**(d) Special rules****(1) Uncollectible share****(A) In general**

Notwithstanding subsection (a) of this section, if, upon motion made not later than 6 months after a final judgment is entered in any Y2K action that is not a contract action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

**(i) Percentage of net worth**

The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than \$200,000.

**(ii) Other plaintiffs**

For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant.

**(iii) Additional liability**

For a plaintiff not described in clause (i), in addition to the share identified in clause (ii), the defendant is liable for an additional portion of the uncollectible share in an amount equal to 50 percent of