Comptroller of the Currency, Treasury

§ 190.4 Federally-related residential manufactured housing loans—consumer protection provisions.

(a) Definitions. As used in this section:

(1) Prepayment. A “prepayment” occurs upon—

(i) Refinancing or consolidation of the indebtedness;

(ii) Actual prepayment of the indebtedness by the debtor, whether voluntarily or following acceleration of the payment obligation by the creditor; or

(iii) The entry of a judgment for the indebtedness in favor of the creditor.

(2) Actuarial method. The term actuarial method means the method of allocating payments made on a debt between the outstanding balance of the obligation and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the outstanding balance of the obligation.

(3) Precomputed Finance Charge. The term precomputed finance charge means interest or a time/price differential as computed by the add-on or discount method. Precomputed finance charges do not include loan fees, points, finder’s fees, or similar charges.

(4) Creditor. The term creditor means any entity covered by this part, including those which regularly extend or arrange for the extension of credit and assignees that are creditors under section 501(a)(1)(C)(v) of the Depository Institutions Deregulation and Monetary Control Act of 1980.

(b) General. (1) The provisions of the constitution or the laws of any state expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, credit sale, or advance which is secured by a first lien on a residential mobile home if a creditor covered by this part complies with the consumer protection regulations of this section.

(2) Relation to state law. (i) In making loans or credit sales subject to this section, creditors shall comply with state and Federal law in accordance with the following:

(A) State law regulating matters not covered by this section. When state law regulating matters not covered by this section is otherwise applicable to a loan or credit sale subject to this section, creditors shall comply with such state law provisions.

(B) State law regulating matters covered by this section. Creditors need comply only with the provisions of this section, unless the OCC determines that an otherwise applicable state law regulating matters covered by this section provides greater protection to consumers. Such determinations shall be published in the FEDERAL REGISTER and shall operate prospectively.

(ii) Any interested party may petition the OCC for a determination that state law requirements are more protective of consumers than the provisions of this section. Petitions shall include:

(A) A copy of the state law to be considered;

(B) Copies of any relevant judicial, regulatory, or administrative interpretations of the state law; and

(C) An opinion or memorandum from the state Attorney General or other appropriate state official having primary enforcement responsibilities for the subject state law provision, indicating how the state law to be considered offers greater protection to consumers than the OCC’s regulation.

(c) Refund of precomputed finance charge. In the event the entire indebtedness is prepaid, the unearned portion of the precomputed finance charge shall be refunded to the debtor. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed finance charge were calculated in accordance with the actuarial method, except that the debtor shall not be entitled to a refund which, is less than one dollar. The unearned portion of the precomputed finance charge is, at the option of the creditor, either:

(1) That portion of the precomputed finance charge which is allocable to all unexpired payment periods as originally scheduled, or if deferred, as deferred. A payment period shall be deemed unexpired if prepayment is
made within 15 days after the payment period’s scheduled due date. The un-
earned precomputed finance charge is the total of that which would have
been earned for each such period had the loan not been precomputed, by ap-
plying to unpaid balances of principal, according to the actuarial method, an
annual percentage rate based on those
charges which are considered
precomputed finance charges in this
section, assuming that all payments
were made as originally scheduled, or
as deferred, if deferred. The creditor, at
its option, may round this annual per-
centage rate to the nearest one-quarter
of one percent; or

(2) The total precomputed finance
charge less the earned precomputed fi-
nance charge. The earned precomputed
finance charge shall be determined by
applying an annual percentage rate
based on the total precomputed finance
charge (as that term is defined in this
section), under the actuarial method,
to the unpaid balances for the actual
time those balances were unpaid up to
the date of prepayment. If a late
charge or deferral fee has been col-
llected, it shall be treated as a pay-
ment.

(d) Prepayment penalties. A debtor
may prepay in full or in part the un-
paid balance of the loan at any time
without penalty. The right to prepay
shall be disclosed in the loan contract
in type larger than that used for the
body of the document.

(e) Balloon payments— (1) Federal sav-
ings associations. Federal savings asso-
ciation creditors may enter into agree-
ments with debtors which provide for
non-amortized and partially-amortized
loans on residential manufactured
homes, and such loans shall be gov-
erned by the provisions of this section
and 12 CFR 560.220 until superseding
regulations are issued by the Consumer
Financial Protection Bureau regarding
the Alternative Mortgage Transactions
Parity Act.

(2) Other creditors. All other creditors
may enter into agreements with debt-
ors which provide for non-amortized and partially-amortized loans on resi-
dential manufactured homes to the ex-
tent authorized by applicable Federal
or state law or regulation.

(f) Late charges. (1) No late charge
may be assessed, imposed, or collected
unless provided for by written contract
between the creditor and debtor.

(2) To the extent that applicable
state law does not provide for a longer
period of time, no late charge may be
collected on an installment which is
paid in full on or before the 15th day
after its scheduled or deferred due date
even though an earlier maturing in-
stallment or a late charge on an earlier
installment may not have been paid in
full. For purposes of assessing late
charges, payments received are deemed
to be applied first to current install-
ments.

(3) A late charge may be imposed
only once on an installment; however,
no such charge may be collected for a
late installment which has been de-
ferred.

(4) To the extent that applicable
state law does not provide for a lower
charge or a longer grace period, a late
charge on any installment not paid in
full on or before the 15th day after its
scheduled or deferred due date may not
exceed five percent of the unpaid
amount of the installment.

(5) If, at any time after imposition of
a late charge, the lender provides the
borrower with written notice regarding
amounts claimed to be due but unpaid,
the notice shall separately state the
total of all late charges claimed.

(6) Interest after the final scheduled
maturity date may not exceed the
maximum rate otherwise allowable
under state law for such contracts, and
if such interest is charged, no separate
late charge may be made on the final
scheduled installment.

(g) Deferral fees. (1) With respect to
mobile home credit transactions con-
taining precomputed finance charges,
agreements providing for deferral of all
or part of one or more installments
shall be in writing, signed by the par-
ties, and

(i) Provide, to the extent that appli-
cable state law does not provide for a
lower charge, for a charge not exceed-
ing one percent of each installment or
part thereof for each month from the
date when such installment was due to
the date when it is agreed to become
payable and proportionately for a part
of each month, counting each day as 1/30th of a month;
(ii) Incorporate by reference the transaction to which the deferral applied;
(iii) Disclose each installment or part thereof in the amount to be deferred, the date or dates originally payable, and the date or dates agreed to become payable; and
(iv) Set forth the fact of the deferral charge, the dollar amount of the charge for each installment to be deferred, and the total dollar amount to be paid by the debtor for the privilege of deferring payment.
(2) No term of a writing executed by the debtor shall constitute authority for a creditor unilaterally to grant a deferral with respect to which a charge is to be imposed or collected.
(3) The deferral period is that period of time in which no payment is required or made by reason of the deferral.
(4) Payments received with respect to deferred installments shall be deemed to be applied first to deferred installments.
(5) A charge may not be collected for the deferral of an installment or any part thereof if, with respect to that installment, a refinancing or consolidation agreement is concluded by the parties, or a late charge has been imposed or collected, unless such late charge is refunded to the borrower or credited to the deferral charge.
(h) Notice before repossession, foreclosure, or acceleration. (1) Except in the case of abandonment or other extreme circumstances, no action to repossess or foreclose, or to accelerate payment of the entire outstanding balance of the obligation, may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default in the form set forth in paragraph (h)(2) of this section. Such notice shall be sent by registered or certified mail with return receipt requested. In the case of default on payments, the sum stated in the notice may only include payments in default and applicable late or deferral charges. If the debtor cures the default within 30 days of the postmark of the notice and subsequently defaults a second time, the creditor shall again give notice as described in this paragraph (h)(1). The debtor is not entitled to notice of default more than twice in any one-year period.
(2) The notice in the following form shall state the nature of the default, the action the debtor must take to cure the default, the creditor’s intended actions upon failure of the debtor or to cure the default, and the debtor’s right to redeem under state law.
To:
Date: , 20
Notice of Default and Right To Cure Default
Name, address, and telephone number of creditor
Account number, if any
Brief identification of credit transaction
You are now in default on this credit transaction. You have a right to correct this default within 30 days from the postmarked date of this notice.
If you correct the default, you may continue with the contract as though you did not default. Your default consists of:
Describe default alleged
Cure of default: Within 30 days from the postmarked date of this notice, you may cure your default by (describe the acts necessary for cure, including, if applicable, the amount of payment required, including itemized delinquency or deferral charges).
Creditor’s rights: If you do not correct your default in the time allowed, we may exercise our rights against you under the law by (describe action creditor intends to take).
If you have any questions, write (the creditor) at the above address or call (creditor’s designated employee) at (telephone number) between the hours of and on (state days of week).
If this default was caused by your failure to make a payment or payments, and you want to pay by mail, please send a check or money order; do not send cash.
§ 190.100 Status of Interpretations issued under Public Law 96–161.
The OCC continues to adhere to the views expressed in the formal Interpretations issued under the authority of section 105(c) of Public Law 96–161, 93 Stat. 1233 (1979). These interpretations,