

NCRC Model Anti-Predatory Lending Legislation

For use and reference at the federal, state and local level.

Section 1. Title.

This Chapter shall be known as the Homeowner Protections from Predatory Lending Act of 2002.

Section 2. Legislative findings.

The Legislature finds and declares that unscrupulous mortgage lenders often engage in “predatory lending,” practices in which lenders make unsuitable loans designed to exploit vulnerable unsophisticated borrowers. These “predatory loans” are a subset of sub-prime lending and loans and have one or more of the following features:

- (a) Charges more in interest and fees than is required to cover the added risk of lending to borrowers with credit imperfections;
- (b) Contains abusive terms and conditions that trap borrowers and lead to increased indebtedness;
- (c) Does not take into account that borrowers ability to repay the loan; or
- (d) Violates fair lending laws by targeting women, senior citizens, minorities and communities of color.

Section 3. Definitions

- (1) “Affiliate” means any company that controls, is controlled by, or is under common control with another company, pursuant to the federal “Bank Holding Company Act of 1956” (12 U.S.C. §1841 et seq.).
- (2) “Annual percentage rate” means the annual percentage rate for a loan calculated pursuant to the federal “Truth in Lending Act” (15 U.S.C. §1601 et seq.), and the regulations promulgated by the Federal Reserve Board.
- (3) “Bona fide loan discount points” means loan discount points knowingly paid by a borrower for the purpose of reducing, and which result in a reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry practices for mortgage market transactions.

- (4) “Borrower” means any natural person or persons obligated to repay a loan, including without limitation, a co-borrower, cosigner, or guarantor.
- (5) “Credit insurance” means any credit life, credit disability, credit unemployment, accident, health, or loss-of-income insurance or any other line or subline of insurance which may become accepted as credit insurance by the insurance and lending industries or any debt cancellation or suspension agreement or contract (whether or not the debt cancellation or suspension agreement or contract coverage is insurance under applicable law) or any similar product.
- (6) “Creditor” means a person who extends consumer credit that is subject to a finance charge or that is payable by written agreement in more than four installments and to whom the obligation is payable.
- (7) “High cost home loan” means any loan or extension of credit, including an open-end line of credit but excluding a reverse mortgage transaction, as defined in 12 C.F.R. §226.33, as from time to time amended:
 - (a) The principal amount of the loan does not exceed the lesser of the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association, or \$300,000;
 - (b) The borrower is a natural person;
 - (c) The debt is incurred by the borrower primarily for personal, family, or household purposes;
 - (d) The loan is secured by a security interest or mortgage on real estate upon which there is erected or to be erected a one-to-four family dwelling; and
 - (e) The terms of the loan equal or exceed one or more of the “thresholds,” as that term is defined in this Act.
- (8) “Home loan” means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust, or other document representing a security interest or lien upon any interest in one-to-four family residential property or a manufactured home located in (specify state, county, city, etc.), regardless of where made, including the renewal or refinancing of any such loan. Without limiting the generality of the foregoing, the term specifically includes a home equity line of credit, a commercial or small business loan secured by a residential property or manufactured home, or other similar agreement.
- (9) “Junior mortgage” means a home loan secured by a deed of trust or mortgage on real property if the deed of trust or mortgage is junior in priority to another deed of trust or mortgage on the real property.

- (10) “Lender” means any person who makes a home loan or acts as a mortgage broker with respect to a home loan.
- (11) “Loan consummation” means the time that a consumer becomes contractually obligated on a credit transaction.
- (12) “Mortgage broker” means any person who functions as intermediary for a fee between the borrower and the creditor in the making of a home loan.
- (13) “Originate” means to arrange, negotiate, or make a consumer loan.
- (14) “Prepayment penalty” means any charge or penalty for paying all or part of the principal before the date on which the principal is due and includes computing a refund of unearned interest by a method that is less favorable to the borrower than the actuarial method, as defined by Section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. §1615(d), as from time to time amended.
- (15) “Points and fees” means:
 - (a) All items required to be disclosed under 12 C.F.R. §§226.4 14 (a) and 226.4 (b), as amended, except interest or the time-price differential;
 - (b) All charges for items listed under 12 C.F.R. §226.4 (c) (7), as amended, if the creditor receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the creditor, or third party or parties;
 - (c) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a home loan in its own name through an advance of moneys and subsequently assigns the home loan to the person advancing the moneys;
 - (d) The cost of all premiums financed by the creditor, directly or indirectly, for any credit life, credit disability, credit unemployment, credit property, or other credit life or health insurance, or any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract; except that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the creditor;
 - (e) The maximum prepayment fees or penalties that may be charged or collected under the terms of the loan documents;
 - (f) All prepayment fees or penalties that are charged to the borrower if the loan refinances a previous loan made by the same creditor or an affiliate of the creditor;
 - (g) For open-ended loans, the points and fees are calculated by adding the total fees charged at closing plus the maximum additional fees that can be charged pursuant to the loan documents during the term of the loan.
 - (h) The term “points and fees” does not include any of the following:

- i. Taxes, filing fees, recording charges, and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest;
- ii. Charges paid to a person other than the creditor, an affiliate of the creditor, a mortgage broker, or an affiliate of a mortgage broker, as follows: fees for flood certification; fees for pest infestation and flood determinations; appraisal fees, fees for inspections performed prior to loan closing; credit report fees; survey fees; attorney fees if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow fees if not otherwise included under paragraph (a) of this subsection; title insurance premiums; or fire insurance or flood insurance premiums if the conditions in section 226.4 (d) (2) of Title 12 of the Code of Federal Regulations are met.

(16) “Rate” means the interest rate charged on the home loan, based on an annual simple interest yield.

(17) “Threshold” means any one of the followings

(a) The annual percentage rate of the loan equals or exceeds:

- i. By more than 4 percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor, if the home loan is a first mortgage; or
- ii. By more than 5 percentage the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor, if the home loan is a junior mortgage.

(b) The total points and fees equals or exceeds 3 percent of the total loan amount or \$400, whichever amount is greater; provided, the following discount points shall be excluded from the calculation of the total points and fees payable by the borrower:

- i. Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan’s interest rate will be discounted does not exceed by more than one percentage point (1%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;
- ii. Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan’s interest rate will be discounted does not exceed by more than two percentage points (2%) the required net yield for a 90-day standard mandatory delivery

commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

If the terms of the home loan provide for an initial or introductory period during which the annual percentage rate is lower than that which will apply after the end of such initial or introductory period, then the annual percentage rate to be considered for purposes of this definition is the rate which applies after the initial or introductory period. If the terms of the home loan provide for an annual percentage rate that varies in accordance with an index plus a margin, then the annual percentage rate to be considered for purposes of this definition is the rate that is in effect on the date of loan consummation. In the case of a home loan with a regular interest rate that varies in accordance with an index plus a margin, but with an initial or introductory interest rate established in some other manner, the annual percentage rate to be considered is the rate that would have been in effect on the date of loan consummation were the regular rate determined by the index plus the margin to apply, that is, the fully-indexed rate on the date of loan consummation

- (18) “Total loan amount” means the principal of the loan minus those points and fees as defined in subsection (15) of this section that are included in the principal amount of the loan. For open-ended loans, the total loan amount shall be calculated using the total line of credit allowed under the home loan.

Section 4. Limitations on home loans.

A home loans shall be subject to the following limitations:

- (1) **No financing of credit insurance.** No creditor making a home loan may finance, directly or indirectly, the premiums for any credit life, credit disability, credit property, or credit unemployment insurance, or any other life or health insurance premiums, or any payments for any debt cancellation or suspension agreement or contracts. Insurance premiums that are not included in the home loan principal and that are calculated and paid on a monthly basis shall not be considered to have been financed by the creditor for purposes of this subsection.
- (2) **No flipping.** No creditor shall knowingly or intentionally engage in the unfair act or practice of flipping a consumer home loan. For the purposes of this section, “flipping” is the making of a consumer home loan to a borrower which refinances an existing consumer home loan when the new loan does not have a tangible benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower’s circumstances. Home loan refinancings are presumed to be flippings if the primary tangible benefit to the borrower is an interest rate lower than the interest rate on debts satisfied or refinanced in connection with the home loan, and it will take more than four (4) years for the borrower to recoup the costs of the points and fees and other closing costs through savings resulting from the lower interest rate. The provisions of this subsection shall apply regardless of whether the interest rate, points, fees and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds as defined in subsection (17) of section 3 of this Act.

- (3) **No default recommendations.** No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a consumer home loan that refinances all or any portion of that existing loan or debt.
- (4) **No excessive late fees.** A creditor shall not charge a late payment fee except according to the following rules:
 - (a) The late payment fee may not be in excess of four percent (4%) of the amount of the payment past due.
 - (b) The late payment fee may be assessed only for a payment past due for fifteen (15) days or more.
 - (c) The late payment fee may not be charged more than one (1) time with respect to a single late payment. If a late payment charge is deducted from a payment made on the loan, and the deduction causes a subsequent default on a subsequent payment, no late payment charge may be imposed for the default. If a late payment charge has been imposed one (1) time with respect to a particular late payment, a late payment fee may not be imposed with respect to any future payment that would have been timely and sufficient, but for the previous default.
 - (d) A late payment fee may not be charged unless the creditor notifies the borrower within forty-five (45) days following the date the payment was due that a late payment charge has been imposed for a particular late payment. No late payment charge may be collected from any borrower if the borrower informs the creditor that nonpayment of an installment is in dispute and presents proof of payment within forty-five (45) days after receipt of the creditor's notice of the late charge.
 - (e) A creditor shall treat each payment as posted on the same date as it was received by the creditor, servicer, or creditor's agent, or at the address provided to the borrower by the creditor, servicer, or the creditor's agent for making payments.
- (5) **No refinancing of special mortgages.** No creditor may make a home loan if the new loan refinances an existing home loan that is a special mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local government, or nonprofit organization, that either bears nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the mortgage.
- (6) **No call provisions.** A home loan may not contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This subsection does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

- (7) **No fee for balance or payoff.** A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a release upon prepayment. A creditor must provide payoff balance not later than seven (7) business days after the request is received by the creditor.
- (8) **No fee for product where product not provided.** A creditor shall not charge a fee for a product or service where the product or service is not actually provided, or misrepresent the amount charged by or paid to a third party for a product or service.
- (9) **No above market charges for services.** No third party shall charge or receive any unreasonable compensation for loan-related goods, products, and services. For the purpose of this section, “unreasonable compensation” is a price for loan-related goods, services, and products that is 50 percent higher than the average price in a metropolitan area or the non-metropolitan areas of a state. The average price can be determined by obtaining quotes for services from three or more third parties. Loan-related goods, products and services include fees for tax payment services, fees for flood certification, fees for pestinfestation determinations, mortgage brokers’ fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys’ fees, notary fees, escrow charges and insurance premiums, including, for example, fire, title, life, accident and health, disability, unemployment, flood and mortgage insurance.
- (10) **No false statements or representations.** A creditor, appraiser, or real estate agent shall not make or cause to be made, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a home loan including, without limitation, a false, deceptive, or misleading statement or representation regarding the borrower’s ability to qualify for any mortgage product, or regarding the value of the dwelling.

A statement or representation is deceptive or misleading if it has the capacity to deceive or mislead a borrower or potential borrower. The commissioner shall consider the following factors in deciding whether a statement or representation is deceptive or misleading:

- (a) The overall impression that the statement or representation reasonably creates.
- (b) The particular type of audience to which the statement is directed.
- (c) Whether it may be reasonably comprehended by the segment of the public to which the statement is directed.
- (11) **No influencing appraisers.** A creditor shall not directly or indirectly compensate, coerce, or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate covered by a home loan or is being offered as security according to an application for a home loan.
- (12) **No blanks in loan documents.** A home loan document in which blanks are left to be filled in after the contract is signed by the borrower is not enforceable under the law.

- (13) **Required language accommodation.** If the discussions between the creditor and the borrower on a home loan are conducted primarily in a language other than English, the creditor shall, before closing, provide an additional copy of all information required to be disclosed to the borrower under the federal Truth in Lending Act, translated into the language in which the discussions were conducted, or make available an objective third party interpreter who can explain the loan transaction and translate the loan documents and disclosures into the language in which the discussions were conducted.
- (14) **Required disclosure of yield spread premiums.** In the making of a home loan, the amount of yield spread premium and other compensation paid to mortgage brokers shall be disclosed to the borrower no later than 3 days prior to closing the home loan.

Section 5. Limitations on high cost home loans.

A high cost home loans shall be subject to the following limitations:

- (1) **No financing of points and fees.** No creditor making a high cost home loan shall directly or indirectly finance:
 - (a) Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced;
 - (b) Any points and fees; or
 - (c) Any other charges payable to third parties.
- (2) **No benefit from refinancing existing high cost home loan with new high cost home loan.** A creditor may not charge a borrower points, fees, or other charges in connection with a high-cost home loan if the proceeds of the high cost home loan are used to refinance an existing high-cost home loan held by the same creditor or an affiliate of the creditor.
- (3) **Limit on prepayment penalties.**
 - i. A high cost loan shall not include a prepayment fee or penalty after the first 24 months after the date of consummation of the loan.
 - ii. A covered loan may include a prepayment fee or penalty up to the first 24 months after the date of consummation of the loan if:
 - iii. The person who originates the covered loan has also offered the consumer a choice of another product without a prepayment fee or penalty.
 - iv. The person who originates the covered loan has disclosed in writing to the consumer at least three business days prior to loan consummation the terms of the prepayment fee or penalty to the consumer for accepting a covered loan with the prepayment

penalty and the rates, points, and fees that would be available to the consumer for accepting a covered loan without a prepayment penalty.

- v. The person who originates the covered loan has limited the amount of the prepayment fee or penalty to an amount not to exceed the payment of six months' advance interest, at the contract rate of interest then in effect, on the amount prepaid in any 12-month period in excess of **20** percent of the original principal amount.
 - vi. **A** covered loan will not impose the prepayment fee or penalty if the covered loan is accelerated as a result of default.
 - vii. The person who originates the covered loan will not finance a prepayment penalty through a new loan that is originated by the same person.
- (4) **No** balloon payment. No high cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. For a payment schedule that is adjusted to account for the seasonal or irregular income of the consumer, the total installments in any year shall not exceed the amount of one year's worth of payments on the loan. This prohibition does not apply to a bridge loan. For purposes of this paragraph, "bridge loan" means a loan with a maturity of less than 18 months that only requires payments of interest until the time when the entire unpaid balance is due and payable.
- (5) **No** steering. No creditor making a high cost home loan may steer a borrower into a loan with higher costs than the lowest-cost category of loans for which the borrower could qualify with that creditor or any of its affiliates. No mortgage broker arranging a high cost home loan may steer a borrower into a loan with higher costs than the lowest-cost array of loans available to that borrower from the creditors with whom the mortgage broker regularly does business.
- (6) **No** negative amortization. No high cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.
- (7) **No** advance payments. No high cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.
- (8) **No** increased interest rate upon default. Except with regard to interest rate changes in a variable-rate loan in which the increase is otherwise consistent with the provisions of the loan documents and in which the event of default or the acceleration of the indebtedness does not trigger the change in the interest rate, no high cost home loan may contain a provision that increases the interest rate after default.

(9) **No modification or deferral fees.** A creditor may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high cost home loan or to defer any payment due under the terms of a high-cost home loan.

(10) **No mandatory arbitration clause.** No high cost loan may be subject to a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through the judicial process. Non-binding arbitration and mediation would be acceptable forms of attempted dispute or conflict resolution.

(11) **No lending without home ownership counseling.** A creditor may not make a high cost home loan without first receiving certification from a counselor approved by the United States Department of Housing and Urban Development or the creditor's regulatory agency of jurisdiction that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

(12) **No lending without due regard to repayment ability.**

(a) A creditor may not make a high cost home loan unless the creditor reasonably believes at the time the loan is consummated, the person reasonably believes the consumer, or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan. In the case of a covered loan that is structured to increase to a specific designated rate, stated as a number or formula, at a specific predetermined date not exceeding 37 months from the date of application, this evaluation shall be based upon the fully indexed rate of the loan calculated at the time of application. In the case of multiple consumers, a creditor shall not include or add a borrower to the high cost loan, unless the individual or added borrower separately confirms in writing to the creditor that the borrower expects and commits to substantially contribute to payments.

The consumer shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, do not exceed 50 percent of the consumer's monthly gross income, as verified by the credit application, the consumer's financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other reasonable means.

(b) No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, exceed 50 percent of the consumer's monthly gross income.

(c) In the case of a stated income loan, the reasonable belief requirement in paragraph (a) shall apply, however, for stated income loans that belief may be based on the income stated by the consumer, and other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in

connection with loans of this type. A person shall not knowingly or willfully originate a covered loan as a stated income loan with the intent, or effect, of evading the provisions of this subdivision.

- (13) **No attempted evasion.** A creditor who originates a high cost loan shall not avoid, or attempt to avoid, the application of this division by doing the following:
 - (a) Dividing any loan transaction into separate parts for the purpose of evading the provisions of this Act.
 - (b) Any other such acts or practices with the intent of evading the provisions of this Act.
- (14) **Restrictions on home-improvement contracts.** A creditor may not pay a contractor under a home-improvement contract from the proceeds of a high cost home loan unless:
 - (a) The creditor is presented with a completion contract dated and signed by all parties to the home-improvement contract showing that the home improvements have been completed; and
 - (b) The instrument is payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the creditor, and the contractor prior to the disbursement.
- (15) **Required notice.** A creditor or broker shall not sell, transfer or otherwise assign a high cost home loan without furnishing the following statement to the purchaser or assignee:

“NOTICE: THIS IS A HOME LOAN SUBJECT TO SPECIAL RULES AND CONDITIONS AS REQUIRED BY LAW. PURCHASERS OR ASSIGNEES OF THIS LOAN SHALL BE LIABLE FOR ALL CLAIMS AND DEFENSES WITH RESPECT TO THE LOAN THAT THE BORROWER COULD ASSERT AGAINST THE CREDITOR OR BROKER OF THE LOAN.”

- (16) **Required reporting of payments.** Any lender who makes a high cost home loan shall report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit reporting agency at least annually during such period as the lender holds or services the loan.

Section 6. Right to cure.

- (1) **Right to reinstate.** If a creditor asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the security instrument, the borrower or anyone authorized to act on the borrower's behalf shall have the right at any time, up to the time title is transferred by means of foreclosure, judicial proceeding and sale, or otherwise, to cure the default and reinstate the high cost home loan by tendering the amount or performance as specified in this section. Cure of default as provided in this section shall reinstate the borrower to the same position as if the default had not occurred and shall

nullify, as of the date of the cure, any acceleration of any obligation under the security instrument or note arising from the default.

- (2) **Grounds for reinstatement.** Before any action filed to foreclose upon the property or other action is taken to seize or transfer ownership of the property, a notice of the right to cure the default shall be delivered to the borrower informing the borrower of the following:
 - (a) The nature of default claimed on the high-cost home loan, and of the borrower's right to cure the default by paying the sum of money required to cure the default; except that a creditor or servicer shall not refuse to accept any partial payment made or tendered in response to such notice. If the amount necessary to cure the default will change during the twenty-day period after the effective date of the notice due to the application of a daily interest rate or the addition of late fees, as allowed by this Act, the notice shall give sufficient information to enable the borrower to calculate the amount at any point during the twenty-day period.
 - (b) The date by which the borrower must cure the default to avoid acceleration and initiation of foreclosure, or other action to seize the property, which date shall not be less than twenty days after the date the notice is effective, and the name, address, and telephone number of a person to whom the payment or tender shall be made;
 - (c) That if the borrower does not cure the default by the date specified, the creditor may take steps to terminate the borrower's ownership in the property by requiring payment in full of the high-cost home loan and commencing a foreclosure proceeding or other action to seize the property; and
 - (d) The name and address of the creditor and the telephone number of a representative of the creditor whom the borrower may contact if the borrower disagrees with the creditor's assertion that a default has occurred or the correctness of the creditor's calculation of the amount required to cure the default.
- (3) **Fees.** To cure a default under this section, a borrower shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default as provided for in this section, other than the fees specifically allowed by this section. The borrower may be liable for attorney fees that are reasonable and actually incurred by the creditor, based on a reasonable hourly rate and a reasonable number of hours; except that the borrower shall not be liable for any attorney fees relating to the borrower's default that are incurred by the creditor prior to or during the twenty-day period set forth in this section.

Section 7. Enforcement and remedies.

- (1) Any violation of this Act constitutes an unfair or deceptive trade practice.
- (2) Any person found by a preponderance of evidence to have violated this Act shall be liable to the borrower for the following:

- (a) Actual damages sustained by the borrower as a result of the violation. The borrower shall not be required to demonstrate reliance in order to receive actual damages.
- (b) Statutory damages equal to the finance charges agreed to in the home loan agreement plus twenty percent of the amount financed for all violations;
- (c) Punitive damages if the violation was malicious or reckless;
- (d) Reasonable costs and attorney fees.

In addition, the court may, as the court deems appropriate, grant injunctive, declaratory, and other equitable relief in an action to enforce compliance.

- (3) The intentional violation of this Act, including the absence of acting in good faith, renders the home loan agreement void. A creditor intentionally violating any provision in this Act shall have no rights to collect, receive, or retain any principal, interest, or other charges whatsoever with respect to the loan, and the borrower may recover any payments made under the agreement. Loan terms that violate the protections of Act are unenforceable, and the courts may issue orders to reform any terms to bring the loan into compliance.
- (4) The brokering of a home loan that violates the provisions of this Act shall constitute a violation of such provisions.
- (5) The rights of rescission granted under 15 U.S.C. §1601, et seq., for violations of this Act and all other remedies provided in this Act shall be available to a borrower by way of recoupment against a party foreclosing on the home loan or collecting on the loan, at any time during the term of the loan.
- (6) A borrower may also assert a violation of this Act as a defense, bar, or counterclaim to any default action, collection action, or judicial or nonjudicial foreclosure action in connection with a home loan.
- (7) The remedies provided under this Act are cumulative. The protections and remedies provided under this Act are in addition to other protections and remedies that may be otherwise available under law. Nothing in this Act is intended to limit the rights of any injured person to recover damages or pursue any other legal or equitable action under any other applicable law or legal theory.
- (8) Any entity that purchases or is otherwise assigned a home loan shall be liable for all claims and defenses with respect to the loan that the borrower could assert against the creditor or broker of the loan.
- (9) A creditor that makes a home loan and that, when acting in good faith, fails to comply with the provisions of this Act will not be deemed to have violated this Act if the creditor establishes that either:

- (a) Within thirty days after the loan closing, and prior to receiving any notice from the borrower or any governmental agency of such noncompliance, the creditor made appropriate restitution to the borrower and made appropriate adjustments to the loan; or
 - (b) Within sixty days after the loan closing, prior to receiving any notice from the borrower of such noncompliance, and the noncompliance was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, the creditor made appropriate restitution to the borrower and made appropriate adjustments to the loan. examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.
- (10) Any city, county, city and county, or other appropriate governmental agency may sue on behalf of the public interest or on behalf of resident damaged by violations of this Act.
- (11) High cost home loans shall be governed by this Act notwithstanding any other provision of law to the contrary.

Section 8. Severability.

The provisions of this Act shall be severable, and if any phrase, clause, sentence, paragraph, or provision of this Act, or the application thereof to any person or circumstance, is for any reason adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act nor the application of such phrase, clause, sentence, paragraph, or provision to other persons or circumstances, but shall be confined in its operation to the phrase, clause, sentence, paragraph, or provision thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. if any provision of this Act is declared to be inapplicable to any specific category, type, or kind of loan or points and fees, the provisions of this Act shall nonetheless continue to apply with respect to all other loans and points and fees.

Section 9. Effective date and applicability.

- (1) **Effective date.** This Act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after enactment.
- (2) **Applicability.** This Act shall apply to home loans and high cost home loans offered or originated or consummated on or after the applicable effective date of this Act.

Endnotes

ⁱ William J., Brennan, Jr.'s statement to the US Senate Special Committee on Aging, March 16, 1998)

ⁱⁱ Department of Housing and Urban Development, *Unequal Burden: Income and Racial Disparities in Subprime Lending in America* (April 2000, www.hud.gov/pressrel/pr00-75.html).

ⁱⁱⁱ In NCRC's study, a census tract was predominantly minority if more than 80 percent of its residents were minority, and a census tract was predominantly white if less than 20 percent of its residents were minority. NCRC calculated the share of loans made by the top 30 lending institutions that were issued by subprime and manufactured home lenders.

^{iv} Freddie Mac web page, <http://www.freddie.com/corporate/reports/moseley/chap5.htm>; "Fannie Mae Vows More Minority Lending," in the *Washington Post*, March 16, 2000, page E01.

^v Anthony Pennington-Cross, Anthony Yezer, and Joseph Nichols, *Credit Risk and Mortgage Lending: Who Uses Subprime and Why?*, Working Paper No. 00-03, published by the Research Institute for Housing America, September 2000.

^{vi} *New Leader After Year of Upheaval at ACB*, *American Banker*, October 30, 2000.

^{vii} *Curbing Predatory Home Mortgage Lending: A Joint Report* by the Department of Housing and Urban Development and the Department of Treasury, June 2000, p. 93.

^{viii} Designed to help refinance predatory loans secured by real estate, the CRF permits consumers to have a "fresh start" while NCRC fair lending staff evaluate their civil rights or consumer complaints as appropriate and NCRC members provide comprehensive counseling in conjunction with ongoing financial education. All Consumer Rescue Fund loans are conventional loans with prime-like interest rates, with no fees, no points, and no insurance or ancillary product sales or offerings, and are intended to "rescue" CRF participants from problematic loans. CRF Loans do not have any pre-payment penalties and NCRC will be involved with portfolio management, fair lending enforcement and related consumer follow-up. The program is initially made possible by a multi-million dollar fund and underwriting commitment from Household.

^{ix} Complaint and Jury Demand of the People of the State of New York against Delta Funding Corporation, Index No. 99, Civ. 4951.

^x Federal Trade Commission complaint against the Associates and press release of March 6, 2001.

^{xi} Total single family lending refers to home purchase, refinance, and home improvement lending to owner-occupants of single family homes (one to four units).

^{xii} NCRC found that subprime lenders made 11 percent of the loans in the District of Columbia in 2000 but were responsible for 16 percent of the foreclosures. The subprime share of foreclosures was 1.5 times their share of loans. Abt Associates found similar trends in Atlanta. See *Analyzing Trends in Subprime Originations and Foreclosures: A Case Study of the Atlanta Metro Area*, Abt Associates Inc., February 2000.

^{xiii} Department of Treasury, Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, Proposed Agency Information Collection Activities (Collecting subprime lending information on call reports), Federal Register, May 31, 2000, pages 34801-34819.

^{xiv} HUD-Treasury Curbing Predatory Lending report, p. 85.

^{xv} *Fannie Mae Chairman Announces New Loan Guidelines to Combat Predatory Lending Practices*, Fannie Mae News Release of April 11, 2000.

^{xvi} Fannie Mae April 11 press release and letter to the editor of the *American Banker* by David Andrukonis of Freddie Mas on April 6, 2000.