

BUTERA & ANDREWS

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2002 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 5

01/10/03 version

CON7CEPT¹	NHEMA Staff Draft Concepts	New York SB 7811	New York AB 11856	New York SB 7839	New York SB 7840	New York -NYC Local Law Int. No. 67	Ohio – Cleveland Ordinance 372-02	Ohio – Cleveland Ordinance 737-02	Ohio – Toledo Ordinance O-291-02	Oklahoma HB 2144	Rhode Island SB 2205	Rhode Island HB 6837	Rhode Island HB 7700	Rhode Island HB 8029
Date of Introduction (i), Current Status, or Date of Enactment (e)		06/23/02 (i) pending	06/21/02 (i) 10/03/02 (signed by Governor)	07/02/02 (i) dead	07/02/02 (i) 07/02/02 (passed Senate)	03/13/02 (i) 11/20/02 (Mayor’s veto overridden by Council)	dead due to passage of replacement legislation	04/22/02 (i) 4/25/02 (e) but TRO due to pending litigation	04/23/02 (i) 11/11/02 (e)	02/04/02 (i) dead	01/23/02 (i) 06/14/02 (e)	01/22/02 (i) dead	02/12/02 (i) defeated by HOUSE	04/10/02 (i) dead
Summary of Bills Only Related to Predatory Lending		Provides for additional licensing, bonding, and deposit requirements for mortgage bankers and brokers, further establishes crime of mortgage fraud, regulated predatory lending (see below).		Provides for additional licensing and registration requirements; regulates predatory lending (see below).	Provides for additional licensing and registration requirements; regulates predatory lending (see below).	Prohibits NYC from doing business with institutions engaged in predatory lending (as defined below).	Prohibits issuing predatory loans.				Requires lending institutions to disclose all charges and assessments that may be incurred by borrowers through prepayment of a mortgage.	Requires lending institutions to provide to the obligor within 2 business days after receipt of a written request the exact payoff to the lender on the loan.	Requires lending institutions to disclose all charges and assessments that may be incurred by borrowers through prepayment of a mortgage.	
Types of Loans Covered by Act		Applies to loans, including open-end credit plans, other than reverse mortgages and loans for \$300,000 or less guaranteed by NYMA or	Applies to loans, including open-end credit plans, other than reverse mortgages and loans for \$300,000.	Applies to loans, including open-end credit plans, other than reverse mortgages and loans for \$300,000.	Applies to loans, including open-end credit plans, other than reverse mortgages and loans for \$300,000.	Applies to loans secured by residential real property in NYC.	Applies to loans secured by residential real property in Cleveland (excludes loans primarily for business purpose).	Applies to loans secured by residential real property in Cleveland (excludes loans primarily for business purpose).		Applies to loans, other than open-end credit plans or reverse mortgages; loans are equal to or less than conforming loan size limit for single-family dwelling as				Applies to loans, including open-end credit plans, other than reverse mortgages.

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		FHA/VA.								established by Fannie Mae.				
Triggers														
Annual Percentage Rate Trigger (HOEPA = APR > T-bill + 8% for first mortgage lien, or + 10% for junior lien mortgage)	(like HOEPA)	APR > T-bill + 8% for first mortgage lien, or + 9% for junior mortgage lien.	APR > T-bill + 8% for first mortgage lien, or + 9% for junior mortgage lien.	APR > T-bill + 8% for first mortgage lien, or + 9% for junior mortgage lien.	APR > T-bill + 8% for first mortgage lien, or + 9% for junior mortgage lien.	APR > T-bill + 5% for first mortgage lien, or + 7% for junior mortgage lien.	APR > T-bill + 5% (or between 4.5 and 6.5% for threshold loans) for first mortgage lien, or + 8% (or between 6.5 and 8% for threshold loans) for junior mortgage lien.	APR > T-bill + 4.5 up to 8% for first lien mortgage, or +6.5 up to 10% for junior lien mortgage.		APR > 1-year T-bill + 8% .				APR > 5-year T-bill + 6% for first mortgage lien, or + 8% 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 > 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.	P&f > 5% (or 6% if purchase \$ guaranteed by FHA/VA) of total loan amount if total loan => \$50,000, or the greater of 6% of total loan amount or \$1,500 if total loan amount < \$50,000.	P&f > 5% (or 6% if purchase \$ guaranteed by FHA/VA) of total loan amount if total loan => \$50,000, or the greater of 6% of total loan amount or \$1,500 if total loan amount < \$50,000.	P&f > 5% (or 6% if purchase \$ guaranteed by FHA/VA) of total loan amount if total loan => \$50,000, or the greater of 6% of total loan amount or \$1,500 if total loan amount < \$50,000.	P&f > 5% (or 6% if purchase \$ guaranteed by FHA/VA) of total loan amount for loans => \$20,000, or the lesser of \$800 or 6% of total loan amount for loans < \$20,000 (this also makes HCL predatory loan). Definition of p&f includes,	P&f > 4% of total loan amount for loans => \$16,000 or \$800 for loans < \$16,000. Definition of p&f includes, among others: all compensation paid directly to broker, cost of all premiums for credit and other insurance financed by			P&f > 3% (or 4% if purchase \$ 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, among others: all compensation				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 broker, cost of all

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						among others: all compensation paid directly to broker, cost of all premiums for credit and other insurance financed by lender, maximum prepayment penalties).	lender.			paid directly to broker, cost of all premiums for credit and other insurance financed by lender, all prepayment fees and penalties included in loan documents.				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).
Other Triggers														
Restrictions on Loan Terms														
No Negative Amortization	X	X	X	X	X		X (makes HCL predatory loan)	X (makes HCL predatory loan)		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)	X	X (OK if balloon payable at least 10 years after origination)	X (OK if balloon payable at least 15 years after origination)	X (OK if balloon payable at least 15 years after origination)	X (OK if balloon payable at least 15 years after origination)		X (makes HCL predatory loan)	X (makes HCL predatory loan) (does not apply to bridge loan connected	X (only disclosure required)	X				X

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adjustments typically OK)								with acquisition or construction of principal dwelling)						
No Call Provision (Debt Acceleration; Due-On-Demand Clause) (except when repayment accelerated by default)	X	X (acceleration OK if due to borrower’s failure to abide by the material terms of the loan)	X (acceleration OK if due to borrower’s failure to abide by the material terms of the loan)	X (acceleration OK if due to borrower’s failure to abide by the material terms of the loan)	X (acceleration OK if due to borrower’s failure to abide by the material terms of the loan)			X (makes HCL predatory loan)		X (and except when repayment accelerated pursuant to a due-on-sale provision, or some other provision unrelated to the payment schedule)				X (any home loan) (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 (makes HCL predatory loan)	X (makes HCL predatory loan)	X (makes HCL predatory loan)		X				X
No Modification or Deferral Fees	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%)	X (OK if after modification loan is no longer HCL where APR has been decreased by at least 2%)		X (makes HCL predatory loan)			X				X
No (or Very Limited) Prepayment Fees or Penalties	X (use CA statute model – no fees except during 1 st 60 mo. & charge not > 6 mo. advance						X (makes HCL predatory loan)	X (makes HCL predatory loan)	X (only disclosure required)	X (any home loan)	X (any mortgage on real estate located in Rhode Island) (pp may not exceed 2% of		X (any mortgage on real estate located in Rhode Island) (pp may not exceed 2% of	X (no pp after 2 nd year; during 1 st year: no pp if > 2% of the loan amount prepaid;

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	interest on amount prepaid in excess of 20% of original balance)										balance due at date of pay-off)		balance due at date of pay-off)	during 2 nd year: no pp >1% of the total loan amount)
No Increased Interest Rate After Default	X	X	X	X	X		X (makes HCL predatory loan)	X (makes HCL predatory loan)						X
No Mandatory Arbitration Limiting Judicial Relief	X (clause must require proceeding to be in property’s federal 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	X	X	X	X		X (makes HCL predatory loan)	X (makes HCL predatory loan)	X (only disclosure required)	X				X
No Bad Faith Avoidance of Restrictions as by Structuring as Open-End Credit Plan, Dividing Transaction into Separate		X	X	X	X					X				X

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Parts, or Any Other Subterfuge														
No Enforcement if HCL Contract Leaves Blanks to be Filled In									X (no requesting borrower to sign inaccurate or incomplete loan document)					
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 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 (special cautionary notice must be given)	X (special cautionary notice must be given within 3 days of determining that this L is HCL, but no later than at least 10 days before closing)	X (special cautionary notice must be given within 3 days of determining that this L is HCL, but no later than at least 10 days before closing)	X (special cautionary notice must be given within 3 days of determining that this L is HCL, but no later than at least 10 days before closing)	X makes HCL predatory loan if lender does not receive a certification that borrower received counseling)	X (generally prohibited for HCL and threshold loans; also makes HCL predatory loan)	X (makes HCL predatory loan) (notice from counselor that borrower received counseling; also lending without counseling is prohibited for loans where		X (lender must receive a certification that borrower received counseling)				X (lender must receive a certification that borrower received counseling)

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								APR > T-bill + 8% for first lien mortgage, or + 10% for junior lien mortgage, or p&f > greater of 8% of total loan amount of \$400 (adjusted annually)						
No Lending Without Consumer’s Own Attorney														
No Loan “Flipping”		X (no refinancing of special mortgages)	X (no refinancing of special mortgages, unless Lender receives documentation that borrower received counseling on advantages and disadvantages)	X (no refinancing of special mortgages, unless Lender receives documentation that borrower received counseling on advantages and disadvantages)	X (no refinancing of special mortgages, unless Lender receives documentation that borrower received counseling on advantages and disadvantages)		X (makes HCL predatory loan) “Flipping” is defined as: more than 50% of prior debt refinanced bears lower IR; it will take more than 5 years to recoup transaction costs; refinancing of special mortgages.	X (makes HCL predatory loan) “Flipping” is defined as: more than 50% of prior debt refinanced bears lower IR; it will take more than 5 years to recoup transaction costs; refinancing of special mortgages.		X (any home loan)				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; and (2) refinancing of a special mortgage originated, subsidized, or guaranteed by

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														state, tribal, or local gov’t or NGO.
No Refinancing if No Reasonable, Tangible Net Benefit to Obligor		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)	X (this is called “loan flipping”)	X (this is called “loan flipping”)	X (this is called “loan flipping”)	X (makes HCL predatory loan)								
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 within 12 mo.)	X (presumption borrower can repay if his total monthly debts do not exceed 50% of his monthly gross income, and lender followed residual income guidelines)	X (presumption borrower can repay if his total monthly debts do not exceed 50% of his monthly gross income, and lender followed residual income guidelines)	X (presumption borrower can repay if his total monthly debts do not exceed 50% of his monthly gross income, and lender followed residual income guidelines)	X (presumption borrower can repay if his total monthly debts do not exceed 50% of his monthly gross income, and lender followed residual income guidelines)	X (makes HCL predatory loan; presumption borrower can repay if his total monthly debts do not exceed 50% of his monthly gross income)	X (generally prohibited for HCL and threshold loans; also makes HCL predatory loan) (presumption borrower can repay if his total monthly debts do not exceed 50% of his monthly gross income)	X (makes HCL predatory loan) (presumption borrower can repay if his total monthly debts do not exceed 50% of his monthly gross income and borrower has sufficient residual income to pay		X (presumption borrower can repay if his total monthly debts do not exceed 50% of his monthly gross income; no presumption of inability to repay solely because monthly debts > 50% of his				X (presumption that loan was made with due regard for repayment ability if creditor follows debt-to-income ratio and residual income guidelines)

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							and borrower has sufficient residual income to pay essential monthly expenses after paying his monthly debts)	essential monthly expenses after paying his monthly debts)		monthly gross income)				
No Recommending or Encouraging Default on Existing Loan		X	X	X	X					X (any home loan)				X (any home 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 (no making HL based on appraisal which unreasonably overstates value of property)					
No Making or Causing to Make Any False, Deceptive or Misleading Statement or Representation									X (no preparing HL application which misrepresents income, assets, expenses; no taking advantage of borrower due					

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									to his infirmities, etc.; in land installment contract sale: no requiring borrower to sign quitclaim deed)					
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 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														
Point & Fee & Financing Limitations														
No Financing of Points & Fees or Other Charges Payable to 3 rd Parties or of Prepayment Fees or Penalties		X (borrower may not be required to directly or indirectly finance p&f if they exceed	X (lender may not finance p&f in the amount that exceeds 3% of principal amount of	X (lender may not finance p&f in the amount that exceeds 5% of principal amount of	X (lender may not finance p&f in the amount that exceeds 5% of principal amount of		X (makes HCL predatory loan if financing of p&f in excess of 4% of total loan amount	X (makes HCL predatory loan if financing of p&f in excess of 4% of total loan amount		X (and no financing of pp if refinancing by lender or his affiliate)				X (no financing of more than 3% of loan amount in points or fees)

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		5% of total loan amount (or maximum line of credit on open-end loans)	loan)	loan)	loan)		less amount of such p&f if loan is => \$16,000 or \$800 if loan is < \$16,000.	less amount of such p&f if loan is => \$16,000 or \$800 if loan is < \$16,000.						
No Points & Fees if Proceeds of HCL Are Used to Refinance Lender’s or Affiliate’s HCL		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, lender may not finance pp in refinancing transaction)	X	X (prohibited if last financing was within 2 years)	X (prohibited if last financing was within 2 years)					X				
No Financing of Credit Life, Disability, Unemployment, or Any Other Life or Health Insurance Premiums (except monthly premium)		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)	X (and no financing of payments for debt cancellation or suspension agreements)	X (makes HCL predatory loan)	X (makes HCL predatory loan)	X (makes HCL predatory loan)	X (only disclosure required)	X (any home loan)				X (any home loan) (and no financing of payments for debt cancellation or suspension agreements)
Limit Broker Fees and/or Total Charges	X	X (no kickbacks to brokers in violation of Section 2607 of Real Estate		X (no kickbacks to brokers in violation of Section 2607 of Real Estate	X (no kickbacks to brokers in violation of Section 2607 of Real Estate				X (no kickbacks to broker in exchange for referral or settlement					

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		Settlement Procedures Act)		Settlement Procedures Act)	Settlement Procedures Act)				service business involving mortgage regulated by RESPA)					
No Charging Fee Where Product or Service Not Actually Provided & No Misrepresenting Amount Charged By or Paid to 3 rd Party for Product or Service	(Gives 30 day right to cancel with full refund and later right to cancel with 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)		X											
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

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															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 fee without notification within 45 days of the due date)
No Fee For Balance															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															

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Other Than English (if another language used during discussions)														
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 (notice of the right to cure the default)
Notice That In Business of Arranging Loans for Fees, What Fee Will Be Charged and How Calculated + Borrower Should Receive His Credit Report														
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 (makes HCL predatory loan)	X (generally prohibited for HCL and threshold loans; also makes HCL predatory loan)	X (makes HCL predatory loan; also, direct payment from lender to contracted is prohibited for loans where APR > T-bill + 4.5% for first mortgage lien, or + 6.5% for junior mortgage lien)	X	X				X
Various Other Restrictions on Home Improvement			X (cannot engage in any	X (cannot engage in any			X (borrower must receive	X (borrower must receive						

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Lending / Contracting			activity in connection with financing of home improvement contracts without full disclosure and without obtaining written agreement from all parties to transaction)	activity in connection with financing of home improvement contracts without full disclosure and without obtaining written agreement from all parties to transaction)			special “notice to customers of home improvement contractors”)	special “notice to customers of home improvement contractors”)						
Required Reporting to Credit Bureaus		X (both favorable and unfavorable credit history)	X (both favorable and unfavorable credit history)	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.)													

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Broker’s Duties														
Lender May Not Make Investments Backed By Loans That Violate Statute	X													
Enforcement & Liability														
Violations Deemed Unfair & Deceptive Acts & Practices	X								X (“minor misdemeanor”)					
Subsequent Purchasers or Assignees Liable on All Claims (e.g. Secondary Market)		X		X	X									X (any home loan)
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 (possibly \$5,000 per violation or 2x p&f and closing costs, whichever is greater)	X (possibly \$5,000 per violation or 2x p&f and closing costs, whichever is greater)	X (possibly \$5,000 per violation or 2x p&f and closing costs, whichever is greater)									X (statutory damages (finance change + 10%), punitive damages (if malicious or reckless violation), costs and reasonable attorney fees)

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														(each violation punishable by fine up to \$500 or imprisonment not exceeding 1 year, or both)
Corrections and Unintentional Violations		X (no violation if appropriate restitution within 60 days of loan closing and prior to institution of any action)	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 failure and prior to action)	X (no violation if appropriate restitution within 60 days of loan closing and prior to institution of any action)	X (no violation if appropriate restitution within 60 days of loan closing and prior to institution of any action)		X (no violation of law prohibiting issuance of predatory loans 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 failure and prior to action)	X (no violation of law prohibiting issuance of predatory loans if appropriate restitution, in case of bona fide error, is made within 60 days after discovery of compliance failure and prior to action)		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 failure and prior to action)				X (no violation of law prohibiting issuance of predatory loans if appropriate restitution within 30 days of loan closing and prior to notice of compliance failure; in case of bona fide error, appropriate restitution must be made within 60 days of loan closing and prior to notice of compliance failure)
Additional Limitations on														X (creditor

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Foreclosing														must use juridical 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														

¹ 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.