

BUTERA & ANDREWS

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2002 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 4

12/04/02 version

CONCEPTⁱ	NHEMA Staff Draft Concepts	Missouri HB 1363	Missouri HB 1375	Missouri SB 839	Missouri HB 1655	Missouri SB 1147	New Hampshire SB 392	New Jersey AB 671 / SB 198	New Jersey AB 1703	New Jersey SB 1200	New Jersey AB 75	New Jersey SB 1540	New York SB 6751	New York SB 7717	New York SB 7728
Date of Introduction (i), Current Status, or Date of Enactment (e)		01/09/02 (i) dead	01/09/02 (i) pending	01/09/02 (i) pending	01/29/02 (i) pending	02/12/02 (i) pending	01/02/02 (i) 05/18/02 (signed by Governor)	AB 671: 01/08/02 (i) pending SB 198: 01/08/02 (i) pending	01/31/02 (i) pending	02/21/02 (i) pending	01/08/02 (i) 05/09/02 (re-i) pending	05/16/02 (i) pending	04/02/02 (i) pending	06/17/02 (i) pending	06/17/02 (i) pending
Summary of Bills Only Related to Predatory Lending		Relates to consumer protection of homeowners and licensing and auditing.	Related to increase in permissible insurance amounts.				Provides for regulation by the banking department of revolving credit plan agreements between banks and borrowers.						Creates Loan Review Board which would accept and review complaints of misconduct by banking institutions, and defines predatory lending (see below).		Provides for additional licensing, bonding, and deposit requirements for mortgage bankers and brokers, further establishes crime of mortgage fraud; regulated predatory lending (see below).
Types of Loans Covered by Act				Applies to loans, other than open-end credit plans or reverse mortgages; loans are equal to or less than conforming loan size	Applies to loans, other than open-end credit plans or reverse mortgages; principal balance may not exceed \$250,000.	Applies to loans, other than open-end credit plans or reverse mortgages; loans are equal to or less than conforming loan size		Applies to loans, other than open-end credit plans or reverse mortgages; principal balance may not exceed \$300,000.	Applies to loans =< \$100,000.	Applies to loans, including open-end credit plans, other than reverse mortgages.	Applies to loans, including open-end credit plans, other than reverse mortgages; loans =< \$350,000.	Applies to loans, including open-end credit plans, other than reverse mortgages; loans =< \$350,000.	Applies to loans, including open-end credit plans, other than reverse mortgages.	Applies to loans, including open-end credit plans, other than reverse mortgages.	Applies to loans, including open-end credit plans, other than reverse mortgages and loans for \$300,000 or less guaranteed by

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				limit for single-family dwelling as established by Fannie Mae.		limit for single-family dwelling as established by Fannie Mae.									NYMA or FHA/VA.
Triggers															
Annual Percentage Rate Trigger (HOEPA = APR > T-bill + 8% for first mortgage lien, or + 10% for junior mortgage lien)	(like HOEPA)			APR > 1-year T-bill + 5%	APR > T-bill + 8%	APR > 1-year T-bill + 8%		(like HOEPA)	(like HOEPA)	APR > 5-year T-bill + 6% for first mortgage lien, or + 8% for junior mortgage lien.	(like HOEPA)	(like HOEPA)	APR > 1-year T-bill + 5% for first mortgage lien, or + 7% for junior mortgage lien.	APR > 1-year T-bill + 5% for first mortgage lien, or + 7% for junior mortgage lien.	APR > T-bill + 8% for first mortgage lien, or + 9% for junior mortgage lien.
Points and Fees Trigger (HOEPA = points & fees > greater of 8% of total loan amount or \$480 (for 2002))	(like HOEPA)			P&f > 3% (or 4% if purchase \$ loan guaranteed by FHA/VA) of total loan amount for loans => \$20,000, or the lesser of \$800 or 5% of total loan amount for loans < \$20,000.	P&f > 6% of total loan amount	P&f > 3% (or 4% if purchase \$ loan guaranteed by FHA/VA) of total loan amount for loans => \$20,000, or the lesser of \$800 or 5% of total loan amount for loans < \$20,000. Definition of p&f includes,		P&f > 5% of total loan amount for loans => \$20,000, or the lesser of \$1,000 or 8% of total loan amount for loans < \$20,000. Definition of p&f includes, among others: all compensation paid directly to	(like HOEPA)	P&f > 3% of total loan amount for loans => \$30,000, or the lesser of \$900 or 6% of total loan amount for loans < \$30,000. Definition of p&f includes, among others: all compensation paid directly to	P&f > 5% of total loan amount if total loan => \$20,000, or the lesser of 8% of total loan amount or \$1,000 if total loan amount < \$20,000.	P&f > 5% of total loan amount if total loan => \$20,000, or the lesser of 8% of total loan amount or \$1,000 if total loan amount < \$20,000.	P&f > 5% (or 6% if purchase \$ guaranteed by FHA/VA) of total loan amount if total loan => \$20,000, or the lesser of 6% of total loan amount or \$800 if total loan amount < \$20,000.	P&f > 5% (or 6% if purchase \$ guaranteed by FHA/VA) of total loan amount if total loan => \$20,000, or the lesser of 6% of total loan amount or \$800 if total loan amount < \$20,000.	P&f > 5% of total loan amount if total loan => \$60,000, or the greater of 6% of total loan amount or \$1,500 if total loan amount < \$60,000.

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						among others: all compensation paid directly to broker, cost of all premiums for credit and other insurance financed by lender, all prepayment fees or penalties included in loan document.		broker, maximum prepayment fees permissible under terms of loan documents.		broker, cost of all premiums for credit and other insurance financed by lender, maximum prepayment penalties, all prepayment penalties charges during refinancing by same lender (and for open-ended loans: total fees charged plus maximum additional fees permitted).			\$20,000.		
Other Triggers										Loan documents permit lender to charge prepayment fees more than 30 months after closing or which	Loan documents permit lender to charge prepayment fees more than 30 months after closing or which	Loan documents permit lender to charge prepayment fees more than 30 months after closing or which			

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										exceed more than 2% of amount prepaid.	exceed more than 2% of amount prepaid.	exceed more than 2% of amount prepaid.			
Restrictions on Loan Terms															
No Negative Amortization	X			X	X (OK for first mortgage if it is disclosed: also, loans =< 5 years may not have payment schedule with payments that do not fully amortize principal balance as of date of maturity)	X		X	X (expect when borrower’s gross income exceeds 150% of median family income)	X	X	X	X	X	X
No Negative Equity															
No Balloons (defined as a scheduled payment that is more than twice as large as the average of earlier scheduled payments) (seasonal/irregular income adjustments typically OK)	X			X	X (total installment in any year may not exceed amount of one year’s worth of payment on the loan; does not	X		X	X (unless it becomes due not less than 120 months after date of loan; bridge loans are excluded)	X	X	X	X	X	X (OK if balloon payable at least 10 years after origination)

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					apply to bridge loans)										
No Call Provision (Debt Acceleration; Due-On-Demand Clause) (except when repayment accelerated by default)	X			X	X (or OK is repayment accelerated due to fraud or material misrepresentation)	X		X (or OK if repayment accelerated pursuant to due-on sale provision, or other provision in loan documents unrelated to payment schedule)	X (or OK is repayment accelerated due to fraud or material misrepresentation or action or inaction by borrower adversely affecting lender’s security for loan)	X (any home loan) (acceleration OK if due to borrower’s failure to abide by the material terms of the loan)	X (any home loan) (acceleration OK if due to borrower’s failure to abide by the material terms of the loan)	X (any home loan) (acceleration OK if due to borrower’s failure to abide by the material terms of the loan)	X	X	X (acceleration OK if due to borrower’s failure to abide by the material terms of the loan)
No Advance Payments (if more than 2 period payments are consolidated)	X			X	X	X		X	X	X	X	X	X	X	X
No Modification or Deferral Fees	X			X		X		X		X	X	X	X (OK if after modification loan is no longer HCL where APR has been decreased by at least 2%)	X (OK if after modification loan is no longer HCL where APR has been decreased by at least 2%)	X (OK if after modification loan is no longer HCL where APR has been decreased by at least 2%)
No (or Very Limited) Prepayment Fees or Penalties	X (use CA statute model – no fees except during			X	X (no pp after first 36 months, unless:	X			X (permitted only during first 60 months;				X	X	

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	1 st 60 mo. & charge not > 6 mo. advance interest on amount prepaid in excess of 20% of original balance)				borrower is offered choice of product without pp; terms of pp are disclosed to borrower in writing; pp may not exceed payment of 6 months' advance interest on amount prepaid in any 12-month period in excess of 20% of original principal amount; no pp is HCL accelerated due to default)				lender must make available to borrower also loan product without pp; no pp penalty on refinancing of HCL with another HCL by same lender)						
No Increased Interest Rate After Default	X			X	X	X		X	X	X	X	X	X	X	X
No Mandatory Arbitration Limiting Judicial Relief	X (clause must require proceeding to be in property's federal			X		X				X	X (only "oppressive, unfair, unconscionable" mandatory	X	X	X	X

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	judicial district, or as agreed by parties; lend to pay 50% of filing fees over \$150, up to max. of \$250; & comply with rules of nationally recognized arbitration organization										arbitration clause is prohibited)				
No Bad Faith Avoidance of Restrictions as by Structuring as Open-End Credit Plan, Dividing Transaction into Separate Parts, or Any Other Subterfuge				X	X	X		X		X	X	X	X	X	X
No Enforcement if HCL Contract Leaves Blanks to be Filled In				X	X										
No Waiver of a Violation of Predatory Lending Bill															
Adjustable Rate Mortgages Must Be Tied to Nationally Recognized Lending Rate															
Borrower Cannot Be Required to Provide Property Insurance on Improvements If Insurance Exceeds Their															

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Reasonable Replacement Value															
Limitation on Sales & Marketing															
No Lending Without Prior Credit Counseling	X (lender must give strong cautionary notice, saying should consider counseling, & give state-approved list of counselors)			X (lender must receive a certification that borrower received counseling)	X (special disclosure notice must be provided; lender should establish “best lending practices plan”)	X (lender must receive a certification that borrower received counseling)		X (lender must receive a certification that borrower received counseling)	X (special disclosure (like in Regulation Z) notice must be provided)	X (lender must receive a certification that borrower received counseling)	X (lender must receive a certification that borrower received counseling; also, special cautionary notice must be given)	X (lender must receive a certification that borrower received counseling)	X (lender must receive a certification that borrower received counseling)	X (lender must receive a certification that borrower received counseling)	X (special cautionary notice must be given)
No Lending Without Consumer’s Own Attorney															
No Loan “Flipping”				X				X (any consumer home loan)	X (only prohibits refinancing of zero- or low-interest loans made by gov’n’t or NGO with HCL within 10 years unless current holder consents in writing)	X (any home loan) “Flipping” is presumed if: (1) refinancing in which the primary tangible benefit is a lower interest rate and it will take more than 4 years to recoup expenses;	X (any home loan) “Flipping” is presumed if: (1) refinancing in which the primary tangible benefit is a lower interest rate and it will take more than 4 years to recoup expenses;	X (any home loan) “Flipping” is presumed if: (1) refinancing in which the primary tangible benefit is a lower interest rate and it will take more than 4 years to recoup expenses;	X (“Flipping” is defined as: more than 75% of prior debt refinanced bears lower IR; it will take more than 5 years to recoup transaction costs; refinancing)	X (“Flipping” is defined as: more than 75% of prior debt refinanced bears lower IR; it will take more than 5 years to recoup transaction costs; refinancing of special mortgages)	X (no refinancing of special mortgages)

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										and (2) refinancing of a special mortgage originated, subsidized, or guaranteed by state, tribal, or local gov'n't or NGO.	and (2) refinancing of a special mortgage originated, subsidized, or guaranteed by state, tribal, or local gov'n't or NGO.	and (2) refinancing of a special mortgage originated, subsidized, or guaranteed by state, tribal, or local gov'n't or NGO.	of special mortgages)		
No Refinancing if No Reasonable, Tangible Net Benefit to Obligor					X	X				X (this is called “loan flipping”)	X (this is called “loan flipping”)	X (this is called “loan flipping”)			X (if HCL is refinanced by the same Lender or Affiliate within 5 years of origination, unless Lender receives documentation that borrower received counseling on advantages and disadvantages)
No Steering					X										
No Lending Without Due Regard for Repayment Ability (HOEPA applies only in “pattern & practice” cases)	X (handled by limiting financing of points/fees on refinancing)			X (presumption borrower can repay if his total monthly	X (presumption borrower can repay if his total monthly	X (presumption borrower can repay if his total monthly		X (presumption borrower can repay if his total monthly	X (presumption borrower can repay if his total monthly	X (presumption that loan was made with due regard	X (presumption borrower can repay if his total monthly	X (presumption borrower can repay if his total monthly	X (presumption on borrower can repay if	X (presumption borrower can repay if his total monthly	X (presumption borrower can repay if his total monthly

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	within 12 mo.)			debts do not exceed 50% of his monthly gross income; no presumption of inability to repay solely because monthly debts > 50% of his monthly gross income)	debts do not exceed 50% of his monthly gross income; no presumption of inability to repay solely because monthly debts > 50% of his monthly gross income; lender may make loan based on stated income, but may not knowingly or willfully originate stated income loan to evade this provision)	debts do not exceed 50% of his monthly gross income; no presumption of inability to repay solely because monthly debts > 50% of his monthly gross income)		debts do not exceed 50% of his monthly gross income; no presumption of inability to repay solely because monthly debts > 50% of his monthly gross income)	debts do not exceed 50% of his monthly gross income; no presumption of inability to repay solely because monthly debts > 50% of his monthly gross income) (does not apply to borrowers whose income is greater than 120% of median family income)	for repayment ability if creditor follows debt-to-income ratio and residual income guidelines)	debts do not exceed 50% of his monthly gross income)	debts do not exceed 50% of his monthly gross income; presumption that loan was made with due regard for repayment ability if creditor follows debt-to-income ratio and residual income guidelines)	his total monthly debts do not exceed 50% of his monthly gross income, and lender followed residual income guidelines; no refinancing of unsecured debt into unfavorable home loan made without regard for repayment ability)	debts do not exceed 50% of his monthly gross income, and lender followed residual income guidelines; no refinancing of unsecured debt into unfavorable home loan made without regard for repayment ability)	debts do not exceed 50% of his monthly gross income, and lender followed residual income guidelines)
No Recommending or Encouraging Default on Existing Loan				X	X	X		X (in connection with closing of consumer home loan that refinances		X (any home loan)	X (any home loan)	X (any home loan)	X	X	X

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								existing loan)							
No Compensating, Coercing or Intimidating Appraiser to Influence Judgment on Property Value	X (Presumption can repay if monthly payments do not exceed 55% of gross monthly income; no presumption of inability solely by exceeding 55%)			X	X										
No Making or Causing to Make Any False, Deceptive or Misleading Statement or Representation				X	X (no loan to mentally incapacitated person; no delay of closing solely to increase interest rate or other charges)										
No Lending if loan + other liens exceed 80% of Property Value															
No Lending Without Borrower Being Able To Seek Independent Review of the Loan Terms															
No “Packing” – Selling Unrelated Products in															

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Conjunction with HCL Without Borrower’s Informed Consent															
Lender Can Charge or Receive Money, Thing of Value, or Other Consideration Only if Pledged as Security or Collateral								X (applies to any loan <\$300,000)							
Point & Fee & Financing Limitations															
No Financing of Points & Fees or Other Charges Payable to 3 rd Parties or of Prepayment Fees or Penalties					X	X (and no financing of pp if refinancing by lender or his affiliate)		X		X	X (creditor may not directly or indirectly finance p&f in excess of 2% of total loan amount)		X	X	X (borrower may not be required to directly or indirectly finance p&f if they exceed 5% of total loan amount (or maximum line of credit on open-end loans))
No Points & Fees if Proceeds of HCL Are Used to Refinance Lender’s or Affiliate’s HCL					X (lender may not finance pp through new loan originated by same lender)	X		X	X		X	X	X	X	X (prohibited if last financing was within 2 years; existing HCL does not have to be Lender’s or Affiliate’s; if existing HCL is Lender’s or Affiliate’s,

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															lender may not finance pp in refinancing transaction)
No Financing of Credit Life, Disability, Unemployment, or Any Other Life or Health Insurance Premiums (except monthly premium)				X	X	X		X (any consumer home loan)	X (unless: borrower is offered insurance on monthly premium (applies only during period of 18 months after enactment of this Act and additional 6 months) and special notice is given)	X (any home loan) (and no financing of payments for debt cancellation or suspension agreements)	X (any home loan) (and no financing of payments for debt cancellation or suspension agreements)	X (any home loan) (and no financing of payments for debt cancellation or suspension agreements)	X (and no financing of payments for debt cancellation or suspension agreements)	X (and no financing of payments for debt cancellation or suspension agreements)	X (and no financing of payments for debt cancellation or suspension agreements)
Limit Broker Fees and/or Total Charges	X												X (no kickbacks to brokers)	X (no kickbacks to brokers)	X (no kickbacks to brokers in violation of Section 2607 of Real Estate Settlement Procedures Act)
No Charging Fee Where Product or Service Not Actually Provided & No Misrepresenting Amount Charged By or Paid to 3 rd Party for Product or	(Gives 30 day right to cancel with full refund and later right to cancel with			X				X (explicitly permits charges for bona fide loan-related goods							

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Service	refund computed so as to at least = actuarial method; also, can not sell without separate notice it's not required purchase and right to cancel)							provided by 3 rd parties)							
No Fees & Points for Interest Rate Reduction Not Reasonably Consistent with Industry “Customs & Practices” or Otherwise Made in Bad Faith or Unconscionable															
No Late Fees for Late Payments										X (any home loan) (late fee OK if not > 4% of the total amount past due; it may only be assessed for a payment past due 15 days or more; it may not be charged more than once; no late	X (any home loan) (late fee OK if not > 5% of the total amount past due; it may only be assessed for a payment past due 15 days or more; it may not be charged more than once; no late	X (any home loan) (late fee OK if not > 4% of the total amount past due; it may only be assessed for a payment past due 15 days or more; it may not be charged more than once; no late			

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										fee without notification within 45 days of the due date)	fee without notification within 45 days of the due date)	fee without notification within 45 days of the due date)			
No Fee For Balance										X (any home loan)	X (any home loan)	X (any home loan)			
Additional Disclosures															
Exact Monthly Payments: Mortgage Insurance, Real Estate Taxes, Hazard Insurance, Principal/Interest/Mortgage Insurance.															
Debt Consolidation Loans - Notice At or Prior to Application that Aggregate Amount & Number of Payments May Increase															
Notice at Application that Loan Not Necessarily Least Expensive & Should Shop Around															
Translate Certain Loan Documents into Language Other Than English (if another language used during discussions)				X											
Notice At or Before Application Whether Loan Will Be Sold & If So, To Whom (or Can Not Sell Loan for 180 Days)															
Additional Notice When Foreclosing														X (specific notice)	

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														required to be served together with complaint and summons)	
Notice That In Business of Arranging Loans for Fees, What Fee Will Be Charged and How Calculated + Borrower Should Receive His Credit Report					X (lender must provide documentation demonstrating whether loan is HCL, full disclosure of principal balance, APR, points and fees)										
Other Provisions															
Home Improvement Contract Proceeds Must Be Payable Jointly to Borrower & Contractor, or at Borrower’s Option to agreed upon 3 rd Party Escrow Agent				X	X	X		X	X	X	X	X	X		X
Various Other Restrictions on Home Improvement Lending / Contracting					X (completion certificate is required)									X (cannot engage in any activity in connection with financing of home improvement)	

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														contracts without full disclosure and without obtaining written agreement from all parties to transaction)	
Required Reporting to Credit Bureaus									X (both favorable and unfavorable credit history)						X (both favorable and unfavorable credit history)
Additional Governmental Reporting Requirements	X (new Homeowners' Equity Recovery Act, HERA, provisions that give both strong notice & new borrower's right to sell during 90-day period and recovery remaining equity after paying debt.)			X (lenders who are exempt from reporting requirements of 12 U.S.C. 2803 are required to report same info as required in 12 U.S.C. 2803(b))											
Broker's Duties															
Lender May Not Make Investments Backed By	X			X		X									

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Loans That Violate Statute															
Enforcement & Liability															
Violations Deemed Unfair & Deceptive Acts & Practices	X			X		X (deemed unlawful merchandising practice)									
Subsequent Purchasers or Assignees Liable on All Claims (e.g. Secondary Market)					X (if reckless disregard for violation of this Act, broker and lender are jointly and severally liable)					X (any home loan)	X (any home loan)	X (any home loan)	X	X	X
Special Affirmative Pleading Requirements for Lenders & Various Affirmative Defenses for Borrowers															
Any Payments Collected in Excess of the Statutorily Permitted Amounts Must Be Refunded to Borrower															
Substantial Monetary Penalties				X (actual damages, (including consequential and incidental), statutory damages (finance charge +	X (first violation: fine = total amount originated or up to \$1 M; second violation: fine = 2x total amount			X (any consumer loan) (reasonable attorney fees may be awarded in some instances)	X (civil penalty of up to \$2,000) for each offense	X (statutory damages (finance change + 10%), punitive damages (if malicious or reckless violation),	X (statutory damages (finance change + 10%), punitive damages (if malicious or reckless violation),	X (statutory damages (finance change + 10%), punitive damages (if malicious or reckless violation),			

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				10%), punitive damages, costs and attorney fees)	originated or up to \$5 M or imprisonment for up to 6 months or both; third violation: fine = 3x total amount originated or up to \$10 M or imprisonment up to 1 year or both)					costs and reasonable attorney fees) (penalty for knowing violation: fine up to \$1,000 or imprisonment not exceeding 6 months)	costs and reasonable attorney fees) (penalty for knowing violation: fine up to \$1,000 or imprisonment not exceeding 6 months; civil penalty of up to \$10,000 for each offense)	costs and reasonable attorney fees) (penalty for knowing violation: fine up to \$1,000 or imprisonment not exceeding 6 months)			
Corrections and Unintentional Violations				X (no violation if appropriate restitution within 30 days of loan closing and prior to institution of any action; in case of bona fide error, appropriate restitution must be made within 60 days after discovery of compliance	X (in case of bona fide error, appropriate restitution must be made within 45 days after receipt of complaint or discover of error)	X (no violation if appropriate restitution within 30 days of loan closing and prior to institution of any action; in case of bona fide error, appropriate restitution must be made within 60 days after discovery of		X (no violation if appropriate restitution within 30 days of loan closing and prior to institution of any action; in case of bona fide error, appropriate restitution must be made within 60 days after discovery of		X (no violation if appropriate restitution within 30 days of loan closing and prior to institution of any action; in case of bona fide error, appropriate restitution must be made within 60 days after discovery of	X (no violation if appropriate restitution within 45 days of loan closing and prior to institution of any action; in case of bona fide error, appropriate restitution must be made within 90 days after discovery of	X (no violation if appropriate restitution within 30 days of loan closing and prior to institution of any action; in case of bona fide error, appropriate restitution must be made within 60 days after discovery of	X (no violation if appropriate restitution within 30 days of loan closing and prior to institution of any action; in case of bona fide error, appropriate restitution must be made	X (no violation if appropriate restitution within 30 days of loan closing and prior to institution of any action; in case of bona fide error, appropriate restitution must be made within 60 days after discovery of	X (no violation if appropriate restitution within 60 days of loan closing and prior to institution of any action)

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				failure and prior to action)		compliance failure and prior to action)		compliance failure and prior to action)		compliance failure and prior to action)	compliance failure and prior to action)	compliance failure and prior to action)	within 60 days after discovery of compliance failure and prior to action)	compliance failure and prior to action)	
Additional Limitations on Foreclosing										X (creditor must use judicial foreclosure procedures of the state where property securing loan is located; borrower may assert nonexistence of default, or any other claim or defense based on violations of this Act)	X (creditor must use judicial foreclosure procedures of the state where property securing loan is located; borrower may assert nonexistence of default, or any other claim or defense based on violations of this Act)	X (creditor must use judicial foreclosure procedures of the state where property securing loan is located; borrower may assert nonexistence of default, or any other claim or defense based on violations of this Act)			
If Violation Found, Foreclosure Prohibited, Except by Judicial Order															

ⁱ Note that this chart is designed to give the reader a general comparison of the major concepts in key bills. Not every concept in every bill is highlighted, and the descriptions contained herein may be simplified and not necessarily complete or fully precise. The reader should use this document only as a rough guide and should carefully read the details of each bill.