

instruments with any other local filing requirements.

(Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

Editorial Notes

CODIFICATION

Section is based on section 815 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

§ 3765. Effect of sale

A sale, made and conducted as prescribed in this chapter to a bona fide purchaser, shall bar all claims upon, or with respect to, the property sold, for each of the following persons:

(1) Notice recipients

Any person to whom the notice of default and foreclosure sale was mailed as provided in this chapter, and the heir, devisee, executor, administrator, successor, or assignee claiming under any such person.

(2) Subordinate claimants with knowledge

Any person claiming any interest in the property subordinate to that of the mortgage, if such person had actual knowledge of the foreclosure sale.

(3) Nonrecorded claimants

Any person claiming any interest in the property, whose assignment, mortgage, or other conveyance was not duly recorded or filed in the proper place for recording or filing, or whose judgment or decree was not duly docketed or filed in the proper place for docketing or filing, before the date on which the notice of the foreclosure sale was first served by publication, as required by section 3758(3) of this title, and the executor, administrator, or assignee of such a person.

(4) Other persons

Any person claiming an interest in the property under a statutory lien or encumbrance created subsequent to the recording or filing of the mortgage being foreclosed, and attaching to the title or interest of any person designated in any of the foregoing paragraphs.

(Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

Editorial Notes

CODIFICATION

Section is based on section 816 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

§ 3766. Computation of time

Periods of time provided for in this chapter shall be calculated in consecutive calendar days, including the day or days on which the actions or events occur or are to occur for which the period of time is provided and including the day on which an event occurs or is to occur from which the period is to be calculated.

(Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

Editorial Notes

CODIFICATION

Section is based on section 817 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

§ 3767. Severability

If any part of this chapter shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, or invalid as applied to a class of cases, such judgment shall not affect, impair, or invalidate the remainder thereof, and shall be confined in its operation to the part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

Editorial Notes

CODIFICATION

Section is based on section 818 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

§ 3768. Deficiency judgment

(a) In general

(1) Referral to Attorney General

If after deducting the payments provided for in section 3762 of this title, the price at which the security property is sold at a foreclosure sale is less than the unpaid balance of the debt secured by the security property, resulting in a deficiency, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any or all debtors to recover the deficiency, unless such an action is specifically prohibited by the mortgage.

(2) Other recoveries

In any action instituted pursuant to this section the United States may recover—

- (A) any amount authorized by section 3011 of title 28; and
- (B) the costs of the action.

(b) Limitation

Any action commenced to recover a deficiency under this section must be brought not later than 6 years after the date of the last sale of the security property.

(Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

Editorial Notes

CODIFICATION

Section is based on section 819 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

CHAPTER 39—ALTERNATIVE MORTGAGE TRANSACTIONS

Sec.	
3801.	Findings and purpose.
3802.	Definitions.
3803.	Alternative mortgage authority.
3804.	Applicability of preemption provisions.
3805.	Applicability of consumer protection provisions.
3806.	Adjustable rate mortgage caps.

§ 3801. Findings and purpose

(a) The Congress hereby finds that—

(1) increasingly volatile and dynamic changes in interest rates have seriously impaired¹ the ability of housing creditors to provide consumers with fixed-term, fixed-rate credit secured by interests in real property, cooperative housing, manufactured homes, and other dwellings;

(2) alternative mortgage transactions are essential to the provision of an adequate supply of credit secured by residential property necessary to meet the demand expected during the 1980's; and

(3) the Comptroller of the Currency, the National Credit Union Administration, and the Director of the Office of Thrift Supervision have recognized the importance of alternative mortgage transactions and have adopted regulations authorizing federally chartered depository institutions to engage in alternative mortgage financing.

(b) It is the purpose of this chapter to eliminate the discriminatory impact that those regulations have upon nonfederally chartered housing creditors and provide them with parity with federally chartered institutions by authorizing all housing creditors to make, purchase, and enforce alternative mortgage transactions so long as the transactions are in conformity with the regulations issued by the Federal agencies.

(Pub. L. 97-320, title VIII, §802, Oct. 15, 1982, 96 Stat. 1545; Pub. L. 101-73, title VII, §744(c), Aug. 9, 1989, 103 Stat. 438.)

Editorial Notes**AMENDMENTS**

1989—Subsec. (a)(3). Pub. L. 101-73 substituted “Director of the Office of Thrift Supervision” for “Federal Home Loan Bank Board”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

Pub. L. 97-320, title VIII, §807(a), Oct. 15, 1982, 96 Stat. 1548, provided that: “This title [enacting this chapter] shall be effective upon enactment [Oct. 15, 1982].”

SHORT TITLE

Pub. L. 97-320, title VIII, §801, Oct. 15, 1982, 96 Stat. 1545, provided that: “This title [enacting this chapter] may be cited as the ‘Alternative Mortgage Transaction Parity Act of 1982.’”

IDENTIFICATION, DESCRIPTION AND PUBLICATION OF REGULATIONS INAPPLICABLE TO, OR CONFORMATION OF REGULATIONS FOR USE OF NONFEDERALLY CHARTERED HOUSING CREDITORS

Pub. L. 97-320, title VIII, §807(b), Oct. 15, 1982, 96 Stat. 1548, provided that: “Within sixty days of the enactment of this title [Oct. 15, 1982], the Comptroller of the Currency, the National Credit Union Administration, and the Federal Home Loan Bank Board shall identify, describe, and publish those portions or provisions of their respective regulations that are inappropriate for (and thus inapplicable to), or that need to be conformed for the use of, the nonfederally chartered housing creditors to which their respective regulations apply, including without limitation, making necessary changes

in terminology to conform the regulatory and disclosure provisions to those more typically associated with various types of transactions including credit sales.”

§ 3802. Definitions

As used in this chapter—

(1) the term “alternative mortgage transaction” means a loan or credit sale secured by an interest in residential real property, a dwelling, all stock allocated to a dwelling unit in a residential cooperative housing corporation, or a residential manufactured home (as that term is defined in section 5402(6) of title 42), in which the interest rate or finance charge may be adjusted or renegotiated, described and defined by applicable regulation; and

(2) the term “housing creditor” means—

(A) a depository institution, as defined in section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980;

(B) a lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act [12 U.S.C. 1701 et seq.];

(C) any person who regularly makes loans, credit sales, or advances secured by interests in properties referred to in paragraph (1); or

(D) any transferee of any of them.

A person is not a “housing creditor” with respect to a specific alternative mortgage transaction if, except for this chapter, in order to enter into that transaction, the person would be required to comply with licensing requirements imposed under State law, unless such person is licensed under applicable State law and such person remains, or becomes, subject to the applicable regulatory requirements and enforcement mechanisms provided by State law.

(Pub. L. 97-320, title VIII, §803, Oct. 15, 1982, 96 Stat. 1545; Pub. L. 111-203, title X, §1083(a)(1), July 21, 2010, 124 Stat. 2080.)

Editorial Notes**REFERENCES IN TEXT**

Section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980, referred to in par. (2)(A), is section 501(a)(2) of Pub. L. 96-221, title V, Mar. 31, 1980, 94 Stat. 161, which is set out as a note under section 1735f-7 of this title.

The National Housing Act, referred to in par. (2)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to chapter 13 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

2010—Par. (1). Pub. L. 111-203 substituted “section 5402(6) of title 42), in which the interest rate or finance charge may be adjusted or renegotiated, described and defined by applicable regulation; and” for “section 5402(6) of title 42)—

“(A) in which the interest rate or finance charge may be adjusted or renegotiated;

“(B) involving a fixed-rate, but which implicitly permits rate adjustments by having the debt mature at the end of an interval shorter than the term of the amortization schedule; or

¹ So in original. Probably should be “impaired”.

“(C) involving any similar type of rate, method of determining return, term, repayment, or other variation not common to traditional fixed-rate, fixed-term transactions, including without limitation, transactions that involve the sharing of equity or appreciation;
described and defined by applicable regulation; and”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title X, §1083(b), July 21, 2010, 124 Stat. 2081, provided that: “This section [amending this section and section 3803 of this title and enacting provisions set out as a note under this section] and the amendments made by this section shall become effective on the designated transfer date.”

[For definition of “designated transfer date”, see section 5481 of this title.]

EFFECTIVE DATE

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97-320, set out as a note under section 3801 of this title.

CONSTRUCTION OF 2010 AMENDMENT

Pub. L. 111-203, title X, §1083(c), July 21, 2010, 124 Stat. 2081, provided that: “The amendments made by subsection (a) [amending this section and section 3803 of this title] shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on or before the designated transfer date.”

[For definition of “designated transfer date”, see section 5481 of this title.]

§ 3803. Alternative mortgage authority

(a) General authority; compliance by banks, credit unions and all other housing creditors with applicable regulations

In order to prevent discrimination against State-chartered depository institutions, and other nonfederally chartered housing creditors, with respect to making, purchasing, and enforcing alternative mortgage transactions, housing creditors may make, purchase, and enforce alternative mortgage transactions, except that this section shall apply—

(1) with respect to banks, only to transactions made on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5582], in accordance with regulations governing alternative mortgage transactions as issued by the Comptroller of the Currency for national banks, to the extent that such regulations are authorized by rulemaking authority granted to the Comptroller of the Currency with regard to national banks under laws other than this section;

(2) with respect to credit unions, only to transactions made on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010, in accordance with regulations governing alternative mortgage transactions as issued by the National Credit Union Administration Board for Federal credit unions, to the extent that such regulations are authorized by rulemaking authority granted to the National Credit Union Administration with regard to Federal credit unions under laws other than this section;

(3) with respect to all other housing creditors, including without limitation, savings and loan associations, mutual savings banks, and savings banks, only to transactions made on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010, in accordance with regulations governing alternative mortgage transactions as issued by the Director of the Office of Thrift Supervision for federally chartered savings and loan associations, to the extent that such regulations are authorized by rulemaking authority granted to the Director of the Office of Thrift Supervision with regard to federally chartered savings and loan associations under laws other than this section; and

(4) with respect to transactions made after the designated transfer date, only in accordance with regulations governing alternative mortgage transactions, as issued by the Bureau of Consumer Financial Protection for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Bureau of Consumer Financial Protection with regard to federally chartered housing creditors under provisions of law other than this section.

(b) Transactions deemed in compliance with applicable regulations

For the purpose of determining the applicability of this section, an alternative mortgage transaction shall be deemed to be made in accordance with the applicable regulation notwithstanding the housing creditor's failure to comply with the regulation, if—

(1) the transaction is in substantial compliance with the regulation; and

(2) within sixty days of discovering any error, the housing creditor corrects such error, including making appropriate adjustments, if any, to the account.

(c) Preemption of State law

An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation that prohibits an alternative mortgage transaction. For purposes of this subsection, a State constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.

(d) Bureau actions

The Bureau of Consumer Financial Protection shall—

(1) review the regulations identified by the Comptroller of the Currency and the National Credit Union Administration,¹ (as those rules exist on the designated transfer date), as applicable under paragraphs (1) through (3) of subsection (a);

(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of the Consumer Financial Protection Act of 2010; and

¹ So in original. The comma probably should not appear.

- (3) promulgate regulations under subsection (a)(4) after the designated transfer date.

(e) Designated transfer date

As used in this section, the term “designated transfer date” means the date determined under section 1062 of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5582].

(Pub. L. 97-320, title VIII, §804, Oct. 15, 1982, 96 Stat. 1546; Pub. L. 101-73, title VII, §744(c), Aug. 9, 1989, 103 Stat. 438; Pub. L. 111-203, title X, §1083(a)(2), July 21, 2010, 124 Stat. 2080.)

Editorial Notes

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (d)(2), is title X of Pub. L. 111-203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§5481 et seq.) of chapter 53 of this title and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

AMENDMENTS

2010—Subsec. (a)(1), (2), (3). Pub. L. 111-203, §1083(a)(2)(A)(i), inserted “on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010,” after “transactions made”.

Subsec. (a)(4). Pub. L. 111-203, §1083(a)(2)(A)(ii)–(iv), added par. (4).

Subsec. (c). Pub. L. 111-203, §1083(a)(2)(B), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: “An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation.”

Subsecs. (d), (e). Pub. L. 111-203, §1083(a)(2)(C), added subsecs. (d) and (e).

1989—Subsec. (a)(3). Pub. L. 101-73 substituted “Director of the Office of Thrift Supervision” for “Federal Home Loan Bank Board” wherever appearing.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1083(b) of Pub. L. 111-203, set out as a note under section 3802 of this title.

EFFECTIVE DATE

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97-320, set out as a note under section 3801 of this title.

§ 3804. Applicability of preemption provisions

(a) The provisions of section 3803 of this title shall not apply to any alternative mortgage transaction in any State made on or after the effective date (if such effective date occurs on or after October 15, 1982, and prior to a date three years after October 15, 1982) of a State law or a certification that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the preemption provided in section 3803 of this title to apply with respect to alternative mortgage transactions (or to any class or type of alternative mortgage transaction) subject to the laws of such State, except that section 3803 of this title shall continue to apply to—

(1) any alternative mortgage transaction undertaken on or after such date pursuant to an agreement to undertake such alternative mortgage transaction which was entered into on or after October 15, 1982, and prior to such later date (the “preemption period”); and

(2) any renewal, extension, refinancing, or other modification of an alternative mortgage transaction that was entered into during the preemption period.

(b) An alternative mortgage transaction shall be deemed to have been undertaken during the preemption period to which this section applies if it—

(1) is funded or extended in whole or in part during the preemption period, regardless of whether pursuant to a commitment or other agreement therefor made prior to that period; or

(2) is a renewal, extension, refinancing, or other modification of an alternative mortgage transaction entered into before the preemption period and such renewal, extension, or other modification is made during such period with the written consent of any person obligated to repay such credit.

(Pub. L. 97-320, title VIII, §805, Oct. 15, 1982, 96 Stat. 1547; Pub. L. 98-181, title I [title IV, §472], Nov. 30, 1983, 97 Stat. 1237.)

Editorial Notes

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181 inserted “(or to any class or type of alternative mortgage transaction)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97-320, set out as a note under section 3801 of this title.

§ 3805. Applicability of consumer protection provisions

Section 501(c)(1) of the Depository Institutions Deregulation and Monetary Control Act of 1980 shall not apply to transactions which are subject to this chapter.

(Pub. L. 97-320, title VIII, §806, Oct. 15, 1982, 96 Stat. 1548.)

Editorial Notes

REFERENCES IN TEXT

Section 501(c)(1) of the Depository Institutions Deregulation and Monetary Control Act of 1980, referred to in text, is section 501(c)(1) of Pub. L. 96-221, title V, Mar. 31, 1980, 94 Stat. 161, which is set out as a note under section 1735f-7 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97-320, set out as a note under section 3801 of this title.

§ 3806. Adjustable rate mortgage caps

(a) In general

Any adjustable rate mortgage loan originated by a creditor shall include a limitation on the

maximum interest rate that may apply during the term of the mortgage loan.

(b) Regulations

The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section.

(c) Enforcement

Any violation of this section shall be treated as a violation of the Truth in Lending Act [15 U.S.C. 1601 et seq.] and shall be subject to administrative enforcement under section 108 [15 U.S.C. 1607] or civil damages under section 130 [15 U.S.C. 1640] of such Act, or both.

(d) Definitions

For the purpose of this section—

(1) the term “creditor” means a person who regularly extends credit for personal, family, or household purposes; and

(2) the term “adjustable rate mortgage loan” means any consumer loan secured by a lien on a one- to four-family dwelling unit, including a condominium unit, cooperative housing unit, or mobile home, where the loan is made pursuant to an agreement under which the creditor may, from time to time, adjust the rate of interest.

(e) Effective date

This section shall take effect upon the expiration of 120 days after August 10, 1987.

(Pub. L. 100-86, title XII, §1204, Aug. 10, 1987, 101 Stat. 662; Pub. L. 102-550, title IX, §952, Oct. 28, 1992, 106 Stat. 3893.)

Editorial Notes

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (c), is title I of Pub. L. 90-321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Competitive Equality Banking Act of 1987, and not as part of the Alternative Mortgage Transaction Parity Act of 1982 which comprises this chapter.

AMENDMENTS

1992—Subsec. (d)(2). Pub. L. 102-550 substituted “any consumer loan” for “any loan”.

CHAPTER 40—INTERNATIONAL LENDING SUPERVISION

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3904.	Reserves.
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Sec.

3911. Equal representation for Federal Deposit Insurance Corporation and the Office of Thrift Supervision.

3912. Repealed.

§ 3901. Congressional declaration of policy

(a)(1) It is the policy of the Congress to assure that the economic health and stability of the United States and the other nations of the world shall not be adversely affected or threatened in the future by imprudent lending practices or inadequate supervision.

(2) This shall be achieved by strengthening the bank regulatory framework to encourage prudent private decisionmaking and by enhancing international coordination among bank regulatory authorities.

(b) The Federal banking agencies shall consult with the banking supervisory authorities of other countries to reach understandings aimed at achieving the adoption of effective and consistent supervisory policies and practices with respect to international lending.

(Pub. L. 98-181, title I [title IX, §902], Nov. 30, 1983, 97 Stat. 1278.)

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101-240, title IV, §401, Dec. 19, 1989, 103 Stat. 2501, provided that: “This title [enacting section 3904a of this title and enacting provisions set out as notes under section 3904a of this title and section 2291 of Title 22, Foreign Relations and Intercourse] may be cited as the ‘Foreign Debt Reserving Act of 1989’.”

SHORT TITLE

Pub. L. 98-181, title I [title IX, §901], Nov. 30, 1983, 97 Stat. 1278, provided that: “This title [enacting this chapter] may be cited as the ‘International Lending Supervision Act of 1983’.”

ENCOURAGEMENT OF DEBT-FOR-DEVELOPMENT SWAPS THROUGH LOCAL CURRENCY REPAYMENT

Pub. L. 101-240, title V, §531, Dec. 19, 1989, 103 Stat. 2513, provided that:

“(a) STATEMENT OF POLICY.—It is the sense of the Congress that—

“(1) debt-for-development swaps, where payment is made in local currency at the free market rate, serve a useful purpose by providing banking institutions with constructive opportunities for the reduction of the external debt of highly indebted developing countries in a process that involves the participation of private, nonprofit groups in providing a stimulus to the economic and social development of such developing countries;

“(2) debt-for-development swaps provide highly indebted developing countries with a creative method of reducing external debt burdens, while promoting their economic growth and restructuring objectives;

“(3) banking institutions should give careful consideration to engaging in such swaps as one means of strengthening overall loan portfolios through the reduction of high external debt burdens while expanding economic opportunities through private sector initiatives; and

“(4) in order to avoid any bias against such swaps in the regulatory framework applicable to the financial reporting of banking institutions, where payment is made in local currency at the free market rate, appropriate recognition of the fair market exchange value of the currency so received should be made.