

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2), (4)–(7) 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 1472(c) 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.

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 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 a note under section 1602 of this title.

§ 1605. Determination of finance charge**(a) “Finance charge” defined**

Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction. The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges. Examples of charges which are included in the finance charge include any of the following types of charges which are applicable:

- (1) Interest, time price differential, and any amount payable under a point, discount, or other system or additional charges.
- (2) Service or carrying charge.
- (3) Loan fee, finder’s fee, or similar charge.
- (4) Fee for an investigation or credit report.
- (5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor’s default or other credit loss.
- (6) Borrower-paid mortgage broker fees, including fees paid directly to the broker or the lender (for delivery to the broker) whether such fees are paid in cash or financed.

(b) Life, accident, or health insurance premiums included in finance charge

Charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charges unless

- (1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the per-

son applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(c) Property damage and liability insurance premiums included in finance charge

Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

(d) Items exempted from computation of finance charge in all credit transactions

If any of the following items is itemized and disclosed in accordance with the regulations of the Bureau in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

(2) The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph (1) which would otherwise be payable.

(3) Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.

(e) Items exempted from computation of finance charge in extensions of credit secured by an interest in real property

The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, title insurance, or similar purposes.

(2) Fees for preparation of loan-related documents.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted prior to closing.

(6) Credit reports.

(f) Tolerances for accuracy

In connection with credit transactions not under an open end credit plan that are secured

by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge—

(1) shall be treated as being accurate for purposes of this subchapter if the amount disclosed as the finance charge—

(A) does not vary from the actual finance charge by more than \$100; or

(B) is greater than the amount required to be disclosed under this subchapter; and

(2) shall be treated as being accurate for purposes of section 1635 of this title if—

(A) except as provided in subparagraph (B), the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one-half of one percent of the total amount of credit extended; or

(B) in the case of a transaction, other than a mortgage referred to in section 1602(aa)¹ of this title, which—

(i) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in section 1602(w)¹ of this title, or is any subsequent refinancing of such a transaction; and

(ii) does not provide any new consolidation or new advance;

if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one percent of the total amount of credit extended.

(Pub. L. 90-321, title I, §106, May 29, 1968, 82 Stat. 148; Pub. L. 96-221, title VI §606, Mar. 31, 1980, 94 Stat. 170; Pub. L. 104-29, §§2(a), (b)(1), (c)-(e), 3(a), Sept. 30, 1995, 109 Stat. 271, 272; Pub. L. 111-203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

Editorial Notes

REFERENCES IN TEXT

Subsecs. (aa) and (w) of section 1602 of this title, referred to in subsec. (f)(2)(B), were redesignated subsecs. (bb) and (x), respectively, of section 1602 of this title by Pub. L. 111-203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

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

1995—Subsec. (a). Pub. L. 104-29, §2(a), in introductory provisions inserted after second sentence “The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges.”

Subsec. (a)(6). Pub. L. 104-29, §2(b)(1), added par. (6).

Subsec. (d)(3). Pub. L. 104-29, §2(c), added par. (3).

Subsec. (e)(2). Pub. L. 104-29, §2(d), amended par. (2) generally, substituting “loan-related” for “a deed, settlement statement, or other”.

Subsec. (e)(5). Pub. L. 104-29, §2(e), inserted before period “, including fees related to any pest infestation or flood hazard inspections conducted prior to closing”.

Subsec. (f). Pub. L. 104-29, §3(a), added subsec. (f).

1980—Subsec. (a). Pub. L. 96-221, §606(a), inserted provisions excluding charges of a type payable in comparable cash transactions and indicated that pars. (1) to (5) are examples of charges.

Subsec. (d). Pub. L. 96-221, §606(b), struck out pars. (3) and (4) setting forth applicability to taxes and any other type of charge, respectively.

Statutory Notes and Related Subsidiaries

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 1995 AMENDMENT

Pub. L. 104-29, §2(b)(2), Sept. 30, 1995, 109 Stat. 271, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on the earlier of—

“(A) 60 days after the date on which the Board of Governors of the Federal Reserve System issues final regulations under paragraph (3) [set out below]; or

“(B) the date that is 12 months after the date of the enactment of this Act [Sept. 30, 1995].”

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 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 a note under section 1602 of this title.

REGULATIONS

Pub. L. 104-29, §2(b)(3), Sept. 30, 1995, 109 Stat. 271, provided that: “The Board of Governors of the Federal Reserve System shall promulgate regulations implementing the amendment made by paragraph (1) [amending this section] by no later than 6 months after the date of the enactment of this Act [Sept. 30, 1995].”

ENSURING THAT FINANCE CHARGES REFLECT COST OF CREDIT

Pub. L. 104-29, §2(f), Sept. 30, 1995, 109 Stat. 272, provided that:

“(1) REPORT.—

“(A) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act [Sept. 30, 1995], the Board of Governors of the Federal Reserve System shall submit to the Congress a report containing recommendations on any regulatory or statutory changes necessary—

“(i) to ensure that finance charges imposed in connection with consumer credit transactions more accurately reflect the cost of providing credit; and

“(ii) to address abusive refinancing practices engaged in for the purpose of avoiding rescission.

“(B) REPORT REQUIREMENTS.—In preparing the report under this paragraph, the Board shall—

“(i) consider the extent to which it is feasible to include in finance charges all charges payable directly or indirectly by the consumer to whom credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit (especially those charges excluded from finance charges under section 106 of the Truth in Lending Act [15 U.S.C. 1605] as of the date of the enactment of this Act), excepting only those charges which are payable in a comparable cash transaction; and

“(ii) consult with and consider the views of affected industries and consumer groups.

“(2) REGULATIONS.—The Board of Governors of the Federal Reserve System shall prescribe any appro-

¹ See References in Text note below.

priate regulation in order to effect any change included in the report under paragraph (1), and shall publish the regulation in the Federal Register before the end of the 1-year period beginning on the date of enactment of this Act.”

§ 1606. Determination of annual percentage rate

(a) “Annual percentage rate” defined

The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Bureau,

(1) in the case of any extension of credit other than under an open end credit plan, as

(A) that nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(B) the rate determined by any method prescribed by the Bureau as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (A).¹

(2) in the case of any extension of credit under an open end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

(b) Computation of rate of finance charges for balances within a specified range

Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the Bureau determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the Bureau may be regulation require.

(c) Allowable tolerances for purposes of compliance with disclosure requirements

The disclosure of an annual percentage rate is accurate for the purpose of this subchapter if the rate disclosed is within a tolerance not greater than one-eighth of 1 per centum more or less than the actual rate or rounded to the nearest one-fourth of 1 per centum. The Bureau may allow a greater tolerance to simplify compliance where irregular payments are involved.

(d) Use of rate tables or charts having allowable variance from determined rates

The Bureau may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection (a)(1)(A) by not more than such toler-

ances as the Bureau may allow. The Bureau may not allow a tolerance greater than 8 per centum of that rate except to simplify compliance where irregular payments are involved.

(e) Authorization of tolerances in determining annual percentage rates

In the case of creditors determining the annual percentage rate in a manner other than as described in subsection (d), the Bureau may authorize other reasonable tolerances.

(Pub. L. 90-321, title I, §107, May 29, 1968, 82 Stat. 149; Pub. L. 96-221, title VI, §607, Mar. 31, 1980, 94 Stat. 170; Pub. L. 111-203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

Editorial Notes

AMENDMENTS

2010—Pub. L. 111-203 substituted “Bureau” for “Board” wherever appearing.

1980—Subsec. (c). Pub. L. 96-221, §607(a), substituted provisions relating to allowable tolerances for purposes of compliance with disclosure requirements, for provisions relating to rounding off of annual percentage rates which are converted from single add-on or other rates.

Subsec. (e). Pub. L. 96-221, §607(b), struck out reference to subsection (c) of this section.

Subsec. (f). Pub. L. 96-221, §607(c), struck out subsec. (f) setting forth requirements for form of expressing percentage rates prior to Jan. 1, 1971.

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§ 1607. Administrative enforcement

(a) Enforcing agencies

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], compliance with the requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and

¹ So in original.