§ 1638a. Reset of hybrid adjustable rate mortgages

(a) Hybrid adjustable rate mortgages defined

For purposes of this section, the term ''hybrid adjustable rate mortgage'' means a consumer credit transaction secured by the consumer's principal residence with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate after such period.

(b) Notice of reset and alternatives

During the 1-month period that ends 6 months before the date on which the interest rate in effect during the introductory period of a hybrid adjustable rate mortgage adjusts or resets to a variable interest rate or, in the case of such an adjustment or resetting that occurs within the first 6 months after consummation of such loan, at consummation, the creditor or servicer of such loan shall provide a written notice, separate and distinct from all other correspondence to the consumer, that includes the following:

(1) Any index or formula used in making adjustments to or resetting the interest rate and a source of information about the index or formula.

(2) An explanation of how the new interest rate and payment would be determined, including an explanation of how the index was adjusted, such as by the addition of a margin.

(3) A good faith estimate, based on accepted industry standards, of the creditor or servicer of the amount of the monthly payment that will apply after the date of the adjustment or reset, and the assumptions on which this estimate is based.

(4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—

(A) refinancing;

(B) renegotiation of loan terms;

(C) payment forbearances; and

(D) pre-foreclosure sales.

(5) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1441a–1 of title 12).

(6) The address, telephone number, and Internet address for the State housing finance authority (as so defined) for the State in which the consumer resides.

(c) Savings clause

The Board may require the notice in paragraph (b) or other notice consistent with this chapter for adjustable rate mortgage loans that are not hybrid adjustable rate mortgage loans.

(Pub. L. 90–321, title I, § 128A, as added Pub. L. 111–203, title XIV, § 1418(a), July 21, 2010, 124 Stat. 2153.)

References in Text

This chapter, referred to in subsec. (c), was in the original ''this Act'' meaning Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Effective Date

Section effective on the date on which final regulations implementing such section 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 an Effective Date of 2010 Amendment note under section 1601 of this title.

§ 1639. Requirements for certain mortgages

(a) Disclosures

(1) Specific disclosures

In addition to other disclosures required under this subchapter, for each mortgage referred to in section 1602(aa)[1] of this title, the creditor shall provide the following disclosures in conspicuous type size:

(A) ''You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.''.

(B) ''If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.''.

(2) Annual percentage rate

In addition to the disclosures required under paragraph (1), the creditor shall disclose—

(A) in the case of a credit transaction with a fixed rate of interest, the annual percentage rate and the amount of the regular monthly payment; or

(B) in the case of any other credit transaction, the annual percentage rate of the loan, the amount of the regular monthly payment, a statement that the interest rate and monthly payment may increase, and the amount of the maximum monthly payment, based on the maximum interest rate allowed pursuant to section 3806 of title 12.

(b) Time of disclosures

(1) In general

The disclosures required by this section shall be given not less than 3 business days prior to consummation of the transaction.

(2) New disclosures required

(A) In general

After providing the disclosures required by this section, a creditor may not change the terms of the extension of credit if such changes make the disclosures inaccurate, unless new disclosures are provided that meet the requirements of this section.

(B) Telephone disclosure

A creditor may provide new disclosures pursuant to subparagraph (A) by telephone, if—

(i) the change is initiated by the consumer; and

(ii) at the consummation of the transaction under which the credit is extended—

[1] See References in Text note below.

(I) the creditor provides to the consumer the new disclosures, in writing; and

(II) the creditor and consumer certify in writing that the new disclosures were provided by telephone, by not later than 3 days prior to the date of consummation of the transaction.

(3) No wait for lower rate

If a creditor extends to a consumer a second offer of credit with a lower annual percentage rate, the transaction may be consummated without regard to the period specified in paragraph (1) with respect to the second offer.

(4) Modifications

The Bureau may, if it finds that such action is necessary to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of rights created under this subsection, to the extent and under the circumstances set forth in those regulations.

(c) No prepayment penalty

(1) In general[2]

(A) Limitation on terms

A mortgage referred to in section 1602(aa)[1] of this title may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal before the date on which the principal is due.

(B) Construction

For purposes of this subsection, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the consumer than the actuarial method (as that term is defined in section 1615(d) of this title).

(d) Limitations after default

A mortgage referred to in section 1602(aa)[1] of this title may not provide for an interest rate applicable after default that is higher than the interest rate that applies before default. If the date of maturity of a mortgage referred to in subsection[3] 1602(aa)[1] of this title is accelerated due to default and the consumer is entitled to a rebate of interest, that rebate shall be computed by any method that is not less favorable than the actuarial method (as that term is defined in section 1615(d) of this title).

(e) No balloon payments

No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer.

(f) No negative amortization

A mortgage referred to in section 1602(aa)[1] of this title may not include terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

[2] So in original. There is no par. (2).

[3] So in original. Probably should be ''section''.

(g) No prepaid payments

A mortgage referred to in section 1602(aa)[1] of this title may not include terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the consumer.

(h) Prohibition on extending credit without regard to payment ability of consumer

A creditor shall not engage in a pattern or practice of extending credit to consumers under mortgages referred to in section 1602(aa)[1] of this title based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment.

(i) Requirements for payments under home improvement contracts

A creditor shall not make a payment to a contractor under a home improvement contract from amounts extended as credit under a mortgage referred to in section 1602(aa)[1] of this title, other than—

(1) in the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or

(2) at the election of the consumer, by a third party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor before the date of payment.

(j) Recommended default

No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

(k) Late fees

(1) In general

No creditor may impose a late payment charge or fee in connection with a high-cost mortgage—

(A) in an amount in excess of 4 percent of the amount of the payment past due;

(B) unless the loan documents specifically authorize the charge or fee;

(C) before the end of the 15-day period beginning on the date the payment is due, or in the case of a loan on which interest on each installment is paid in advance, before the end of the 30-day period beginning on the date the payment is due; or

(D) more than once with respect to a single late payment.

(2) Coordination with subsequent late fees

If a payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on such payment.

(3) Failure to make installment payment

If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.

(*l*) Acceleration of debt

No high-cost mortgage may contain a provision which permits the creditor to accelerate the indebtedness, except when repayment of the loan has been accelerated by default in payment, or pursuant to a due-on-sale provision, or pursuant to a material violation of some other provision of the loan document unrelated to payment schedule.

(m) Restriction on financing points and fees

No creditor may directly or indirectly finance, in connection with any high-cost mortgage, any of the following:

(1) Any prepayment fee or penalty payable by the consumer in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced.

(2) Any points or fees.

(n) Consequence of failure to comply

Any mortgage that contains a provision prohibited by this section shall be deemed a failure to deliver the material disclosures required under this subchapter, for the purpose of section 1635 of this title.

(*o*) "Affiliate" defined

For purposes of this section, the term ''affiliate'' has the same meaning as in section 1841(k) of title 12.

(p) Discretionary regulatory authority of Bureau

(1) Exemptions

The Bureau may, by regulation or order, exempt specific mortgage products or categories of mortgages from any or all of the prohibitions specified in subsections (c) through (i), if the Bureau finds that the exemption—

(A) is in the interest of the borrowing public; and

(B) will apply only to products that maintain and strengthen home ownership and equity protection.

(2) Prohibitions

The Bureau, by regulation or order, shall prohibit acts or practices in connection with—

(A) mortgage loans that the Bureau finds to be unfair, deceptive, or designed to evade the provisions of this section; and

(B) refinancing of mortgage loans that the Bureau finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.

(q) Civil penalties in Federal Trade Commission enforcement actions

For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Bureau pursuant to subsection (*l*)(2) shall be treated as a violation of a rule promulgated under section 57a of this title regarding unfair or deceptive acts or practices.

(r) Prohibitions on evasions, structuring of transactions, and reciprocal arrangements

A creditor may not take any action in connection with a high-cost mortgage—

(1) to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this subchapter; or

(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this subchapter.

(s) Modification and deferral fees prohibited

A creditor, successor in interest, assignee, or any agent of any of the above, may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage.

(t) Payoff statement

(1) Fees

(A) In general

Except as provided in subparagraph (B), no creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off the outstanding balance on a high-cost mortgage.

(B) Transaction fee

When payoff information referred to in subparagraph (A) is provided by facsimile transmission or by a courier service, a creditor or servicer may charge a processing fee to cover the cost of such transmission or service in an amount not to exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages.

(C) Fee disclosure

Prior to charging a transaction fee as provided in subparagraph (B), a creditor or servicer shall disclose that payoff balances are available for free pursuant to subparagraph (A).

(D) Multiple requests

If a creditor or servicer has provided payoff information referred to in subparagraph (A) without charge, other than the transaction fee allowed by subparagraph (B), on 4 occasions during a calendar year, the creditor or servicer may thereafter charge a reasonable fee for providing such information during the remainder of the calendar year.

(2) Prompt delivery

Payoff balances shall be provided within 5 business days after receiving a request by a 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[4] 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; Pub. L. 115–174, title I, § 109(a), May 24, 2018, 132 Stat. 1305.)

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

2018—Subsec. (b)(3), (4). Pub. L. 115–174 added par. (3) and redesignated former par. (3) as (4).

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

[4] So in original. Probably should be ''Bureau''.