

PUBLIC LAW 111–8—MAR. 11, 2009  
Omnibus Appropriations Act, Division D, Title VI

SEC. 626.

(a) (1) Within 90 days after the date of enactment of this Act, the Federal Trade Commission shall initiate a rulemaking proceeding with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this subsection shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

(2) Paragraph (1) shall not be construed to authorize the Federal Trade Commission to promulgate a rule with respect to an entity that is not subject to enforcement of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Commission.

(3) Before issuing a final rule pursuant to the proceeding initiated under paragraph (1), the Federal Trade Commission shall consult with the Federal Reserve Board concerning any portion of the proposed rule applicable to acts or practices to which the provisions of the Truth in Lending Act (15 U.S.C. 1601 et seq.) may apply.

(4) The Federal Trade Commission shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made part of this section.

(b) (1) Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in a practice that violates such rule, the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in an appropriate district court of the United States or other court of competent jurisdiction—

(A) to enjoin that practice;

(B) to enforce compliance with the rule;

(C) to obtain damages, restitution, or other compensation on behalf of all residents of the State; or

(D) to obtain penalties and relief provided by the Federal Trade Commission Act and such other relief as the court considers appropriate.

(2) The State shall serve written notice to the primary Federal regulator of any civil action under paragraph (1) at least 60 days prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide notice immediately upon instituting such civil action.

(3) Upon receiving the notice required by paragraph (2), the primary Federal regulator may intervene in such civil action and upon intervening—

(A) be heard on all matters arising in such civil action;

(B) remove the action to the appropriate United States district court; and

(C) file petitions for appeal of a decision in such civil action.

(4) Nothing in this subsection shall prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence. Nothing in this section shall prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

(5) In a civil action brought under paragraph (1)—

(A) the venue shall be a judicial district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code; and

(B) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted.

(6) Whenever a civil action or an administrative action has been instituted by or on behalf of the primary Federal regulator for violation of any provision of law or rule described in paragraph (1), no State may, during the pendency of such action instituted by or on behalf of the Commission, institute a civil action under that paragraph against any defendant named in the complaint in such action for violation of any law or rule as alleged in such complaint.

(7) If the attorney general of a State prevails in any civil action under paragraph (1), the State can recover reasonable costs and attorney fees from the lender or related party.

(c) Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by adding at the end the following:

“(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Federal Reserve Board pursuant to subsection (l)(2) of this section shall be treated as a violation of a rule promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.”.