

406, 407, and 408 [amending this section] shall apply in determining the liability of any person under chapter 2 or 4 of the Truth in Lending Act [this part or part D of this subchapter], unless prior to the date of enactment of this Act [Oct. 28, 1974] such liability has been determined by final judgment of a court of competent jurisdiction and no further review of such judgment may be had by appeal or otherwise.”

### § 1641. Liability of assignees

#### (a) Prerequisites

Except as otherwise specifically provided in this subchapter, any civil action for a violation of this subchapter or proceeding under section 1607 of this title which may be brought against a creditor may be maintained against any assignee of such creditor only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement, except where the assignment was involuntary. For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to (1) a disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned, or (2) a disclosure which does not use the terms required to be used by this subchapter.

#### (b) Proof of compliance with statutory provisions

Except as provided in section 1635(c) of this title, in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgement of receipt by a person to whom a statement is required to be given pursuant to this subchapter shall be conclusive proof of the delivery thereof and, except as provided in subsection (a), of compliance with this part. This section does not affect the rights of the obligor in any action against the original creditor.

#### (c) Right of rescission by consumer unaffected

Any consumer who has the right to rescind a transaction under section 1635 of this title may rescind the transaction as against any assignee of the obligation.

#### (d) Rights upon assignment of certain mortgages

##### (1) In general

Any person who purchases or is otherwise assigned a mortgage referred to in section 1602(aa)<sup>1</sup> of this title shall be subject to all claims and defenses with respect to that mortgage that the consumer could assert against the creditor of the mortgage, unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary due diligence, could not determine, based on the documentation required by this subchapter, the itemization of the amount financed, and other disclosure of disbursements that the mortgage was a mortgage referred to in section 1602(aa)<sup>1</sup> of this title. The preceding sentence does not affect rights of a consumer under subsection (a), (b), or (c) of this section or any other provision of this subchapter.

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

#### (2) Limitation on damages

Notwithstanding any other provision of law, relief provided as a result of any action made permissible by paragraph (1) may not exceed—

(A) with respect to actions based upon a violation of this subchapter, the amount specified in section 1640 of this title; and

(B) with respect to all other causes of action, the sum of—

(i) the amount of all remaining indebtedness; and

(ii) the total amount paid by the consumer in connection with the transaction.

#### (3) Offset

The amount of damages that may be awarded under paragraph (2)(B) shall be reduced by the amount of any damages awarded under paragraph (2)(A).

#### (4) Notice

Any person who sells or otherwise assigns a mortgage referred to in section 1602(aa)<sup>1</sup> of this title shall include a prominent notice of the potential liability under this subsection as determined by the Bureau.

#### (e) Liability of assignee for consumer credit transactions secured by real property

##### (1) In general

Except as otherwise specifically provided in this subchapter, any civil action against a creditor for a violation of this subchapter, and any proceeding under section 1607 of this title against a creditor, with respect to a consumer credit transaction secured by real property may be maintained against any assignee of such creditor only if—

(A) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this subchapter; and

(B) the assignment to the assignee was voluntary.

##### (2) Violation apparent on the face of the disclosure described

For the purpose of this section, a violation is apparent on the face of the disclosure statement if—

(A) the disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement, any itemization of the amount financed, the note, or any other disclosure of disbursement; or

(B) the disclosure statement does not use the terms or format required to be used by this subchapter.

#### (f) Treatment of servicer

##### (1) In general

A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is or was the owner of the obligation.

##### (2) Servicer not treated as owner on basis of assignment for administrative convenience

A servicer of a consumer obligation arising from a consumer credit transaction shall not

be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

**(3) “Servicer” defined**

For purposes of this subsection, the term “servicer” has the same meaning as in section 2605(i)(2) of title 12.

**(4) Applicability**

This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

**(g) Notice of new creditor**

**(1) In general**

In addition to other disclosures required by this subchapter, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including—

- (A) the identity, address, telephone number of the new creditor;
- (B) the date of transfer;
- (C) how to reach an agent or party having authority to act on behalf of the new creditor;
- (D) the location of the place where transfer of ownership of the debt is recorded; and
- (E) any other relevant information regarding the new creditor.

**(2) Definition**

As used in this subsection, the term “mortgage loan” means any consumer credit transaction that is secured by the principal dwelling of a consumer.

(Pub. L. 90-321, title I, § 131, May 29, 1968, 82 Stat. 157; Pub. L. 96-221, title VI, § 616(a), Mar. 31, 1980, 94 Stat. 182; Pub. L. 103-325, title I, § 153(c), Sept. 23, 1994, 108 Stat. 2195; Pub. L. 104-29, § 7, Sept. 30, 1995, 109 Stat. 274; Pub. L. 111-22, div. A, title IV, § 404(a), May 20, 2009, 123 Stat. 1658; Pub. L. 111-203, title X, § 1100A(2), July 21, 2010, 124 Stat. 2107.)

REFERENCES IN TEXT

Section 1602(aa) of this title, referred to in subsec. (d)(1), (4), was redesignated section 1602(bb) of this title by Pub. L. 111-203, title X, § 1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Subsec. (d)(4). Pub. L. 111-203 substituted “Bureau” for “Board”.

2009—Subsec. (g). Pub. L. 111-22 added subsec. (g).

1995—Subsec. (e). Pub. L. 104-29, § 7(a), added subsec. (e).

Subsec. (f). Pub. L. 104-29, § 7(b), added subsec. (f).

1994—Subsec. (d). Pub. L. 103-325 added subsec. (d).

1980—Pub. L. 96-221 added subsecs. (a) and (c), designated existing provisions as subsec. (b), substituted “excepted as provided in subsection (a)” for “unless the

violation is apparent on the face of the statement”, and struck out exception for actions under section 1640(d) of this title.

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 1980 AMENDMENT

Amendment by Pub. L. 96-221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required 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 a note under section 1602 of this title.

**§ 1642. Issuance of credit cards**

No credit card shall be issued except in response to a request or application therefor. This prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card.

(Pub. L. 90-321, title I, § 132, as added Pub. L. 91-508, title V, § 502(a), Oct. 26, 1970, 84 Stat. 1126.)

EFFECTIVE DATE

Pub. L. 91-508, title V, § 503(1), Oct. 26, 1970, 84 Stat. 1127, provided that: “Section 132 of such Act [this section] takes effect on date of enactment of this title [Oct. 26, 1970].”

**§ 1643. Liability of holder of credit card**

**(a) Limits on liability**

(1) A cardholder shall be liable for the unauthorized use of a credit card only if—

- (A) the card is an accepted credit card;
- (B) the liability is not in excess of \$50;
- (C) the card issuer gives adequate notice to the cardholder of the potential liability;

(D) the card issuer has provided the cardholder with a description of a means by which the card issuer may be notified of loss or theft of the card, which description may be provided on the face or reverse side of the statement required by section 1637(b) of this title or on a separate notice accompanying such statement;

(E) the unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise; and

(F) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it.

(2) For purposes of this section, a card issuer has been notified when such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information have been taken, whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

**(b) Burden of proof**

In any action by a card issuer to enforce liability for the use of a credit card, the burden of