

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 26.
BANKS AND OTHER FINANCIAL
INSTITUTIONS.

CHAPTER 11A.
HOME LOAN PROTECTION.

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DISTRICT OF COLUMBIA OFFICIAL CODE

CHAPTER 11A. HOME LOAN PROTECTION.

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CHAPTER 11A. HOME LOAN PROTECTION.

SUBCHAPTER I. DEFINITIONS; FEDERALLY REGULATED AND SUPERVISED ENTITIES AND FANNIE MAE AND FREDDIE MAC.

§ 26-1151.01. DEFINITIONS.

For the purposes of this chapter, the term:

(1) "Annual percentage rate" means the annual percentage rate for the mortgage loan calculated according to the provisions of the Truth in Lending Act, the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System, and the official staff commentary thereto.

(2) "Assessed value" means the full market value of real property for assessment and taxation purposes as determined by the Office of Tax and Revenue and in effect on the applicable date.

(3) "Bona fide loan discount points" means loan discount points which are knowingly paid by the borrower for the express purpose of reducing, and which reduce, the annual percentage rate.

(4) "Borrower" means each accommodation party, borrower, co-borrower, cosigner, co-maker, obligor, mortgagor, or guarantor obligated to repay a loan that is secured by a lien instrument.

(5) "Bridge loan" means a loan that has a term of less than one year and that only requires that payments of interest be made until the entire unpaid balance becomes due.

(6) "Commissioner" shall have the same meaning as set forth in § 26- 551.02(7).

(7)(A) "Covered loan" means a mortgage loan, secured by property located in the District (including an open-end line of credit, but not including a mortgage loan insured or guaranteed by a state or local authority, the District of Columbia Housing Finance Agency, the Federal Housing Administration, or the Department of Veteran Affairs, or a reverse mortgage transaction), in which the terms of the mortgage loan exceed one or more of the following thresholds:

(i) The loan is secured by a first mortgage on the borrower's principal dwelling and the annual percentage rate at closing will exceed by more than 6 percentage points the yield on United States Treasury securities having comparable periods of maturity to the loan maturity measured as of the 15th day of the month immediately preceding the month in which the application for the residential mortgage loan is received by the creditor;

(ii) The loan is secured by a junior mortgage on the borrower's principal dwelling and the annual percentage rate at closing will exceed by more than 7 percentage points the yield on United States Treasury securities having comparable periods of maturity to the loan maturity measured as of the 15th day of the month immediately preceding the month in which the application for the residential mortgage loan is received by the creditor; or

(iii) The origination/discount points and fees payable by the borrower at or before loan closing exceed 5% of the total loan amount.

(B) Notwithstanding subparagraph (A) of this paragraph, in the case of a loan made or purchased by the Federal National Mortgage Association, Federal Home Loan Corporation, or a bank, trust company, savings and loan association, or savings bank that is regulated and supervised by a supervising federal agency, which entities shall include the finance and operating subsidiaries of such entities that are so regulated and supervised, the term "covered loan" shall have the same meaning as a mortgage in section 103(aa) of the Truth in Lending Act, and regulations adopted pursuant thereto by the Federal Reserve Board, including 12 C.F.R. § 226.32 (relating to requirements for certain closed-end home mortgages).

(8) "Department" shall have the same meaning as set forth in § 26-551.02(9).

(9) "District" means the District of Columbia.

(10) "Gross income" means a borrower's gross income as set forth in a mortgage loan application and

by a borrower, the borrower's financial statement, a credit report, financial information provided to the lender on behalf of the borrower, or as determined by any other reasonable means available to a lender, including a signed statement of the borrower; provided, that the borrower certifies the accuracy of the statement of his or her income and provides documentation that evidences such gross income.

(11) "Lender" means any person to whom the obligation is initially payable, either under the terms of the note or contract, or by agreement if there is no note or contract. The term "lender" shall include a mortgage broker, obligee, or mortgagee.

(12) "Lien instrument" means a deed of trust; mortgage; security agreement; trust deed; land installment contract; contract for a deed; assignment of lease, rent, or profit; or any other conveyance or retention of an interest in real property or personal property related to real property, including cooperative housing units and garage spaces, which secures the performance of a note or other obligation and creates a lien on real property or security interest in personal property. The term "lien instrument" shall include an amendment, modification, supplement, replacement, or restatement of a lien instrument.

(13) "Mortgage broker" shall have the same meaning as in § 26-1101(10).

(14)(A) "Mortgage loan" means any loan or other extension of credit:

(i) To a natural person primarily for personal, family, or household purposes;

(ii) That is secured by a lien instrument secured, in whole or in part, by residential real property located within the District which there is located, or there is to be located, a structure, intended principally for occupancy of from one to 4 families, and which is, or will be, occupied by the borrower as the borrower's principal dwelling; and

(iii) For which the principal amount does not exceed the conforming loan size limit for a comparable dwelling as established and revised from time to time by the Federal National Mortgage Association or the Federal Home Loan Corporation.

(B) A mortgage loan shall not include an extension of credit for the purpose of financing the acquisition or initial construction of a borrower's residential real property.

(15) "Note" means a promissory note secured by a deed of trust, a promissory note or mortgage bond secured by a mortgage, or any other written evidence of indebtedness or obligation secured by a lien instrument.

(16) "Notice" means a written notice that describes with reasonable clarity the specific act, event, or default and the response that the notice sender is seeking from the addressee or other party obligated to the sender of the notice.

(17) "Origination/discount points and fees" means points and fees as defined in 12 C.F.R. § 226.32(b).

(18) "Person" means an individual, corporation, governmental subdivision or agency, business trust, estate, trustee for a trust, partnership, association, limited liability company, joint venture, government, or any other legal or commercial entity or agent.

(19) "Point" means, when referring to a fee, one percent applied to a portion of a loan amount.

(20) "Principal balance" means the principal amount of a note.

(21) "Real property" means real property in the District and interests in real property located in the District, including the stock of a cooperative housing corporation and associated residential lease of a cooperative housing unit or garage space.

(22) "Red Flag Warning Disclosure Notice" means the notice provided for by § 26-1152.11.

(23) "Residential real property" means real property in the District improved by:

(A) A one to 4 family dwelling, including a condominium or cooperative housing unit; or

(B) A mixed-use building with an assessed value of \$1 million or less containing one to 4 family dwelling units where:

(i) The owner of the residential real property is one or more natural persons who occupy one of the dwelling units as the owner's principal dwelling; or

(ii) The borrower is one or more natural persons who intend, in good faith, to occupy one of the dwelling units as the borrower's principal dwelling at the time of the loan closing.

(24) "Servicer" shall have the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974, approved November 28, 1990 (104 Stat. 4405; 12 U.S.C. § 2605(i)(2)).

(25) "Subsidiary", with respect to a specified bank holding company, means a company:

(A) Twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by the bank holding company, or is held by it with power to vote;

(B) The election of a majority of whose directors is controlled in any manner by the bank holding company; or

(C) With respect to the management or policies of which the bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the Board of Governors of the Federal Reserve System, after notice and opportunity for hearing.

(26) "Supervising federal agency" means the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve Board, or the Federal Deposit Insurance Corporation.

(27) "Truth in Lending Act" means the Truth in Lending Act, approved May 29, 1968 (82 Stat. 146; 15 U.S.C. § 1601 *et seq.*).

(May 7, 2002, D.C. Law 14-132, § 101, 49 DCR 2551; June 11, 2004, D.C. Law 15-166, § 4(d), 51 DCR 2817.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 15-166 rewrote pars. (6) and (8) which had read as follows:

"(6) 'Commissioner' means the Commissioner of the Department of Banking and Financial Institutions, or his or her authorized designee."

"(8) 'Department' means the Department of Banking and Financial Institutions."

Emergency Act Amendments

For temporary (90 day) addition of section, see § 101 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

For temporary (90 day) amendment of section, see § 4(d) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

Legislative History of Laws

Law 14-132, the "Home Loan Protection Act of 2002", was introduced in Council and assigned Bill No. 14-515, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 5, 2002, and February 19, 2002, respectively. Signed by the Mayor on March 1, 2002, it was assigned Act No. 14-296 and transmitted to both Houses of Congress for its review. D.C. Law 14-132 became effective on May 7, 2002.

For Law 15-166, see notes following § 26-131.02.

References in Text

The "Truth in Lending Act", referred to in par. (1), is classified to 15 U.S.C.A. § 1601 *et seq.*

Section 103(aa) of the "Truth and Lending Act", referred to in par. (7)(B), is classified to 15 U.S.C.A. § 1602(aa).

Delegation of Authority

Delegation of Authority Pursuant to D.C. Law 14-132, "The Home Loan Protection Act of 2002", see Mayor's Order 2002-154, September 13, 2002 (49 DCR 8622).

§ 26-1151.02. FEDERALLY REGULATED, SUPERVISED, AND INSURED ENTITIES AND THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND FEDERAL HOME LOAN CORPORATION.

(a) Nothing in subchapter II of this chapter shall be construed to apply to loans made or purchased by the Federal National Mortgage Association, Federal Home Loan Corporation, or a bank, trust company, savings and loan association, or savings bank, that is regulated and supervised by a supervising federal agency, including the finance and operating subsidiaries of such entities that are so regulated and supervised.

(b) This section shall not apply to any lender that is not federally regulated and supervised, except the Federal National Mortgage Association, or the Federal Home Loan Corporation.

(c) Except as provided in subsection (d) of this section, the Home Ownership and Equity Protection Act of 1994, approved September 23, 1994 (108 Stat. 2190; codified in various sections of Chapter 16 of the U.S. Code), and the implementing regulations issued by the Federal Reserve Board, as each may be amended from time to time, are hereby adopted by reference thereto and shall apply to loans made or purchased by the Federal National Mortgage Association, Federal Home Loan Corporation, or a bank, trust company, savings and loan association, or savings bank that is regulated and supervised by a supervising federal agency, including the finance and operating subsidiaries of such entities that are so

regulated and supervised, that engage in lending activities in the District.

(d) The violations, remedies, penalties, and enforcement provisions set forth in subchapter III of this chapter shall apply to loans made or purchased by the Federal National Mortgage Association, Federal Home Loan Corporation, or a bank, trust company, savings and loan association, or savings bank that is regulated and supervised by a supervising federal agency, including the finance and operating subsidiaries of such entities that are so regulated and supervised, that engage in lending activities in the District with regard to violations of this chapter.

(May 7, 2002, D.C. Law 14-132, § 102, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 102 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

References in Text

The "Home Ownership and Equity Protection Act of 1994", referred to in subsec. (c), is Pub.L. 103-325, Title I, Subtitle B, Sept. 23, 1994, 108 Stat. 2190, which is codified to various sections in Chapter 16 of Title 15 of U.S.C.A.

SUBCHAPTER II. PROHIBITED PRACTICES.

§ 26-1152.01. APPLICABILITY.

This subchapter shall only apply to a covered loan as defined in § 26- 1151.01(7)(A).

(May 7, 2002, D.C. Law 14-132, § 201, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 201 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.02. INSUFFICIENT REPAYMENT ABILITY.

(a) A lender shall not make a covered loan if the borrower, at the time that the covered loan is closed, cannot reasonably be expected to make the scheduled payments. For purposes of making this determination:

(1) The lender's consideration shall include the ability to make any payments for mortgage insurance premiums, escrow deposits, or direct payment of real estate taxes and property insurance premiums (in addition to the payments of interest and principal) and the employment status of the borrower. The lender may consider the current and expected income, current obligations, and other financial resources of the borrower (other than the borrower's equity in the dwelling which secures repayment of the loan).

(2) The lender shall not consider the borrowers' equity interest in the residential real property which secures repayment of the covered loan; provided, that the borrower's equity interest in the residential real property which secures repayment of the covered loan may be considered by the lender in determining whether to approve the loan as part of the evaluation of the borrower's likelihood of default.

(3) In the case of a covered loan which includes payment terms under which the aggregate amount of the scheduled payments will not fully amortize the outstanding principal balance, the lender's determination of the ability of the borrowers to make an expected balloon payment at the scheduled maturity date may include consideration of the borrowers' equity interest in the residential real property and the borrowers' ability, based on current market conditions, to refinance the covered loan without penalty, hardship, or material loss of equity.

(4) A lender shall not include or add a borrower to the covered loan who did not own or reside in the residential real property securing the covered loan prior to the covered loan transaction for the purpose

of increasing the income and ability of the borrowers owning or residing in the residential real property to make all the scheduled payments of interest, principal, and mortgage insurance premiums, and escrow deposits for, or direct payment of, real estate taxes and property insurance premiums, unless the included or added borrower separately confirms in writing to the lender that the borrower expects and commits to make or substantially contribute to:

(A) The scheduled payments on the covered loan; and

(B) Escrow deposits for or direct payment of real estate taxes and property insurance premiums.

(b) The requirements of subsection (a) of this section shall only apply to borrowers whose gross income, as reported on the loan application which the lender relied upon in making the credit decision, does not exceed 120% of median family income. For purposes of this subsection, the median family income shall be the most recent estimate made by the U.S. Department of Housing and Urban Development at the time the application is received. For purposes of determining gross income under this section, only the income of the borrower shall be considered.

(c) The current and expected income, current debts, current assets, and employment of the borrowers shall be verified by the lender in accordance with standard residential mortgage lending industry practices to underwrite a loan secured by a residential lien instrument. For the purposes of this subsection, the lender shall be deemed to have followed standard residential mortgage lending industry practices if the lender verified the borrowers' current and expected income and current debts in accordance with the verification guidelines and practices of the Federal National Mortgage Association, Federal Home Loan Corporation, U.S. Department of Housing and Urban Development, or U.S. Department of Veterans Affairs. Nothing in this subsection shall preclude the utilization of other standard industry verification practices accepted by applicable regulatory authorities.

(May 7, 2002, D.C. Law 14-132, § 202, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 202 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.03. RESTRICTIONS ON THE FINANCING OF SINGLE-PREMIUM CREDIT INSURANCE.

A lender shall not sell any individual or group credit life, accident, health, or unemployment insurance product on a prepaid single premium basis in conjunction with a covered loan. Credit insurance sold by a lender on a basis other than a prepaid single premium shall be accompanied by a clear and conspicuous disclosure, provided at least 3 days before closing, stating that the credit insurance shall not be a condition to the extension of mortgage credit and that the borrower may elect not to purchase the insurance. Insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly or bi-weekly basis shall not be considered financed by the lender; provided, that the disclosure required by this section shall be provided to the borrower for any insurance, debt cancellation, or suspension services purchased by the borrower.

(May 7, 2002, D.C. Law 14-132, § 203, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 203 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.04. RESTRICTION ON FINANCING ORIGINATION/DISCOUNT POINTS AND FEES.

If a lender refinances a loan secured by the same residential real property to the same borrower which was made 18 months or less before the covered loan is made, the same lender shall not finance, directly or indirectly, any portion of the covered loan's origination/discount points and fees or other fees payable to the lender or any third party in excess of the greatest of 3% of the new covered loan principal amount

actually funded, \$400, or such amount as the Mayor may establish by regulation, excluding:

(1) Reasonable charges described in 12 C.F.R. § 226.4(c)(7)(i), (iii), (iv), and (v); and

(2) Bona fide loan discount points.

(May 7, 2002, D.C. Law 14-132, § 204, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 204 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.05. NO ENCOURAGEMENT OF DEFAULT.

A lender shall not recommend or encourage the borrower to default on an existing loan or other debt prior to and in connection with the closing or planned closing of a covered loan that refinances all or any portion of the existing loan or other debt.

(May 7, 2002, D.C. Law 14-132, § 205, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 205 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.06. UNFAIR STEERING OR IMPROPER USE OF CREDIT SCORES.

(a) A lender shall not steer, counsel, or direct any prospective borrower to accept a loan product with a risk grade less favorable than the risk grade that the borrower would qualify for based on that lender's then current underwriting guidelines, prudently applied, considering the information available to that lender, including the information provided by the borrower. A lender shall not violate this section if the risk grade determination applied to a borrower is reasonably based on the lender's underwriting guidelines and if it is an appropriate risk grade category for which the borrower qualifies with the lender.

(b) The lender shall not make, or cause to be made, any false, deceptive, or misleading statement, representation, or determination regarding the borrower's ability to qualify for any mortgage product or the borrower's credit score.

(May 7, 2002, D.C. Law 14-132, § 206, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 206 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.07. FAILING TO REPORT FAVORABLE PAYMENT RECORD.

A lender or its servicer shall report a borrower's favorable payment history and information to a nationally recognized credit-reporting agency at least once every 12 months. This section shall not prevent a lender or its servicer from agreeing with the borrower not to report payment history information and shall not apply to covered loans held or serviced by a lender for less than 90 days. Nothing in this section shall prevent a lender from reporting a borrower's unfavorable payment history.

(May 7, 2002, D.C. Law 14-132, § 207, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 207 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.08. HOME IMPROVEMENT CONTRACTS.

(a) A lender shall not pay a contractor under a home improvement contract from the proceeds of a covered loan other than by an instrument payable to the borrower or jointly payable to the borrower and the contractor or, at the election of the borrower, through a third-party escrow agent that is independent from the contractor in accordance with the terms established in a written agreement signed by the borrower, the mortgage lender, and the contractor prior to the disbursement of funds to the contractor. The borrower shall be responsible for any reasonable fees or costs associated with the election. A lender may conclusively rely on a certified written statement from either the contractor or the third-party escrow agent that states that the escrow agent and contractor are independent from each other.

(b) A lender shall not purchase a home improvement contract in connection with, or make an instrument payable to, a home improvement contractor that is not bonded with the District pursuant to subchapter IV of Chapter 28 of Title 47. The Mayor shall maintain a list of home improvement contractors that are bonded and in good standing. Unless the lender has notice that the contractor is not licensed or authorized to do business in the District, a lender who relies on the list within 60 days of the closing shall be considered in compliance with this section; provided, that the lender has provided the Mayor with a name, telephone number, mailing address, and electronic mail address of a contact person to whom the Mayor can provide updates or amendments to the list required by this subsection.

(May 7, 2002, D.C. Law 14-132, § 208, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 208 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.09. NO INCREASE IN INTEREST RATE UPON DEFAULT.

A lender shall not make a covered loan that includes a provision that increases the covered loan's interest rate upon a default. This section shall not apply to an interest rate increase in adjustable rate covered loans based on a recognized adjustable rate mortgage index and constant margin amount if an event of default or the acceleration of the maturity date of the covered loan does not cause or permit the increase in the interest rate.

(May 7, 2002, D.C. Law 14-132, § 209, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 209 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.10. CHARGES IN BAD FAITH.

A lender shall not charge and retain fees paid by the borrower in making a covered loan which are:

- (1) For services that are not actually performed;
- (2) For loan discount points which are not bona fide discount points; or
- (3) In violation of the Real Estate Procedures Settlement Act of 1974, approved December 22, 1974 (88 Stat. 1724; 12 U.S.C. § 2601 *et seq.*).

(May 7, 2002, D.C. Law 14-132, § 210, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 210 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.11. FAILURE TO TIMELY SEND DISCLOSURE NOTICE.

- (a) In making a covered loan, a lender shall send to the borrower a Red Flag Warning Disclosure Notice.
- (b) This notice shall be received by the borrower at least 3 business days prior to closing of the loan.
- (c) If the loan is originated with the assistance of a mortgage broker, the mortgage broker shall provide the Red Flag Warning Disclosure Notice.
- (d) Only one Red Flag Warning Disclosure Notice must be provided to each borrower.
- (e) The Mayor shall promulgate, by regulation, the Red Flag Warning Disclosure Notice and instructions for completing, executing, and sending the disclosure notice. The Mayor may revise the disclosure notice or instructions at any time not less than 90 days in advance of the publication in the District of Columbia Register. After the publication of a revised disclosure notice or revised instructions, either the existing or revised instructions may be followed and either the existing or revised disclosure notice shall be accepted until the advance publication period expires.

(May 7, 2002, D.C. Law 14-132, § 211, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 211 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.12. PREPAYMENT PREMIUM, FEE OR CHARGE.

A lender shall not include in a covered loan or collect or attempt to collect any prepayment premium, fee, or charge in violation of Chapter 33 of Title 28.

(May 7, 2002, D.C. Law 14-132, § 212, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 212 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.13. LIMITATIONS ON BALLOON PAYMENTS.

A lender shall not make a covered loan that provides for a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments unless the balloon payment becomes due and payable not less than 7 years after the date of the loan closing. This section shall not apply if the payment schedule is adjusted to account for the seasonal or irregular income of the borrower or if the loan is a bridge loan connected with or related to the acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

(May 7, 2002, D.C. Law 14-132, § 213, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 213 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.14. NO CALL PROVISION.

A lender shall not make a covered loan that includes a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness; provided, that this prohibition shall not apply when repayment of the covered loan has been accelerated by a bona fide default or pursuant to some other provision of the loan agreement unrelated to the payment schedule.

(May 7, 2002, D.C. Law 14-132, § 214, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 214 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.15. NO NEGATIVE AMORTIZATION.

A lender shall not make a covered loan with a payment schedule with regular periodic payments that causes the principal balance to increase.

(May 7, 2002, D.C. Law 14-132, § 215, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 215 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.16. NO ADVANCE PAYMENTS.

A lender shall not make a covered loan that includes terms under which any periodic payments required under the loan are paid in advance from loan proceeds.

(May 7, 2002, D.C. Law 14-132, § 216, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 216 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.17. NO ADVANCE WAIVERS.

A provision in a covered loan whereby a borrower waives in advance a violation of this chapter shall be void.

(May 7, 2002, D.C. Law 14-132, § 217, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 217 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.18. NO OPPRESSIVE MANDATORY ARBITRATION CLAUSE.

(a) A mandatory arbitration clause in a note, lien, instrument, or ancillary lien instrument or obligation that evidences or secures a covered loan that is oppressive, unfair, unconscionable, or in substantially in derogation of the rights of borrowers shall be void.

(b) Arbitration clauses that comply with the standards adopted by the Mayor pursuant to regulation shall be presumed not to violate this section; provided, the Mayor's standards be in accordance with the procedures of a nationally recognized arbitration forum such as the American Arbitration Association.

(May 7, 2002, D.C. Law 14-132, § 218, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 218 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.19. HOMEOWNERSHIP COUNSELING.

A lender shall inform a borrower of his or her right to obtain counseling in connection with a covered loan.
A Red Flag Warning Disclosure Notice shall satisfy this requirement.

(May 7, 2002, D.C. Law 14-132, § 219, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 219 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.20. BROKER LICENSOR.

Upon initiation of a business relationship with a mortgage broker, a lender shall verify that each mortgage broker with whom it does business in connection with making a covered loan is licensed or otherwise authorized to do business in the District. After verifying that the broker is licensed or authorized to do business in the District, the lender shall be entitled thereafter to rely upon a signed written statement by the mortgage broker that the mortgage broker is duly authorized to conduct business in the District unless the lender has notice that the mortgage broker is not licensed or authorized to do business in the District; provided, that the lender has provided the Mayor with a name, telephone number, mailing address, and electronic mail address of a contact to whom the Mayor can provide updates or amendments to the list of licensed brokers.

(May 7, 2002, D.C. Law 14-132, § 220, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 220 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.21. FILING REQUIREMENTS.

(a) Within 14 days following the funding of a covered loan, a lender otherwise subject to the jurisdiction of the Mayor shall submit to the Mayor a loan package including copies of the following documents:

- (1) The settlement statement;
- (2) The FP-7 Form filed with the Recorder of Deeds;
- (3) The final Truth in Lending Act disclosure; and
- (4) The note.

(b) In its transmittal of the loan package required by subsection (a) of this section, the lender shall certify that each of the documents provided are true copies of the original documents.

(c) The loan package submitted pursuant to subsection (a) of this section shall remain confidential and exempt from disclosure under any law except to the borrower, a lender involved in the covered loan transaction, or current noteholder.

(May 7, 2002, D.C. Law 14-132, § 221, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 221 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.22. SUSPECT SETTLEMENT SERVICE PROVIDERS.

The Mayor may create and maintain a public list of lenders and other settlement service providers, including real estate agents and appraisers, who have been found by a court to have engaged in a systematic pattern or practice of fraud or in operations in violation of the requirements of District law.

(May 7, 2002, D.C. Law 14-132, § 222, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 222 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1152.23. MEDIAN FAMILY INCOME.

The Mayor shall periodically publish or make available to lenders median family income for Washington, D.C. that may be relied upon by lenders for purposes of this chapter.

(May 7, 2002, D.C. Law 14-132, § 223, 49 DCR 2551; Oct. 19, 2002, D.C. Law 14-213, § 42(a), 49 DCR 8140.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 14-213 deleted "the" before "Washington D.C.".

Emergency Act Amendments

For temporary (90 day) addition of section, see § 223 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

Law 14-213, the "Technical Amendments Act of 2002", was introduced in Council and assigned Bill No. 14-671, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings

on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 26, 2002, it was assigned Act No. 14-459 and transmitted to both Houses of Congress for its review. D.C. Law 14-213 became effective on October 19, 2002.

SUBCHAPTER III. VIOLATIONS AND REMEDIES; ENFORCEMENT AND CIVIL LIABILITY.

§ 26-1153.01. VIOLATIONS AND REMEDIES.

(a) The Mayor or any borrower under a covered loan may recover damages for a lender's violation of § 26-1151.02 or subchapter II of this chapter.

(b) Notwithstanding subsection (a) of this section, if the violation of § 26-1151.02 or subchapter II of this chapter was caused by the borrower, his or her employer, or a creditor providing materially incorrect information to the lender, which inaccuracy the lender did not discover prior to the covered loan funding, and if the lender reasonably attempted to verify the current and expected income and current debts of the borrowers in accordance with § 26-1152.02(c), the lender shall not be liable.

(c) Damages or other relief awarded to the borrower under this section may include:

- (1) Reformation of the covered loan to correct or remove an unfair term or a term obtained in violation of § 26-1151.02 or subchapter II of this chapter, whichever is applicable as of the date of initial funding;
- (2) Actual damages;
- (3) Injunctive relief;
- (4) Reasonable attorneys' fees and costs; or
- (5) Statutory damages in an amount to be determined by the finder of fact if the finder of fact determines that the lender has engaged in a systematic pattern of practices and acted in violation of § 26-1151.02 or subchapter II of this chapter.

(d) An action for violation of § 26-1151.02 or subchapter II of this chapter shall be filed no later than 3 years after the violation has been discovered or should have been discovered.

(e)(1) A lender making a covered loan who, when acting in good faith, fails to comply with § 26-1151.02 or subchapter II of this chapter, shall not be deemed to have violated § 26-1151.02 or subchapter II of this chapter if the lender establishes one of the following:

(A) Without regard to who discovered the error, within 120 days of the covered loan initial funding and prior to the institution of judicial process under this section, the borrower was notified of the violation, appropriate restitution was made, and whatever adjustments are necessary were made to the covered loan, at the choice of the lender, to:

- (i) Conform the covered loan to the requirements of § 26-1151.02 or subchapter II of this chapter;
- (ii) Materially change the terms of the covered loan to benefit the borrower; or
- (iii) Remove the features that caused the loan to be considered a covered loan.

(B) The violation resulted from a bona fide error notwithstanding the lender's maintenance of procedures reasonably designed to avoid the error and, within 60 days after the discovery of the compliance failure and prior to the filing of an action under this section, the borrower was notified of the compliance failure, appropriate restitution was made, and whatever adjustments are necessary were made to the covered loan, at the choice of the lender, to:

- (i) Conform the covered loan to the requirements of § 26-1151.02 or subchapter II of this chapter;
- (ii) Materially change the terms of the covered loan to benefit the borrower; or
- (iii) Remove the features that caused the loan to be considered a covered loan.

(2) If the lender fails to comply with § 26-1152.11 or section 129(a) and (b) of the Truth in Lending Act in the case of a lender covered by § 26-1151.02, the lender shall not be deemed to have violated § 26-1151.02 or subchapter II of this chapter, only if:

- (A) The lender satisfies paragraph (1)(A)(i) or (B)(ii) of this subsection;
- (B) The lender provided the borrower with a disclosure notice prior to the closing of the covered loan; and
- (C) The failure to comply with § 26-1152.11, or section 129(a) or (b) of the Truth in Lending Act in the case of a lender covered by § 26-1151.02, shall not have been shown to be part of a pattern or practice of such non-compliance.

(3) For the purposes of this subsection, a bona fide error shall include clerical error or, calculation, computer malfunction, and programming and printing errors. An error of legal judgment with respect to a lender's obligations under § 26-1151.02 or subchapter II of this chapter shall not constitute a bona fide error.

(f) No provision of this chapter shall be applied or interpreted to bar a borrower from bringing an action in an appropriate court of competent jurisdiction pursuant to any District or federal law for damages, injunctive relief, or any other relief.

(g) The remedies provided in this chapter shall be the sole and exclusive remedies for the violation of any provision of this chapter.

(May 7, 2002, D.C. Law 14-132, § 301, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 301 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

References in Text

Sections 129(a) and (b) of the Truth in Lending Act, referred to in subsecs. (e)(2) and (e)(2)(C), is classified to 15 U.S.C.A. § 1639(a) and (b).

§ 26-1153.02. ENFORCEMENT.

The Mayor may conduct examinations and investigations, and issue orders to enforce the provisions of this chapter, with respect to lenders over which it otherwise has jurisdiction. The Mayor may examine any relevant instrument, document, account, book, record, or file of a lender over which the Mayor has jurisdiction. The Mayor may recover the reasonable cost of the examinations and investigations from the lender. A lender shall maintain records which allow the Mayor to determine compliance with this chapter and any regulations promulgated hereunder.

(May 7, 2002, D.C. Law 14-132, § 302, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 302 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1153.03. ADMINISTRATIVE PENALTIES.

(a) If the Mayor determines that a person has violated this chapter, the Mayor may impose one or more of the following penalties:

(1) A civil penalty imposed as follows:

(A) \$1,000 for the first violation;

(B) For the second and each subsequent violation occurring within a 24-month period of a prior violation, twice the immediately preceding civil penalty imposed (or which could have been imposed).

(2) Order a person to cease and desist from engaging in any violation of this chapter and to make restitution for actual damages to the borrower.

(b) If the Mayor determines that any person has a systematic pattern of violations of this chapter, the Mayor may impose one or more of the following penalties in addition to the penalties set forth in subsection (a) of this section:

(1) Suspend, revoke, or refuse to renew any license issued by the Mayor;

(2) Prohibit or suspend an individual responsible for a violation of this chapter from working in his or her present capacity or in any other capacity related to the activities regulated by the Mayor; or

(3) Obtain an injunction or other process against any person to restrain and prevent the person from engaging in any activity violating this chapter.

(May 7, 2002, D.C. Law 14-132, § 303, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 303 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1153.04. FINAL DECISION.

A decision of the Mayor under § 26-1153.03 shall be a final order for the purposes of subchapter I of Chapter 5 of Title 2, and shall be enforceable in a court of competent jurisdiction. The Mayor shall publish the final decisions, subject to redaction or modification to preserve confidentiality. Any person aggrieved by a final decision of the Mayor pursuant to this subchapter may appeal the decision to Superior Court of the District of Columbia.

(May 7, 2002, D.C. Law 14-132, § 304, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 304 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

§ 26-1153.05. ASSIGNEE LIABILITY.

(a) Any person who purchases or is otherwise assigned a covered loan shall be subject to all claims and defenses with respect to the covered loan that the borrower could assert against the originator of the covered loan, unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary due diligence could not determine that the loan was a covered loan for the purposes of this chapter, based on:

- (1) The documentation required by § 26-1151.02 or subchapter II of this chapter;
- (2) The itemization of the amount financed; and
- (3) Other disclosure of disbursements.

(b) Nothing in subsection (a) of this section shall affect the rights of a borrower under any other provision of this chapter.

(c) Notwithstanding any other provision of law, the relief provided under this section shall not exceed:

- (1) With respect to actions based upon a violation of this chapter, the amount of actual damages; and
- (2) With respect to all other causes of action, the sum of:
 - (A) The amount of all remaining indebtedness; and
 - (B) The total amount paid by the consumer in connection with the transaction, reduced by the amount of any damages awarded under paragraph (1) of this subsection.

(d) Any person who sells or otherwise assigns a covered loan shall include a prominent notice, in the form as provided by the Mayor pursuant to rules of the potential liability under this section.

(May 7, 2002, D.C. Law 14-132, § 305, 49 DCR 2551; Apr. 13, 2005, D.C. Law 15-354, § 38, 52 DCR 2638.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 15-354, in subsec. (c)(2), validated a previously made technical correction.

Emergency Act Amendments

For temporary (90 day) addition of section, see § 305 of Home Loan Protection Emergency Act of 2002 (D.C.

Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

For Law 15-354, see notes following § 26-551.05.

SUBCHAPTER IV. RULEMAKING.

§ 26-1154.01. RULEMAKING AUTHORITY.

The Mayor shall promulgate rules in accordance with Chapter 5 of Title 2, to carry out the purposes of this chapter. The rules shall be promulgated within 90 days of May 7, 2002.

(May 7, 2002, D.C. Law 14-132, § 401, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 401 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.

SUBCHAPTER V. APPLICABILITY.

§ 26-1155.01. APPLICABILITY.

(a) Subchapters I through III of this chapter shall apply 60 days after the effective date of the regulations promulgated by the Mayor pursuant to this chapter.

(b) The provisions of this chapter shall be interpreted and applied to the fullest extent practical in a manner consistent with applicable federal laws and regulations. Nothing in this chapter is intended to preempt federal laws and regulations.

(May 7, 2002, D.C. Law 14-132, § 501, 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Emergency Act Amendments

For temporary (90 day) addition of section, see § 501 of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 14-132, see notes following § 26-1151.01.