



October 18, 2002

Greg Jones
Director of Regulatory Relations
NetBank
Royal Centre Three, Suite 100
11475 Great Oaks Way
Alpharetta, GA 30022

RE: Comments on NetBank's Proposed CRA Strategic Plan

Dear Mr. Jones:

The National Community Reinvestment Coalition (NCRC) believes that NetBank has made a good start on its CRA strategic plan, but that the goals must be made stronger. NetBank is to be commended for recognizing a national CRA responsibility although its home office and one "branch" is located in Alpharetta, Georgia. For several years, NCRC has advocated the updating of CRA assessment area procedures to keep pace with the dramatic changes in the financial industry and the capacities of depository institutions to make large volumes of loans outside of the areas in which their branches are located.

While applauding NetBank for its approach to assessment areas, NCRC believes that NetBank should increase the rigor of its strategic plan to account for the tremendous new capacities of NetBank. As stated in the proposed strategic plan, NetBank acquired two large mortgage companies, Market Street Mortgage Corporation and RBMG, in 2001 and 2002. With these two mortgage companies, NetBank is now the 27th largest mortgage company in the United States. Yet, the strategic plan is modest in relation to NetBank's new capacities. Many of the proposed lending goals, in particular, have been met or surpassed by the two new mortgage companies based on the 2001 HMDA data. A strategic plan should push for continual improvements in lending to low- and moderate-income (LMI) communities, and should not result in a regulator approving stagnant lending levels to LMI populations. Furthermore, NCRC believes that NetBank, as an internet bank with competitive rates, can do more to bridge the digital divide and provide low-cost products to LMI populations. While NetBank's draft strategic plan addresses these issues as part of its service goals, the goals can be made more concrete and rigorous.

Lending Goals

At the beginning of the strategic plan, NetBank specifies goals for the Atlanta metropolitan statistical area (MSA) and ten states. NetBank then states that these assessment areas account for roughly 70 percent of its deposits and 50 percent of its lending. As stated above, NCRC commends NetBank for recognizing broad responsibilities for meeting credit needs where it does business. Many large banks have assessment areas that comprise far less than the majority of their lending activities. The Joint Center for Housing Studies at Harvard University documents that the 25 largest banking organizations issued only one quarter of their loans in their CRA assessment areas during 2000.¹

NCRC believes that a strategic plan should raise the bar and encourage other lending institutions to emulate the practices and philosophies of the most aggressive CRA lenders. While we compliment NetBank on its assessment area proposal, we nonetheless ask NetBank to consider establishing lending goals for geographical areas that comprise three quarters of its lending activity. This would come closer to CRA's statutory mandate that depository institutions meet the credit needs of all the communities in which they are chartered.

LMI Borrower Goal

Before proceeding to the specific goals in NetBank's strategic plan, we should state that we included loan approvals only in our HMDA data analysis of NetBank and its subsidiaries RBMG and Market Street Mortgage Corporation. NCRC excluded purchases since NetBank indicates that it will now pursue a strategy of originating loans through their mortgage companies instead of purchasing loans as a means of satisfying their CRA obligations. NCRC agrees with NetBank's emphasis on loan originations since that activity represents more of an effort to reach low- and moderate-income communities and qualify residents for loans than merely purchasing loans.

NetBank states that its goal for a Satisfactory rating on its lending test would be to make between 12 and 16 percent of its loan dollars to LMI borrowers in its assessment areas. As shown in Exhibit 1 (all exhibits are at the end of the letter), the 2001 HMDA data indicates, however, that NetBank and its affiliated mortgage companies issued 17 percent

¹The Joint Center for Housing Studies at Harvard University, "*The 25th Anniversary of the Community Reinvestment Act: Access to Capital in an Evolving Financial Services System*," March 2002, p. 30.

of its loan dollars to LMI borrowers in the eleven assessment areas. Overall, when considering the eleven areas as a whole, NetBank already exceeded the upper boundary of its Satisfactory goal. When considering each area individually, NetBank exceeded its minimal Satisfactory goal of 12 percent in eight of the eleven areas. Therefore, the Satisfactory goal of 12 to 16 percent could encourage NetBank to do worse next year on the CRA indicator of percent of loans to LMI borrowers.

A goal more suited to the new capacity of NetBank would be to equal or exceed the aggregate (all lender) percent of loans to LMI borrowers in half of its assessment areas. Exhibit 2 displays the data in terms of loans, not dollars, as NCRC believes that the number of loans is a more meaningful target since LMI loan dollars will usually be a lower target due to the lower dollar amounts, on average, requested by LMI borrowers.

During 2001, NetBank almost met NCRC's suggested target by equaling or exceeding the aggregate percent of loans in five of its eleven assessment areas. In the eleven assessment areas combined, NetBank and its affiliated mortgage companies issued 24 percent of its loans to LMI borrowers while all lenders, as a group, made 21 percent of their loans to LMI borrowers. Therefore, NCRC's proposed goal is both attainable and reasonable as it states that a large lender will be judged Satisfactory if it is offering a portion of loans to LMI borrowers equal or better than its peer lenders.

An Outstanding goal target would be exceeding the all lender LMI borrower benchmark in two thirds of its assessment area. This goal would push NetBank above its proposed 20 percent Outstanding target (expressed in dollars) and is attainable considering that NetBank already equaled or exceeded this benchmark in almost half of its assessment areas.

LMI Census Tract Goal

NetBank proposes a LMI census tract goal only for the Atlanta MSA, and it proposes a goal of 12 to 16 percent of its loan dollars in LMI tracts for a Satisfactory rating and a goal of 20 percent for an Outstanding rating. The thrift notes that 19 percent of the owner-occupied housing units are in LMI tracts and establishes its goal in relation to the demographic benchmark. While this is to be commended as an effort to measure credit needs, NCRC observes that the thrift already passed its goal for 2003 (in terms of the number of loans) by making 22.5 percent of its loans in LMI tracts in 2001. NCRC also observes that NetBank made a portion of loans that was 8 percentage points higher than

all lenders as a group in LMI tracts (the aggregate percentage was 14.5 percent as shown in Exhibit 2).

Rather than insisting that NetBank increase its goal for Atlanta, NCRC will urge the bank to maintain its good performance in Atlanta and to establish goals for its other assessment areas. NCRC understands that it may be more feasible for NetBank to establish goals for LMI borrowers as opposed to LMI tracts since it lacks a traditional branch network in most of its assessment areas. Nevertheless, a reasonable approach is to start with a baseline of performance, using the thrift's own performance in 2001. In 2001, NetBank equaled or exceeded the all lender percentage of loans in LMI tracts in four of its twelve assessment areas as shown in Exhibit 2. NCRC maintains that a Satisfactory goal attainment for the LMI tract measure would be meeting or beating the aggregate percentage in one third of its assessment areas. An Outstanding goal attainment would be meeting or beating the aggregate percentage in one half of its assessment areas.

NCRC's analysis of the LMI borrower and census tract goal involved one year of data. In order to take into account various economic conditions, a two or three-year analysis of aggregate and institution lending is appropriate. In adopting a benchmark comparing the institution against its peers, NetBank could adopt an average of a two or three year percentage of loans made by itself (RBMG and Market Street) and all lenders as a group. This procedure guards against the possibilities of establishing a goal based on one year's worth of data that may reflect unusually good or bad economic conditions. It is therefore a realistic and reasonable procedure from the perspective of both community groups and banks. The goal setting in the draft strategic plan, however, does not appear to be grounded in empirical analysis of HMDA data and therefore appears to be arbitrary to the reader.

Small Business Lending Goal

NetBank's strategic plan indicates that its subsidiary Republic Leasing will commit to 10 percent to 15 percent of its business loans meeting the eligibility standards of Small Business Investment Companies (SBICs). Although loans and investments to SBICs count for CRA purposes, many SBICs do not necessarily invest in small businesses located in low- and moderate-income communities. As an alternative goal setting strategy, NCRC suggests that Republic Leasing start collecting and submitting CRA small business data (even if it does not have to per the requirements of the CRA regulation, but NCRC believes that starting in 2003 Republic Leasing must start reporting CRA small business data since it is owned by a depository institution with more than \$1



billion in assets). NetBank should analyze the number and percentage of small business loans Republic Leasing makes in low- and moderate-income tracts and to businesses with revenues under \$1 million dollars. It then should establish goals based upon a comparison between Republic Leasing's performance and the performance of all lenders in the assessment areas.

NCRC operates a nationwide program called Community Express under which a lending institution makes a loan with a SBA guarantee and a NCRC member organization provides technical assistance to the small business borrower. Since its inception three years ago, the Community Express program has generated over \$100 million in loans to more than 1,000 small business borrowers, more than half of who are women and minority owned small businesses. In addition, one third of the businesses are located in low- and moderate-income census tracts, a percentage considerably above the national aggregate portion of loans in LMI tracts. If NetBank became involved in the Community Express program, it could boost the portion of its loan to women- and minority-owned businesses in LMI tracts.

Minority Homeownership Lending Goal

NCRC believes it is laudable that NetBank is making a commitment to increase minority homeownership, particularly in a CRA context since CRA explicitly measures lending only to LMI borrowers and communities. NCRC advocates that CRA also explicitly measure lending to minorities since discrimination and predatory lending are too prevalent in minority markets. NCRC agrees with NetBank's choice of targeting communities with more than 30 percent minorities, but we disagree with the income target of 120 percent or less of the HUD median income. NetBank borrowed these targets from HUD's Underserved Areas goal for Fannie Mae and Freddie Mac. NCRC has advocated changing the income target for this goal to the CRA target of no more than 80 percent of area median income. This target would enable NetBank to both serve minorities as well as making progress on a LMI census tract goal. Also, a lack of homeownership is more pressing in minority LMI communities than middle-income communities between 81 to 120 percent of median income.

Investment Test

NetBank proposes a target of CRA-related investments equaling one quarter of one percent of assets for a Satisfactory rating and a goal of three tenths of one percent for Outstanding rating. NCRC has completed a quick study of 25 banks with assets lower

than NetBank's in Massachusetts, one of NetBank's assessment areas. As shown in Exhibit 3, we found that the level of investments for banks with Satisfactory ratings generally matched NetBank's proposed Satisfactory rating. Since NetBank has a larger asset base, we suggest that the thrift increase its goal to one third of one percent for a Satisfactory rating. In addition, we suggest that NetBank increase its goal for an Outstanding rating to one half of one percent since the majority of banks in our Massachusetts sample with Outstanding ratings on the investment test passed the one half of one percent goal and a couple had more than 1 percent of their assets devoted to CRA investments.

One possibility for innovative CRA investments would be purchasing securities backed by loans made to rescue victims of predatory lending. NCRC has observed that it is common for banks to receive credit on the Investment Test for purchasing Fannie Mae and Freddie Mac securities. A more innovative investment would be to purchase securities backed by loans issued to rescue victims of predatory lending. NCRC operates a Consumer Rescue Fund across the country to identify victims of predatory lending and to make them whole by securing prime refinance loans for them. Our program and other rescue programs lack a secondary market outlet. We believe that these loans would perform well because monthly loan costs have been reduced to affordable levels. The borrowers would also exhibit a discipline of gratitude that would motivate and excite them to be diligent in making payments on time.

Service Test

NetBank touts its checking and savings accounts for LMI consumers. The thrift states that since it has lower overhead costs than traditional brick and mortar banks it can offer lower fees and attractive rates on bank accounts. It discusses the following accounts, which are low cost accounts and alternatives to payday lending:

- NetValue Checking account with no monthly fee and accessibility through its internet site.
- Checking Overdraft Protection - If a consumer overdraws his or her checking account by up to \$1,000, he or she is charged a one-time \$15 fee. This product is certainly more affordable than payday loans and appears to avoid the problems associated with repeated "rollovers" or renewing payday loans at higher and higher rates and fees.

- Lifeline Banking Services – This service involves direct electronic deposit of a worker’s paycheck along with providing the consumer with an ATM card.

Despite the availability of these seemingly attractive products for LMI communities, NetBank does not commit itself to any numerical goals relating to the number and/or percentage of accounts that will be offered to LMI borrowers and/or residents of LMI communities. As Dr. Michael Stegman of the University of North Carolina documents, the most rigorous CRA exams of large banks include discussion of percentages of accounts offered to LMI consumers.² As NCRC has advocated as part of our comments on the CRA Advance Notice of Proposed Rulemaking (ANPR), we urge NetBank to start collecting this data and basing goals on the data.

We appreciate that NetBank will work with counseling agencies and organizations to install computers in homes of LMI families. This work, however, appears limited primarily to the Atlanta MSA. We ask NetBank to consider a national approach to bridging the digital divide and providing checking and savings accounts to LMI borrowers and communities. NCRC operates a national financial education program. Using a NCRC developed curriculum, this program has trained more than 2,500 representatives of counseling agencies, churches, job training agencies, welfare-to-work organizations, and refugee assistance centers to become instructors in financial education. NCRC is now embarking on a program evaluation to assess the effectiveness of our training. Some of the evaluations will be conducted on-line to judge the extent to which students of NCRC’s trained instructors understand financial concepts and apply them by opening bank accounts and using bank products.

NCRC is continually looking for additional partners to bring our financial education to greater numbers of consumers. An internet learning environment in which trainers and students are exposed to financial products on-line and how to shop for banking services on-line would be a rich addition to our program. If NetBank embraced a national program such as NCRC’s, it could bridge the digital divide in countless community-based organizations and could potentially reach hundreds if not thousands of consumers with their low cost accounts.

² Dr. Michael A. Stegman, Kelly Thompson Cochran, and Robert Faris, *Creating a Scorecard for the CRA Service Test: Strengthening Basic Banking Services Under the Community Reinvestment Act*, a working paper published by the Center for Community Capitalism at the University of North Carolina at Chapel Hill. Dr. Stegman and colleagues presented findings of the paper at a focus group session convened by NCRC in late June of 2001.

Fair Lending

Strategic plans are not required to contain a fair lending component, but they should since fair lending exams occur approximately the same time as the CRA exam. NCRC would like NetBank to address in its strategic plan what procedures it will establish to make sure it is not discriminating nor making or purchasing predatory loans. NCRC has a model anti-predatory lending bill, attached as Exhibit 4, for NetBank's consideration. If NetBank pledged to refrain from making or purchasing loans with conditions prohibited by NCRC's model bill, it would be assured that it was not engaged in predatory lending. NCRC Civil Rights staff would be eager to discuss other steps such as mystery shopping the thrift can take to ensure compliance with fair housing and fair lending law.

Conclusion

NCRC appreciates the steps NetBank has taken in its strategic plan. In particular, we applaud NetBank for its recognition that as a large lender, it has a national responsibility to meet CRA obligations. NCRC, however, also believes that many of the lending goals err on the conservative side and could even result in NetBank performing worse than it does currently on many measures of lending to low- and moderate-borrowers and communities. In order for the strategic plan option to add value to CRA and community reinvestment, it must encourage lending institutions to make bold plans to reach low- and moderate-income communities. Lending institutions must use the strategic plan option to improve their performance and make more loans and a greater percentage of loans to low- and moderate-income communities. Eventually, institutional capacity reaches a point of maximum attainment where further progress on quantitative measures alone may not be realistic. Once that point is reached, maintaining performance or a certain percentage of loans to low- and moderate-income communities is reasonable. NCRC believes that NetBank has yet to reach that point, and we hope that our comments convince NetBank and its regulator to re-work the goals to make them stronger.

In addition to quantitative measures, another aspect of meeting community needs is continual innovation in lending, investments, and services, particularly in response to changing economic and financial climates. With the explosion of predatory and payday lending, NCRC believes that NetBank has a unique opportunity as an internet bank with relatively low costs to offer lifeline checking accounts, overdraft protection, and electronic deposit for un-banked and under-banked populations. But even on aspects of community reinvestment for which a strategic plan and a CRA exam may stress innovation and qualitative measures, NCRC believes that quantitative measures are



critical so that a lending institution can judge if it is making progress. NCRC urges NetBank to measure and report upon the portion of its low-cost accounts that are held by low- and moderate-income consumers and to use financial education providers who can report to the bank how successful their financial education efforts are.

NCRC urges the federal banking agencies, in their regulatory review of CRA, to either strengthen the strategic plan option or abandon it. The agencies must mandate that the strategic plans must represent real and measurable attempts by an institution to improve its performance. If the institution cannot improve its performance due to a variety of reasonable factors, the existing CRA regulations allow an institution to amend the strategic plan or to opt for a regular CRA exam. Given this built-in safety valve, the federal banking agencies must not approve a strategic plan if it does not commit an institution to improving its CRA performance.

While NCRC appreciates that NetBank has gone further on the assessment area issue than many of its peers, NCRC nevertheless believes that the thrift's draft strategic plan falls short of our proposed standard. NetBank must re-work its strategic plan, and the OTS should extend the October 31 deadline if necessary. NCRC also believes that NetBank must re-submit a revised strategic plan for review and comment. NCRC and our 700 community organizations around the country stand ready to work with NetBank to fashion a forwarding looking, bold, but realistic strategic plan that realizes the twin goals of adherence to CRA reinvestment obligations and opening up profitable financial opportunities for the bank and the communities it serves.

Please feel free to reach us on 202-628-8866. Josh Silver, Vice President of Research and Policy, can answer questions of a technical nature.

Sincerely,

A handwritten signature in black ink, appearing to read "John Taylor".

John Taylor
President and CEO

Cc: Ms. Lynn Bedard, OTS Community Affairs Liaison

NCRC

Exhibits

NCRC Analysis of NetBank's Lending in Dollars: Exhibit 1

Geographical Area	NetBank Loan\$amt	NetBank LMI\$ amt	NetBank % to LMI
Atlanta MSA	\$ 257,361	\$ 82,329	32.0%
California	\$ 293,332	\$ 43,559	14.8%
Florida	\$ 796,571	\$ 138,028	17.3%
New York	\$ 32,261	\$ 3,574	11.1%
Texas	\$ 33,129	\$ 4,381	13.2%
New Jersey	\$ 36,003	\$ 6,944	19.3%
Pennsylvania	\$ 92,942	\$ 13,834	14.9%
Illinois	\$ 711,692	\$ 160,095	22.5%
Arizona	\$ 48,345	\$ 5,110	10.6%
Massachusetts	\$ 1,230,712	\$ 147,051	11.9%
Virginia	\$ 185,044	\$ 33,593	18.2%
11 area total	\$ 3,717,392	\$ 638,498	17.2%
Average	\$ 337,945	\$ 58,045	17.2%

Dollar Amounts are in thousands

NCRC Analysis of NetBank's Lending: Exhibit 2

Geographical Area	NetBank loans to LMI borrowers	% of NetBank loans to LMI borrowers	All lender loans to LMI borrowers	% all lender loans to LMI borrowers	Per Pt Diff Netbank-All Lenders LMI Borrowers	NetBank loans to LMI census tracts	% NetBank loans to LMI census tracts	All lender loans to LMI census tracts	% all lender loans to LMI census tracts	Per Pt Diff Netbank-All Lenders LMI Tracts
Atlanta MSA	755	40.1%	87,644	31.5%	8.6%	425	22.5%	40,428	14.5%	8.0%
California	318	18.4%	271,344	14.1%	4.3%	249	14.4%	260,449	13.5%	0.9%
Florida	1,650	25.9%	202,780	24.4%	1.5%	505	7.9%	86,380	10.5%	-2.6%
New York	30	16.0%	92,724	19.9%	-3.9%	17	9.1%	53,074	11.4%	-2.3%
Texas	50	19.7%	156,793	22.5%	-2.8%	17	6.7%	81,221	11.7%	-5.0%
New Jersey	65	27.4%	78,887	21.5%	5.9%	41	17.3%	40,317	11.0%	6.3%
Pennsylvania	174	20.1%	116,249	23.7%	-3.6%	28	3.2%	48,049	9.9%	-6.7%
Illinois	1,550	30.4%	196,681	29.5%	0.9%	705	13.9%	86,682	13.0%	0.9%
Arizona	52	16.7%	76,592	22.6%	-5.9%	27	8.6%	47,220	13.9%	-5.3%
Massachusetts	1,010	16.1%	72,100	19.9%	-3.8%	543	8.7%	47,077	13.0%	-4.3%
Virginia	279	25.1%	104,461	26.8%	-1.7%	75	6.8%	40,008	10.3%	-3.5%
11 area total	5,933	24.4%	1,456,255	21.4%	3.0%	2,632	10.8%	830,905	12.2%	-1.4%
Average	539	23.3%	132,387	23.3%	0.0%	239	10.8%	75,537	12.1%	-1.2%
Note: Analysis includes all loans reported under HMDA. Excludes purchases. Includes Netbank, RBMG, and Market Street Mortgage.										

NCRC Analysis of CRA Investment Levels: Exhibit 3

Bank Name	City	Asset Size	Exam		Investment Test Rating	Dollar Level	
			Date	Overall Rating		of Investments	Invest/Assets
Boston Private Bank & Trust Company	Boston	\$ 526,000,000	2000	Satisfactory	High Satisfactory	\$ 2,656,156	0.50%
Cambridgeport Bank	Cambridge	\$ 832,000,000	2000	Outstanding	High Satisfactory	\$ 118,134	0.01%
Century Bank and Trust Company	Somerville	\$ 859,000,000	1999	Satisfactory	High Satisfactory	\$ 1,021,000	0.12%
Citizens-Union Savings Bank	Fall River	\$ 425,964,000	2001	Satisfactory	High Satisfactory	\$ 1,600,000	0.38%
City Savings Bank	Pittsfield	\$ 385,875,000	1999	Satisfactory	High Satisfactory	\$ 299,725	0.08%
Commerce Bank & Trust Co	Worcester	\$ 537,000,000	2001	Satisfactory	High Satisfactory	\$ 499,700	0.09%
Plymouth Savings Bank	Wareham	\$ 1,100,000,000	2001	Outstanding	High Satisfactory	\$ 6,393,926	0.58%
Salem Five Cents Savings Bank	Salem	\$ 1,175,760,000	2000	Satisfactory	High Satisfactory	\$ 1,120,000	0.10%
Danvers Savings Bank	Danvers	\$ 400,000,000	2000	Outstanding	High Satisfactory	\$ 475,000	0.12%
		\$ 693,511,000			High Satisfactory Ave.	\$ 1,575,960	0.22%
Belmont Savings Bank	Belmont	\$ 383,000,000	2001	Satisfactory	Low Satisfactory	\$ 21,982	0.01%
Benjamin Franklin Savings Bank	Franklin	\$ 426,342,000	2002	Satisfactory	Low Satisfactory	\$ 1,068,000	0.25%
Bristol County Savings Bank	Taunton	\$ 617,000,000	2001	Satisfactory	Low Satisfactory	\$ 259,406	0.04%
Canton Institution for Savings, the Bank of Canton	Canton	\$ 372,500,000	2001	Satisfactory	Low Satisfactory	\$ 2,404,226	0.65%
Cape Cod Five Cents Savings Bank	Harwich Port	\$ 981,000,000	2001	Outstanding	Low Satisfactory	\$ 175,700	0.02%
Capital Crossing Bank	Boston	\$ 739,000,000	2000	Satisfactory	Low Satisfactory	\$ 443,864	0.06%
Central Co-operative Bank	Somerville	\$ 429,000,000	2001	Satisfactory	Low Satisfactory	\$ 756,293	0.18%
Cambridge Savings Bank	Cambridge	\$ 1,400,000,000	2001	Satisfactory	Low Satisfactory	\$ 215,000	0.02%
Rockland Trust Company	Rockland	\$ 1,600,000,000	1999	Outstanding	Low Satisfactory	\$ 2,640,250	0.17%
County Bank for Savings	Ware	\$ 687,935,000	2000	Satisfactory	Low Satisfactory	\$ 191,906	0.03%
		\$ 763,577,700			Low Satisfactory Ave.	\$ 817,663	0.14%
Medford Savings Bank	Medford	\$ 1,280,000,000	2000	Satisfactory	Needs to Improve	\$ 44,850	0.00%
		\$ 1,280,000,000			Needs to Improve Ave.	\$ 44,850	0.00%
Abington Savings Bank	Abington	\$ 695,000,000	2000	Satisfactory	Outstanding	\$ 9,676,304	1.39%
Bank of Western Massachusetts	Springfield	\$ 491,290,000	2000	Outstanding	Outstanding	\$ 6,978,311	1.42%
Berkshire Bank	Pittsfield	\$ 842,182,000	2000	Outstanding	Outstanding	\$ 909,261	0.11%
Cambridge Trust Company	Cambridge	\$ 559,000,000	2001	Satisfactory	Outstanding	\$ 3,851,277	0.69%
Middlesex Savings Bank	Natick	\$ 1,939,731,000	2000	Outstanding	Outstanding	\$ 8,502,737	0.44%
		\$ 905,440,600			Outstanding Average	\$ 5,983,578	0.81%
		\$ 787,383,160			Grand Average	\$ 2,092,920	0.30%

Note: All Banks are located in MA, and all exams were conducted by the FDIC

Exhibit 4:
NCRC Model
Anti-Predatory
Lending Bill

Summary of NCRC Model Anti-Predatory Lending Legislation

The Homeowner Protections from Predatory Lending Act of 2002

For more information, please contact the National Community Reinvestment Coalition (NCRC) on 202-628-8866.

Summary

The NCRC model bill protects consumers, particularly minority and low- and moderate-income families, from predatory lenders by outlawing certain practices on all home loans, and prohibiting additional practices on high cost loans. The model bill has adopted the most innovative provisions from pending and enacted bills from around the country.

Coverage

The bill applies to all home loans secured by single-family dwellings, including purchase loans, home equity loans, refinance loans, manufactured home loans, and commercial or small business loans that are secured by residential property.

The bill defines a high cost home loan as a loan with points and fees (including those charged by third parties) greater than three percent of the loan amount or with an interest four percentage points greater than Treasury bond rates of comparable maturity for first mortgages and greater than five percentage points than Treasury rates for second mortgages. Up to two discount points can be excluded when calculating the fee threshold under certain circumstances. These interest rate and fee thresholds capture most subprime and manufactured home loans.

Limitations on All Home Loans

No Financing Credit Insurance – Premiums for credit insurance (which covers home loan payments in case of death, disability, or unemployment) cannot be added to the loan amount (financed into the loan). Credit insurance is considerably cheaper for the borrower when it is paid for outside of the loan transaction, then when it is added to the loan principal and subject to interest charges.

No Flipping – NCRC’s bill prevents the practice of repeated financing that adds more fees and points and/or increases the interest rate without providing tangible net benefits to the borrower. The model bill presumes a refinance loan involves flipping if the interest rate is lowered but it takes the borrower more than four years to pay for any new fees and points through savings resulting from the lower interest rate.

No Default Recommendation – Outlaws the practice of predators ruining consumer credit ratings by advising borrowers to stop making payments on their current loans while they are waiting for their new loans to close.

No Excessive Late Fees – Limitations on the amount and frequency of late payments.

No Refinancing of Special Mortgages – Prevents predatory lenders from preying upon families benefiting from public and nonprofit sector loan programs by outlawing the refinancing of below-market rate mortgages and other types of subsidized mortgages.

No False Statements – Prevents predatory lenders from deceiving consumers regarding their abilities to qualify for mortgage products or the value of their dwellings.

No Influencing Appraisers – Prevents lenders from compensating or intimidating an appraiser for the purpose of influencing property appraisals. This provision is designed to prevent property flipping schemes involving the collusion of lenders and appraisers.

Required Language Accommodation – Requires that loan documents be provided in a language other than English if the lender discussed the loan transaction with the borrower in a language other than English.

Other provisions outlawed on all loans include call provisions, fees for balance or payoff, fees for products not provided, above market charges for third party services. The bill requires enhanced disclosures of yield spread premiums to prevent abuses associated with brokers.

Limitations on High Cost Loans

No Financing of Points and Fees – In order to prevent high cost loans from becoming unaffordable, NCRRC's model bill prohibits the financing of points and fees in excess of three percent of the loan amount and prepayment penalties when the financial institution making the original loan is refinancing the loan.

Limits on Prepayment Penalties - Prepayment penalties are charges assessed by a lender when a borrower refinances a loan before the final payment is due. Predatory lenders assess stiff prepayment fees in order to trap borrowers into abusive loans by making it unaffordable to refinance into other loans. The model bill prohibits prepayment penalties after two years on high cost loans, limits the amount of the prepayment charge in the first two years, and requires the lender to offer the borrower a choice of loans with and without prepayment penalties.

No Balloon Payment – Prevents lenders making high cost loans to require a payment that is more than twice as large as the average monthly payment.

No steering or price discrimination – No creditor making a high cost loan may steer a borrower into a loan with higher costs than the lowest-cost category for which the borrower could qualify.

No lending without home ownership counseling – No high cost loan can be made without the lender first receiving certification the borrower has received counseling from a loan counseling agency approved by the Department of Housing and Urban Development.

No lending without due regard for repayment ability – One major abuse is lending without regard to repayment ability. This provision establishes a presumption of repayment ability if the total monthly debt-to-income ratio does not exceed 50 percent. The monthly debt includes the home loan. The impact of this provision is to strongly encourage lenders to refrain from exceeding the 50 percent monthly debt-to-income ratio.

Other prohibitions and provisions include no negative amortization, no advance payments, no increased interest rate upon default, no modification or deferral fees, no mandatory arbitration clause, restrictions on home improvement contracts, assignee liability, and requirements to report payment history to credit bureaus.

The bill also establishes a foreclosure process and mandates that lenders must accept partial payments to cure defaults. The bill establishes liability for actual and punitive damages. A violation of the bill's provisions renders a loan contract void. A borrower can assert a violation of the bill's provisions as a defense against foreclosure.

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 borrowers’ abilities to repay the loans; 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;
 - (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 (a) and 226.4 (b), as amended, except interest or the time-price differential;
 - (b) All charges, except for escrow amounts for future payments of taxes and insurance, 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 maximum prepayment fees or penalties that may be charged or collected under the terms of the loan documents;
 - (e) 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;
 - (f) 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.
 - (g) The term “points and fees” does not include 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;

(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 following:

(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 without the discount points does not exceed by more than one percentage point (1%) the average interest rate posted on Freddie Mac’s Weekly Mortgage Rate Survey.
- 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 without the discount points is more than one percentage point (1%) higher but less than two percentage points (2%) greater than the average interest rate posted on Freddie Mac’s Weekly Mortgage Rate Survey.

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 or varies in any other manner, then the annual percentage rate to be considered for purposes of this definition is the maximum rate that will be charged during the term of the loan. For loans that vary according to an index, the annual percentage rate is computed as the index rate at loan closing plus the largest margin specified in the loan agreements.

(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.

All 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 and debt cancellation or suspension agreement payments 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 home loan to a borrower which refinances an existing 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 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 or 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, or with a below market interest rate that is at least one percentage point less than the average interest rate posted on Freddie Mac's Weekly Mortgage Survey, 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, broker, 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 and the Real Estate Settlement Procedures 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. The borrower shall also be informed of the comparison of the dollar amount of the yield spread premium paid to the broker and the dollar amount of the loan costs assumed by the broker. The borrower shall also be informed how many basis points the interest rate increased due to the

yield spread premium and how much the increase in the interest rate adds to the monthly loan payment and the total loan payment over the term of the 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) Points and fees defined in Section 3 in excess of three percent of the total loan amount; 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 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 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. In the case of a covered loan with an annual percentage rate that varies, this evaluation shall be based upon the procedures for computing the annual percentage rate in Section 3 (17) above.

(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 reasonable 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.