

## § 591.1

## 12 CFR Ch. V (1–1–05 Edition)

### § 591.1 Authority, purpose, and scope.

(a) *Authority.* This part contains regulations issued under section 5 of the Home Owners' Loan Act of 1933, as amended, and under section 341 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469, 1505–1507.

(b) *Purpose and scope.* The purpose of this permanent preemption of state prohibitions on the exercise of due-on-sale clauses by all lenders, whether federally- or state-chartered, is to reaffirm the authority of Federal savings associations to enforce due-on-sale clauses, and to confer on other lenders generally comparable authority with respect to the exercise of such clauses. This part applies to all real property loans, and all lenders making such loans, as those terms are defined in § 591.2 of this part.

### § 591.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) *Assumed* includes transfers of real property subject to a real property loan by assumptions, installment land sales contracts, wraparound loans, contracts for deed, transfers subject to the mortgage or similar lien, and other like transfers. "Completed credit application" has the same meaning as completed application for credit as provided in § 202.2(f) of this title.

(b) *Due-on-sale clause* means a contract provision which authorizes the lender, at its option, to declare immediately due and payable sums secured by the lender's security instrument upon a sale or transfer of all or any part of the real property securing the loan without the lender's prior written consent. For purposes of this definition, a *sale or transfer* means the conveyance of real property of any right, title or interest therein, whether legal or equitable, whether voluntary or involuntary, by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three years, lease-option contract or any other method of conveyance of real property interests.

(c) *Federal savings association* has the same meaning as provided in § 541.11 of this chapter.

(d) *Federal credit union* means a credit union chartered under the Federal Credit Union Act.

(e) *Home* has the same meaning as provided in § 541.14 of this chapter.

(f) *Savings association* has the same meaning as provided in § 561.43 of this chapter.

(g) *Lender* means a person or government agency making a real property loan, including without limitation, individuals, Federal savings associations, state-chartered savings associations, national banks, state-chartered banks and state-chartered mutual savings banks, Federal credit unions, state-chartered credit unions, mortgage banks, insurance companies and finance companies which make real property loans, manufactured-home retailers who extend credit, agencies of the Federal government, any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act, and any assignee or transferee, in whole or part, of any such persons or agencies.

(h) *Loan secured by a lien on real property* means a loan on the security of any instrument (whether a mortgage, deed or trust, or land contract) which makes the interest in real property (whether in fee, or in a leasehold or subleasehold) specific security for the payment of the obligation secured by the instrument.

(i) *Loan secured by a lien on stock in a residential cooperative housing corporation* means a loan on the security of:

(1) A security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization; and

(2) An assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(j) *Loan secured by a lien on a residential manufactured home, whether real or personal property*, means a loan made pursuant to an agreement by which the party extending the credit acquires a security interest in the residential manufactured home.

(k) *Loan originated by a Federal savings association or other lender* means any loan for which the lender makes

the first advance of credit thereunder, *Provided*, That such lender then held a beneficial interest in the loan, whether as to the whole loan or a portion thereof, and whether or not the loan is later held by or transferred to another lender.

(l) *Real property loan* means any loan, mortgage, advance or credit sale secured by a lien on real property, the stock or membership certificate allocated to a dwelling unit in a cooperative housing corporation, or a residential manufactured home, whether real or personal property.

(m) *Residential manufactured home* has the same meaning as provided in § 590.2(g) of this chapter.

(n) *Reverse mortgage* means an instrument that provides for one or more payments to a homeowner based on accumulated equity. The lender may make payment directly, through the purchase of an annuity through an insurance company, or in any other manner. The loan may be due either on a specific date or when a specified event occurs, such as the sale of the property or the death of the borrower.

(o) *State* means the several states, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(p)(1) A *window-period loan* means a real property loan, not originated by a Federal savings association, which was made or assumed during a window-period created by state law and subject to that law, which loan was recorded, at the time of origination or assumption, before October 15, 1982, or within 60 days thereafter (December 14, 1982).

(2) The window-period begins on: (i) The date a state adopted a law (by means of a constitutional provision or statute) prohibiting the unrestricted exercise of due-on-sale clauses upon outright transfers of property securing loans subject to the state law creating the window-period, or the effective date of a constitutional or statutory provision so adopted, whichever is later; or

(ii) The date on which the highest court of the state rendered a decision prohibiting such unrestricted exercise (or if the highest court has not so de-

cidated, the date on which the next highest appellate court rendered a decision resulting in a final judgment which applies statewide), and ends on the earlier of the date such state law prohibition terminated under state law or October 15, 1982.

(3) Categories of state law which create window-periods by prohibiting the unrestricted exercise of due-on-sale clauses upon outright transfers of property securing loans subject to such state law restrictions include laws or judicial decisions which permit the lender to exercise its option under a due-on-sale clause only where:

(i) The lender's security interest or the likelihood of repayment is impaired; or

(ii) The lender is required to accept an assumption of the existing loan without an interest-rate change or with an interest-rate change below the market interest rate currently being offered by the lender on similar loans secured by similar property at the time of the transfer.

[54 FR 49718, Nov. 30, 1989, as amended at 67 FR 60554, Sept. 26, 2002]

#### **§ 591.3 Loans originated by Federal savings associations.**

(a) With regard to any real property loan originated or to be originated by a Federal savings association, as a matter of contract between it and the borrower, a Federal savings association continues to have the power to include a due-on-sale clause in its loan instrument.

(b) Except as otherwise provided in § 591.5 of this part with respect to any such loan made on the security of a home occupied or to be occupied by the borrower, exercise by any lender of a due-on-sale clause in a loan originated by a Federal savings association shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the lender and borrower shall at all times be fixed and governed by that contract.

#### **§ 591.4 Loans originated by lenders other than Federal savings associations.**

(a) With regard to any real property loan originated by a lender other than a Federal savings association, as a