

30, 2008, 122 Stat. 2809; renumbered §129 and amended Pub. L. 111-22, div. A, title II, §201(b), May 20, 2009, 123 Stat. 1638.)

## REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsecs. (a)(2)(A), (c), (f)(1)(A), is div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 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 5201 of Title 12 and Tables.

## CODIFICATION

Another section 129 of Pub. L. 90-321 is classified to section 1639 of this title.

## AMENDMENTS

2009—Pub. L. 111-22 amended section generally. Prior to amendment, section related to fiduciary duty of servicers of pooled residential mortgages without providing for date limitation for implementing modifications or workout plans.

## FINDINGS

Pub. L. 111-22, div. A, title II, §201(a), May 20, 2009, 123 Stat. 1638, provided that: “Congress finds the following:

“(1) Increasing numbers of mortgage foreclosures are not only depriving many Americans of their homes, but are also destabilizing property values and negatively affecting State and local economies as well as the national economy.

“(2) In order to reduce the number of foreclosures and to stabilize property values, local economies, and the national economy, servicers must be given—

“(A) authorization to—

“(i) modify mortgage loans and engage in other loss mitigation activities consistent with applicable guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.]; and

“(ii) refinance mortgage loans under the Hope for Homeowners program; and

“(B) a safe harbor to enable such servicers to exercise these authorities.”

## § 1640. Civil liability

**(a) Individual or class action for damages; amount of award; factors determining amount of award**

Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, subsection (f) or (g) of section 1641 of this title, or part D or E of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, (ii) in the case of an individual action relating to a consumer lease under part E of this subchapter, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1,000, (iii) in the case of an individual action relating to an open end consumer credit plan that is not secured by real property or a dwelling, twice the amount of any finance charge in connection

with the transaction, with a minimum of \$500 and a maximum of \$5,000, or such higher amount as may be appropriate in the case of an established pattern or practice of such failures;<sup>1</sup> or (iv) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than \$400 or greater than \$4,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of \$500,000 or 1 per centum of the net worth of the creditor;

(3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 1635 or 1638(e)(7) of this title, the costs of the action, together with a reasonable attorney’s fee as determined by the court; and

(4) in the case of a failure to comply with any requirement under section 1639 of this title, an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor’s failure of compliance was intentional. In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, 1637(a)<sup>2</sup> of this title, or any of paragraphs (4) through (13) of section 1637(b) of this title, or for failing to comply with disclosure requirements under State law for any term or item that the Board has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms or items referred to in section 1637(a) of this title, or any of paragraphs (4) through (13) of section 1637(b) of this title. In connection with the disclosures referred to in subsection (c) or (d) of section 1637 of this title, a card issuer shall have a liability under this section only to a cardholder who pays a fee described in section 1637(c)(1)(A)(ii)(I) or section 1637(c)(4)(A)(i) of this title or who uses the credit card or charge card. In connection with the disclosures referred to in section 1638 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, of paragraph (2) (insofar as it requires a disclosure of the “amount financed”), (3), (4), (5), (6), or (9) of section 1638(a) of this title, or sec-

<sup>1</sup> So in original. The semicolon probably should be a comma.

<sup>2</sup> So in original. Probably should be preceded by “section”.

tion 1638(b)(2)(C)(ii) of this title, of subparagraphs (A), (B), (D), (F), or (J) of section 1638(e)(2) of this title (for purposes of paragraph (2) or (4) of section 1638(e) of this title), or paragraph (4)(C), (6), (7), or (8) of section 1638(e) of this title, or for failing to comply with disclosure requirements under State law for any term which the Board has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms referred to in any of those paragraphs of section 1638(a) of this title or section 1638(b)(2)(C)(ii) of this title. With respect to any failure to make disclosures required under this part or part D or E of this subchapter, liability shall be imposed only upon the creditor required to make disclosure, except as provided in section 1641 of this title.

**(b) Correction of errors**

A creditor or assignee has no liability under this section or section 1607 of this title or section 1611 of this title for any failure to comply with any requirement imposed under this part or part E of this subchapter, if within sixty days after discovering an error, whether pursuant to a final written examination report or notice issued under section 1607(e)(1) of this title or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

**(c) Unintentional violations; bona fide errors**

A creditor or assignee may not be held liable in any action brought under this section or section 1635 of this title for a violation of this subchapter if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programing, and printing errors, except that an error of legal judgment with respect to a person's obligations under this subchapter is not a bona fide error.

**(d) Liability in transaction or lease involving multiple obligors**

When there are multiple obligors in a consumer credit transaction or consumer lease, there shall be no more than one recovery of damages under subsection (a)(2) of this section for a violation of this subchapter.

**(e) Jurisdiction of courts; limitations on actions; State attorney general enforcement**

Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation or, in the case of a violation involving

a private education loan (as that term is defined in section 1650(a) of this title), 1 year from the date on which the first regular payment of principal is due under the loan. This subsection does not bar a person from asserting a violation of this subchapter in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law. An action to enforce a violation of section 1639 of this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 1607 of this title and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may—

- (1) intervene in the action;
- (2) upon intervening—

(A) remove the action to the appropriate United States district court, if it was not originally brought there; and

(B) be heard on all matters arising in the action; and

- (3) file a petition for appeal.

**(f) Good faith compliance with rule, regulation, or interpretation of Board or with interpretation or approval of duly authorized official or employee of Federal Reserve System**

No provision of this section, section 1607(b) of this title, section 1607(c) of this title, section 1607(e) of this title, or section 1611 of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

**(g) Recovery for multiple failures to disclose**

The multiple failure to disclose to any person any information required under this part or part D or E of this subchapter to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. This subsection does not bar any remedy permitted by section 1635 of this title.

**(h) Offset from amount owed to creditor or assignee; rights of defaulting consumer**

A person may not take any action to offset any amount for which a creditor or assignee is potentially liable to such person under subsection (a)(2) of this section against any amount owed by such person, unless the amount of the creditor's or assignee's liability under this subchapter has been determined by judgment of a court of competent jurisdiction in an action of which such person was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this subchapter as an original action, or as a defense or counterclaim to an action to collect amounts owed by the consumer brought by a person liable under this subchapter.

**(i) Class action moratorium****(1) In general**

During the period beginning on May 18, 1995, and ending on October 1, 1995, no court may enter any order certifying any class in any action under this subchapter—

(A) which is brought in connection with any credit transaction not under an open end credit plan which is secured by a first lien on real property or a dwelling and constitutes a refinancing or consolidation of an existing extension of credit; and

(B) which is based on the alleged failure of a creditor—

(i) to include a charge actually incurred (in connection with the transaction) in the finance charge disclosed pursuant to section 1638 of this title;

(ii) to properly make any other disclosure required under section 1638 of this title as a result of the failure described in clause (i); or

(iii) to provide proper notice of rescission rights under section 1635(a) of this title due to the selection by the creditor of the incorrect form from among the model forms prescribed by the Board or from among forms based on such model forms.

**(2) Exceptions for certain alleged violations**

Paragraph (1) shall not apply with respect to any action—

(A) described in clause (i) or (ii) of paragraph (1)(B), if the amount disclosed as the finance charge results in an annual percentage rate that exceeds the tolerance provided in section 1606(c) of this title; or

(B) described in paragraph (1)(B)(iii), if—

(i) no notice relating to rescission rights under section 1635(a) of this title was provided in any form; or

(ii) proper notice was not provided for any reason other than the reason described in such paragraph.

**(j) Private educational lender**

A private educational lender (as that term is defined in section 1650(a) of this title) has no liability under this section for failure to comply with section 1638(e)(3) of this title.<sup>3</sup>

(Pub. L. 90-321, title I, § 130, May 29, 1968, 82 Stat. 157; Pub. L. 93-495, title IV, §§ 406, 407, 408(a)-(d),

Oct. 28, 1974, 88 Stat. 1518; Pub. L. 94-222, § 3(b), Feb. 27, 1976, 90 Stat. 197; Pub. L. 94-240, § 4, Mar. 23, 1976, 90 Stat. 260; Pub. L. 96-221, title VI, § 615, Mar. 31, 1980, 94 Stat. 180; Pub. L. 100-583, § 3, Nov. 3, 1988, 102 Stat. 2966; Pub. L. 103-325, title I, § 153(a), (b), Sept. 23, 1994, 108 Stat. 2195; Pub. L. 104-12, § 2, May 18, 1995, 109 Stat. 161; Pub. L. 104-29, § 6, Sept. 30, 1995, 109 Stat. 274; Pub. L. 110-289, div. B, title V, § 2502(b), July 30, 2008, 122 Stat. 2857; Pub. L. 110-315, title X, § 1012(a), Aug. 14, 2008, 122 Stat. 3482; Pub. L. 111-22, div. A, title IV, § 404(b), May 20, 2009, 123 Stat. 1658; Pub. L. 111-24, title I, § 107, title II, § 201(b), May 22, 2009, 123 Stat. 1743, 1745.)

## AMENDMENTS

2009—Subsec. (a). Pub. L. 111-24, § 201(b), in concluding provisions, substituted “In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, 1637(a) of this title, or any of paragraphs (4) through (13) of section 1637(b) of this title, or for failing to comply with disclosure requirements under State law for any term or item that the Board has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms or items referred to in section 1637(a) of this title, or any of paragraphs (4) through (13) of section 1637(b) of this title.” for “In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, section 1637(a) of this title, or of paragraph (4), (5), (6), (7), (8), (9), or (10) of section 1637(b) of this title or for failing to comply with disclosure requirements under State law for any term or item which the Board has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms or items referred to in section 1637(a) of this title or any of those paragraphs of section 1637(b) of this title.”

Pub. L. 111-22, § 404(b), which directed insertion of “subsection (f) or (g) of section 1641 of this title,” after “section 1635 of this title,” was executed by making the insertion only in the introductory provisions to reflect the probable intent of Congress.

Subsec. (a)(2)(A)(iii), (iv). Pub. L. 111-24, § 107, added cl. (iii) and redesignated former cl. (iii) as (iv).

2008—Subsec. (a). Pub. L. 110-315, § 1012(a)(1)(B), in fourth sentence of concluding provisions, substituted “1635 of this title,” for “1635 of this title or” and inserted “of subparagraphs (A), (B), (D), (F), or (J) of section 1638(e)(2) of this title (for purposes of paragraph (2) or (4) of section 1638(e) of this title), or paragraph (4)(C), (6), (7), or (8) of section 1638(e) of this title,” before “or for failing”.

Pub. L. 110-289, § 2502(b)(2), in concluding provisions, inserted “or section 1638(b)(2)(C)(ii) of this title,” before “or for failing to comply” and “or section 1638(b)(2)(C)(ii) of this title” before “. With respect to”.

Subsec. (a)(2)(A)(iii). Pub. L. 110-289, § 2502(b)(1), substituted “not less than \$400 or greater than \$4,000” for “not less than \$200 or greater than \$2,000”.

Subsec. (a)(3). Pub. L. 110-315, § 1012(a)(1)(A), inserted “or 1638(e)(7)” after “section 1635”.

Subsec. (e). Pub. L. 110-315, § 1012(a)(2), inserted before period at end of first sentence “or, in the case of a violation involving a private education loan (as that term is defined in section 1650(a) of this title), 1 year from the date on which the first regular payment of principal is due under the loan”.

Subsec. (j). Pub. L. 110-315, § 1012(a)(3), added subsec. (j).

1995—Subsec. (a)(2)(A)(iii). Pub. L. 104-29 added cl. (iii).

Subsec. (i). Pub. L. 104-12 added subsec. (i).

<sup>3</sup>So in original. The closing parenthesis probably should not appear.

1994—Subsec. (a)(4). Pub. L. 103-325, §153(a), added par. (4).

Subsec. (e). Pub. L. 103-325, §153(b), inserted at end “An action to enforce a violation of section 1639 of this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 1607 of this title and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may—

“(1) intervene in the action;

“(2) upon intervening—

“(A) remove the action to the appropriate United States district court, if it was not originally brought there; and

“(B) be heard on all matters arising in the action; and

“(3) file a petition for appeal.”

1988—Subsec. (a). Pub. L. 100-583 substituted “in subsections (a) and (b) of section 1637” for “in section 1637” in third sentence and inserted provisions limiting liability of card issuer under this section to cardholders who pay fee or use credit card or charge card.

1980—Subsec. (a). Pub. L. 96-221, §615(b), in introductory text inserted provisions respecting applicability of section 1635 of this title, and in text following numbered pars. inserted provisions relating to disclosures required under sections 1637 and 1638 of this title.

Subsec. (a)(2)(B). Pub. L. 96-221, §615(a)(1), substituted provisions respecting recovery under this subparagraph in any class action or series of class actions, for provisions respecting recovery in a class action.

Subsec. (a)(3). Pub. L. 96-221, §615(a)(2), inserted provisions relating to right of rescission under section 1635 of this title.

Subsec. (b). Pub. L. 96-221, §615(a)(3), substituted provisions relating to correction of errors within sixty days by a creditor or assignee, for provisions relating to correction of errors within fifteen days by a creditor.

Subsec. (c). Pub. L. 96-221, §615(a)(3), substituted provisions relating to liability of a creditor or assignee in any action brought under this section or section 1635 of this title, for provisions relating to liability of a creditor in any action brought under this section.

Subsec. (d). Pub. L. 96-221, §615(a)(3), substituted provisions relating to liability in transaction or lease involving multiple obligors, for provisions relating to liability of subsequent assignees original creditor.

Subsec. (e). Pub. L. 96-221, §615(a)(4), inserted provisions relating to limitations on actions.

Subsec. (f). Pub. L. 96-221, §615(a)(5), inserted references to section 1607(b), (c), and (e) of this title.

Subsec. (g). Pub. L. 96-221, §615(a)(6), inserted provisions relating to remedy under section 1635 of this title.

Subsec. (h). Pub. L. 96-221, §615(a)(7), substituted provisions relating to offset from amounts owed to the creditor or assignee, and rights of defaulting consumer, for provisions relating to offset from amounts owed to the creditor.

1976—Subsec. (a). Pub. L. 94-240, §4(1), inserted “or E” after “part D”.

Subsec. (a)(2)(A). Pub. L. 94-240, §4(2), designated existing provision as cl. (i) and added cl. (ii).

Subsec. (a)(2)(B). Pub. L. 94-240, §4(3), substituted “lesser of \$500,000” for “lesser of \$100,000”.

Subsec. (b). Pub. L. 94-240, §4(4), inserted “or part E of this subchapter” after “this part” and struck out “finance” after “required to pay a”.

Subsec. (f). Pub. L. 94-222 inserted “or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor” after “by the Board”, and substituted

“interpretation, or approval” for “or interpretation” before “is amended”.

Subsec. (g). Pub. L. 94-240, §4(5), inserted “or part D or E of this subchapter” after “this part”, and “consumer lease” after “consumer loan”.

1974—Subsec. (a). Pub. L. 93-495, §408(a), substituted provisions setting forth determination of amount of liability of any creditor failing to comply with any requirement imposed under part D of this subchapter or this part, for provisions setting forth determination of amount of liability of any creditor failing to disclose in connection with any consumer credit transaction any information required under this part to be disclosed to specified persons.

Subsec. (b). Pub. L. 93-495, §408(b), inserted “for any failure to comply with any requirement imposed under this part,” before “if within”.

Subsec. (c). Pub. L. 93-495, §408(c), substituted “subchapter” for “part”.

Subsec. (f). Pub. L. 93-495, §406, added subsec. (f).

Subsec. (g). Pub. L. 93-495, §407, added subsec. (g).

Subsec. (h). Pub. L. 93-495, §408(d), added subsec. (h).

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111-24, set out as a note under section 1602 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-315, title X, §1012(b), Aug. 14, 2008, 122 Stat. 3482, provided that: “The amendments made by this section [amending this section] shall have the same effective date as provisions referred to in section 1003(b) [set out as a note under section 1638 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.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-240 effective on expiration of one year after Mar. 23, 1976, see section 6 of Pub. L. 94-240, set out as an Effective Date note under section 1667 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-495 effective Oct. 28, 1974, see section 416 of Pub. L. 93-495, set out as an Effective Date note under section 1665a of this title.

#### DETERMINATION OF LIABILITY PRIOR TO OCTOBER 28, 1974

Section 408(e) of Pub. L. 93-495 provided that: “The amendments made by sections 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