36

State of North Carolina

Department of Justice
P. O. Box 629
RALEIGH
27602-0629

MICHAEL F. EASLEY
ATTORNEY GENERAL

CONSUMER PROTECTION
919-716-6000
Fax: 919-716-6050

July 5, 2000

Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Attn: Docket No. 2000-34

By Facsimile & Express Mail

Dear Sir or Madam:

This letter is submitted in response to the Office of Thrift Supervision's advance notice of proposed rulemaking on Responsible Alternative Mortgage Lending, issued on April 5, 2000. The notice invited comments from states that had enacted regulatory initiatives on the problem of predatory lending. In July, 1999, North Carolina became the first state to enact comprehensive legislation to address the abuses of predatory home mortgage lending. We believe that the experience in this State in developing the new law should be useful to the OTS as it considers a regulatory approach to this issue.

The North Carolina legislation was the result of a process of collaboration, negotiation and compromise over a period of several months. Mortgage lenders, mortgage brokers, the Attorney General's Office and representatives of consumer groups were involved in the process and shared a common goal of identifying and attacking the major consumer abuses in the mortgage lending marketplace. Members of the working group began with consensus on several basic premises: 1) Competition in the mortgage lending market is effective, for the most part, in keeping rates and fees reasonable. 2) There is a sector of the market, typically involving lower income and less sophisticated consumers, where most of the abuses have occurred and where competition is not as effective. 3) Regulatory approaches should be carefully focused on abusive practices without interfering with the mainstream lending market. 4) Mortgage loan closings are already heavily encumbered with paper disclosures and disclosures, by themselves, are ineffective in addressing predatory lending abuses. 5) Excessive loan fees and oppressive loan terms are more significant abusive practices than high interest rates which can be potentially reduced through refinancing.

The basic approach of the legislation was to create a separate statutory provision to define and regulate a new category of high cost home loans. Following a modified version of the HOEPA structure, three threshold tests were created (for interest rates, points and fees, and prepayment penalties) to trigger high cost loan coverage. If any of the thresholds are met, a number of restrictions apply, the most significant of which are that fees and closing costs cannot

be financed and the borrower must undergo credit counseling before closing. Balloon payments are prohibited for high cost loans, as is asset-based lending without regard to the borrower's ability to repay. The Act also adds specific new consumer protections to all consumer home loans, including a prohibition on the financing of prepaid single premium credit insurance and a general prohibition on loan "flipping." The Act also clarifies what fees and closing costs are permissible, and is intended to curtail the spread of "junk" fees. A copy of the legislation is attached to this letter for your reference.

The high cost home loan provisions of the new Act took effect on July 1, 2000. It is therefore too early to report on any experience with implementation or compliance. We anticipate that the Act will curtail the worst abuses of mortgage lending without burdening responsible lenders and without significantly affecting the flow of home mortgage credit in this State.

We believe that the North Carolina legislation is a useful model for other states and federal agencies to follow. In approaching the issue of predatory lending, we ask that the OTS give due deference to state initiatives in this area and to avoid preemption of basic consumer protections enacted by the states. As is more fully addressed in a separate letter from the National Association of Attorneys General, some OTS regulations and opinions have contributed to predatory lending by aggressively preempting state consumer protection laws without substituting any equivalent federal protections.

We are gratified by the OTS' interest in addressing predatory lending. We would be pleased to share further information about North Carolina's experience with your staff.

Sincerely,

Philip A. Lehman

Philip A. Lehman
Assistant Attorney General

M. Lynne Weaver

M. Lynne Weaver
Assistant Attorney General

Enclosure

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-332
SENATE BILL 1149

AN ACT TO MODIFY PERMISSIBLE FEES WHICH MAY BE CHARGED IN CONNECTION WITH HOME LOANS SECURED BY FIRST MORTGAGE OR FIRST DEED OF TRUST, TO IMPOSE RESTRICTIONS AND LIMITATIONS ON HIGH-COST HOME LOANS, TO REVISE THE PERMISSIBLE FEES AND CHARGES ON CERTAIN LOANS, TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND LENDERS, AND TO PROVIDE FOR PUBLIC EDUCATION AND COUNSELING ABOUT PREDATORY LENDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1A reads as rewritten:

"§ 24-1.1A. Contract rates on home loans secured by first mortgages or first deeds of trust.

(a) Notwithstanding any other provision of this ~~Chapter,~~ Chapter, but subject to the provisions of G.S. 24-1.1E, parties to a home loan may contract in writing as follows:

(1) Where the principal amount is ten thousand dollars ($10,000) or more the parties may contract for the payment of interest as agreed upon by the parties;

(2) Where the principal amount is less than ten thousand dollars ($10,000) the parties may contract for the payment of interest as agreed upon by the parties, if the lender is either (i) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the ~~Veterans Administration,~~ Department of Veterans Affairs, a national mortgage association or any federal agency; or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union or insurance company; or (iii) a State or federal agency;

(3) Where the principal amount is less than ten thousand dollars ($10,000) and the lender is not a lender described in the preceding subdivision (2) the parties may contract for the payment of interest not in excess of sixteen percent (16%) per annum.

(4) Notwithstanding any other provision of law, where the lender is an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act, the lender may charge interest to be computed only on the following basis: monthly on the outstanding principal

balance at a rate not to exceed the rate provided in this subdivision.

On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by this subdivision. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or fifteen percent (15%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

An affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act may not make a home loan for a term in excess of six (6) months which provides for a balloon payment. For purposes of this subdivision, a balloon payment means any scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection does not apply to equity lines of credit as defined in G.S. 45-81.

(b) ~~No prepayment fees shall be contracted by the borrower and lender with respect to any home loan where the principal amount borrowed is one hundred thousand dollars ($100,000) or less; otherwise a lender and a borrower may agree on any terms as to the prepayment of a home loan.~~ Except as provided in subdivision (1) of this subsection, a lender and a borrower may agree on any terms as to the prepayment of a home loan.

(1) No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any home loan in which: (i) the principal amount borrowed is one hundred fifty thousand dollars ($150,000) or less, (ii) the borrower is a natural person, (iii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iv) the loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(2) The limitations on prepayment fees and penalties contained in subdivision (b)(1) of this section shall not apply to the extent state law limitations on prepayment fees and penalties are preempted by federal law or regulation.

(c) ~~Except as limited by subsection (b) above, a lender may charge to the borrower the fees described in G.S. 24-10. Provided, if the loan is one described in subsection~~

~~(a)(1) or subsection (a)(2) above, the parties may agree to the payment of discount points, commitment fees, finance charges, or other similar charges agreed upon by the parties notwithstanding the provisions of any state law limiting the amount of discount points, commitment fees, finance charges or other similar charges which may be charged, taken, received or reserved with respect to a home loan. Provided further, that no lender on loans under G.S. 24-1.1A(a)(3) may charge or receive any fees or discount points other than the interest permitted in G.S. 24-1.1A(a)(3).~~ If the home loan is one described in subdivision (a)(1) or subdivision (a)(2) of this section, the lender may charge the borrower the following fees and charges in addition to interest and other fees and charges as permitted in this section and late payment charges as permitted in G.S. 24-10.1:

(1) At or before loan closing, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:

a. Loan application, origination, and commitment fees;

b. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of the interest rate or time-price differential;

c. Assumption fees to the extent permitted by G.S. 24-10(d);

d. Appraisal fees to the extent permitted by G.S. 24-10(h);

e. To the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and

f. Additional fees and charges, however denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the principal amount of the loan, or (ii) one hundred fifty dollars ($150.00).

(2) Except as provided in subsection (g) of this section with respect to the deferral of loan payments, upon modification, renewal, extension, or amendment of any of the terms of a home loan, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:

a. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of, the interest rate or time-price differential;

b. Assumption fees to the extent permitted by G.S. 24-10(d);

c. Appraisal fees to the extent permitted by G.S. 24-10(h);

d. To the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and

e. Additional fees and charges, however denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or (ii) one hundred fifty dollars ($150.00). The fees and charges permitted by this sub-subdivision may be charged only pursuant to a written agreement which states the amount of the fee or charge and is made at the time of the specific modification, renewal, extension, or amendment, or at the time the specific modification, renewal, extension, or amendment is requested.

(c1) No lender on home loans under subdivision (a)(3) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (ii) interest as permitted in subdivision (a)(3) of this section; and (iii) late payment charges to the extent permitted by G.S. 24-10.1.

(c2) No lender on home loans under subdivision (a)(4) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) the fees described in G.S. 24-10; (ii) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (iii) interest as permitted in subdivision (a)(4) of this section; and (iv) late payment charges to the extent permitted by G.S. 24-10.1.

(d) The loan or investments regulated by G.S. 53-45 shall not be subject to the provisions of this section.

(e) The term "home loan" shall mean a ~~loan~~ loan, other than an open-end credit plan, where the principal amount is less than three hundred thousand dollars ($300,000) secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one or more single-family dwellings or dwelling units.

(f) Any home loan obligation existing before June 13, 1977, shall be construed with regard to the law existing at the time the home loan or commitment to lend was made and this act shall only apply to home loans or loan commitments made from and after June 13, 1977; provided, however, that variable rate home loan obligations executed prior to April 3, 1974, which by their terms provide that the interest rate shall be decreased and may be increased in accordance with a stated cost of money formula or other index shall be enforceable according to the terms and tenor of said written obligations.

(g) The parties to a home loan governed by ~~G.S.24-1.1A(a) (1) or (2)~~ subdivision (a)(1) or (2) of this section may contract ~~in writing~~ to defer ~~payments of interest~~ the payment of all or part of one or more unpaid installments and for payment of interest on deferred interest as agreed upon by the parties. The parties may agree ~~in writing~~ that ~~said~~ deferred interest may be added to the principal balance of the loan. This subsection shall not be construed to limit payment of interest upon interest in connection with other types of loans. Except as restricted by G.S. 24-1.1E, the lender may charge deferral fees as may be agreed upon by the parties to defer the payment of one or more unpaid installments. If the home loan is of a type described in subdivision (1) of this subsection, the deferral fees shall be subject to the limitations set forth in subdivision (2) of this subsection:

(1) A home loan will be subject to the deferral fee limitations set forth in subdivision (2) of this subsection if:

a. The borrower is a natural person;

b. The debt is incurred by the borrower primarily for personal, family, or household purposes; and

c. The loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(2) Deferral fees for home loans identified in subdivision (1) of this subsection shall be subject to the following limitations:

a. Deferral fees may be charged only pursuant to an agreement which states the amount of the fee and is made at the time of the specific deferral or at the time the specific deferral is requested; provided, that if the agreement relates to an installment which is then past due for 15 days or more, the agreement must be in writing and signed by at least one of the borrowers. For purposes of this subdivision an agreement will be considered a signed writing if the lender receives from at least one of the borrowers a facsimile or computer-generated message confirming or otherwise accepting the agreement.

b. Deferral fees may not exceed the greater of five percent (5%) of each installment deferred or fifty dollars ($50.00), multiplied by the number of complete months in the deferral period. A month shall be measured from the date an installment is due. The deferral period is that period during which no payment is required or made as measured from the date on which the deferred installment would otherwise have been due to the date the next installment is due under the terms of the note or the deferral agreement.

c. If a deferral fee has once been imposed with respect to a particular installment, no deferral fee may be imposed with respect to any future payment which would have been timely and sufficient but for the previous deferral.

d. If a deferral fee is charged pursuant to a deferral agreement, a late charge may be imposed with respect to the deferred payment only if the amount deferred is not paid when due under the terms of the deferral agreement and no new deferral agreement is entered into with respect to that installment.

e. No lender may charge a deferral fee for modifying or extending the maturity date of a loan or the date a balloon payment is due; provided, however, that any such modification or extension of the loan maturity date or the date a balloon payment is due shall, to the extent applicable, be considered a modification or extension subject to the provisions of subdivision (c)(2) of this section.

(h) The parties to a home loan governed by ~~G.S. 24-1.1A(a) (1) or (2)~~ subdivision (a)(1) or (2) of this section may agree in writing to a mortgage or deed of trust which provides that periodic payments may be graduated during parts of or over the entire

term of the loan. The parties to such a loan may also agree in writing to a mortgage or deed of trust which provides that periodic disbursements of part of the loan proceeds may be made by the lender over a period of time agreed upon by the parties, or over a period of time agreed upon by the parties ending with the death of the borrower(s). Such mortgages or deeds of trust may include provisions for adding deferred interest to principal or otherwise providing for charging of interest on deferred interest as agreed upon by the parties. This subsection shall not be construed to limit other types of mortgages or deeds of trust or methods or plans of disbursement or repayment of loans that may be agreed upon by the parties.

(i) Nothing in this section shall be construed to authorize or prohibit a lender, a borrower, or any other party to pay compensation to a mortgage broker or a mortgage banker for services provided by the mortgage broker or the mortgage banker in connection with a home loan."

Section 2. Chapter 24 of the General Statutes is amended by adding a new section to read:

"§ 24-1.1E. Restrictions and limitations on high-cost home loans.

(a) Definitions. – The following definitions apply for the purposes of this section:

(1) 'Affiliate' means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from time to time.

(2) 'Annual percentage rate' means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the Federal Reserve Board (as said Act and regulations are amended from time to time).

(3) 'Bona fide loan discount points' means loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide 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 norms and practices for secondary mortgage market transactions.

(4) A 'high-cost home loan' means a loan other than an open-end credit plan or a reverse mortgage transaction in which:

a. The principal amount of the loan does not exceed the lesser of (i) the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association, or (ii) three hundred thousand dollars ($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 either (i) a security interest in a manufactured home (as defined in G.S. 143-147(7)) which is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling; and

e. The terms of the loan exceed one or more of the thresholds as defined in subdivision (6) of this section.

(5) 'Points and fees' means:

a. All items required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;

b. All charges for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase 'points and fees';

c. All compensation paid directly by the borrower to a mortgage broker not otherwise included in sub-subdivision a. or b. of this subdivision;

d. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents; and

e. 'Points and fees' shall not include (i) taxes, filing fees, recording 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; and (ii) fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included under sub-subdivision a. of this subdivision; title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.

(6) 'Thresholds' means:

a. Without regard to whether the loan transaction is or may be a 'residential mortgage transaction' (as the term 'residential mortgage transaction' is defined in section 226.2(a)(24) of Title 12 of the Code of Federal Regulations, as amended from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a 'mortgage' under section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time;

b. The total points and fees payable by the borrower at or before the loan closing exceed (i) five percent (5%) of the total loan amount if the total loan amount is twenty thousand dollars ($20,000) or more, or (ii) the lesser of eight percent (8%) of the total loan amount or one thousand dollars ($1,000), if the total loan amount is less than twenty thousand dollars ($20,000); provided, the following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:

1. 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;
2. 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;
3. Prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan closing; or

c. The loan documents permit the lender to charge or collect prepayment fees or penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid.

(7) 'Total loan amount' means the same as the term 'total loan amount' as used in section 226.32 of Title 12 of the Code of Federal Regulations, and the same shall be calculated in accordance with the Federal Reserve Board's Official Staff Commentary thereto.

(b) Limitations. — A high-cost home loan shall be subject to the following limitations:

(1) No call provision. — No high-cost home loan may contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to

a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.

(2) 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. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

(3) No negative amortization. -- No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase.

(4) No increased interest rate. -- No high-cost home loan may contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(5) 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.

(6) No modification or deferral fees. -- A lender may not charge a borrower any fees 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.

(c) Prohibited Acts and Practices. -- The following acts and practices are prohibited in the making of a high-cost home loan:

(1) No lending without home-ownership counseling. -- A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the North Carolina Housing Finance Agency that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

(2) No lending without due regard to repayment ability. -- As used in this subsection, the term 'obligor' refers to each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan. A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, 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 borrower's equity in the dwelling which secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the obligor's monthly gross income as verified by the credit application, the obligor's financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided, 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 obligor's

total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor's monthly gross income.

(3) No financing of fees or charges. -- In making a high-cost home loan, a lender may not directly or indirectly finance:

a. Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced;

b. Any points and fees; or

c. Any other charges payable to third parties.

(4) No benefit from refinancing existing high-cost home loan with new high-cost home loan. -- A lender may not charge a borrower points and fees 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 lender as noteholder.

(5) Restrictions on home-improvement contracts. -- A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than (i) by an instrument payable to the borrower or jointly to the borrower and the contractor, or (ii) 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 lender, and the contractor prior to the disbursement.

(d) Unfair and Deceptive Acts or Practices. -- Except as provided in subsection (e) of this section, the making of a high-cost home loan which violates any provisions of subsection (b) or (c) of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by (i) the structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this section when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan, or (ii) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section, or (iii) any other such subterfuge. The Attorney General, the Commissioner of Banks, or any party to a high-cost home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(e) Corrections and Unintentional Violations. -- A lender in a high-cost home loan who, when acting in good faith, fails to comply with subsections (b) or (c) of this section, will not be deemed to have violated this section if the lender establishes that either:

(1) Within 30 days of the loan closing and prior to the institution of any action under this section, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (b) and (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or

(2) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and within 60 days after

the discovery of the compliance failure and prior to the institution of any action under this section or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (b) and (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section. 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.

(f) Severability. – The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this section is declared to be inapplicable to any specific category, type, or kind of points and fees, the provisions of this section shall nonetheless continue to apply with respect to all other points and fees."

Section 3. Chapter 24 of the General Statutes is amended by adding a new section to read:

"**§ 24-2.5. Mortgage bankers and mortgage brokers.**"

A mortgage broker or a mortgage banker originating a loan in a table-funded loan transaction in which the mortgage broker or mortgage banker is identified as the original payee of the note shall be considered a lender for purposes of this Chapter."

Section 4. G.S. 24-8 reads as rewritten:

"**§ 24-8. Loans not in excess of $300,000; what interest, fees and charges permitted.**

~~No lender shall charge or receive from any borrower or require in connection with a loan any borrower, directly or indirectly, to pay, deliver, transfer or convey or otherwise confer upon or for the benefit of the lender or any other person, firm or corporation any sum of money, thing of value or other consideration other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the North Carolina General Statutes, where the principal amount of a loan is not in excess of three hundred thousand dollars ($300,000.00); provided, this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan; provided that this shall not prevent the lender from collecting from the borrower for remittance to others, money in payment of taxes, assessments, cost of upkeep, recording fees, surveys, attorneys' fees, fire, title, life, accident and health, unemployment, and mortgage insurance premiums and other such fees and costs, nor from receiving the proceeds from any insurance policies where a loss occurs under the terms of such policies. This section shall not be applicable to any corporation licensed as a "Small Business Investment Company" under the provisions of the United States Code Annotated, Title 15, section 661, et seq. nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange.~~

(a) If the principal amount of a loan is less than three hundred thousand dollars ($300,000), no lender shall charge or receive from any borrower or require in connection with any loan any borrower, directly or indirectly, to pay, deliver,

transfer, or convey or otherwise confer upon or for the benefit of the lender or any other person, firm, or corporation any sum of money, thing of value, or other consideration other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the General Statutes.

(b) Notwithstanding any contrary provision of State law, if the principal amount of a loan is three hundred thousand dollars ($300,000) or more, any borrower may agree to pay, and any lender or other person may charge and collect from the borrower, interest, fees, and other charges as may be agreed upon between the parties, and the borrower and anyone claiming by or through the borrower is prohibited from asserting usury as a claim or defense.

(c) The provisions of this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm, or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan.

(d) Notwithstanding any contrary provision of State law, any lender may collect money from the borrower for the payment of (i) bona fide loan-related goods, products, and services provided or to be provided by third parties, and (ii) taxes, filing fees, recording fees, and other charges and fees paid or to be paid to public officials. No third party shall charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed. Loan-related goods, products, and services include fees for tax payment services, fees for flood certification, fees for pest-infestation 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).

(e) Notwithstanding any contrary provision of State law, any lender may receive the proceeds from any insurance policies where loss occurs under the terms of such policies.

(f) This section shall not be applicable to any corporation licensed as a 'Small Business Investment Company' under the provisions of the United States Code Annotated, Title 15, section 66, et seq., nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange."

Section 5. Chapter 24 of the General Statutes is amended by adding a new section to read:

"**§ 24-10.2. Consumer protections in certain home loans.**

(a) For purposes of this section, the term 'consumer home loan' shall mean a loan in which (i) the borrower is a natural person, (ii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(b) Notwithstanding the provisions of G.S. 58-57-35(b), it shall be unlawful for any lender in a consumer home loan to finance, directly or indirectly, any credit life, disability, or unemployment insurance, or any other life or health insurance premiums; provided, that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(c) No lender may knowingly or intentionally engage in the unfair act or practice of 'flipping' a consumer home loan. 'Flipping' a consumer loan 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 reasonable, tangible net 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. This provision 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 specified in G.S. 24-1.1E(a)(6).

(d) No lender 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 such existing loan or debt.

(e) The making of a consumer home loan which violates the provisions of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The Attorney General, the Commissioner of Banks, or any party to a consumer home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(f) In any suit instituted by a borrower who alleges that the defendant violated this section, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the attorney representing the prevailing party, such attorneys' fees to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

(1) The party charged with the violation has willfully engaged in the act or practice, and there was unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or

(2) The party instituting the action knew, or should have known, that the action was frivolous and malicious.

(g) This section establishes specific consumer protections in consumer home loans in addition to other consumer protections that may be otherwise available by law."

Section 6. Of the funds appropriated to the Department of Justice for the 1999-2000 fiscal year, the sum of one hundred thousand dollars ($100,000) may be used to develop and implement a program of consumer counseling or awareness designed to inform the public about the methods by which predatory lenders impose unconscionable and noncompetitive fees and charges as part of complex home mortgage transactions, to protect the public from incurring such fees and charges, and otherwise to encourage the informed and responsible use of credit.

Section 7. The Legislative Research Commission shall study the implementation and enforcement of this act including:

(1) Whether the provisions of this act have a measurable effect on the availability of credit in the State;

(2) Whether the act is successfully reducing the predatory lending practices proscribed by the act; and

(3) Whether there are specific circumstances in which consumers would benefit from permitting a lender to finance credit insurance premiums, which practice is prohibited by G.S. 24-10.2(b).

The Commission shall report their findings and recommendations on the issue of financing credit insurance premiums to the 2000 Regular Session of the 1999 General Assembly. The Commission may report their findings and recommendations to the 2001 General Assembly and shall make a final report to the 2002 Regular Session of the 2001 General Assembly.

Section 8. Section 2 of this act and G.S. 24-10.2(b), as enacted in Section 5 of this act, become effective July 1, 2000, and apply to loans made or entered into on or after that date. Section 6 of this act becomes effective July 1, 1999. Section 7 of this act is effective when this act becomes law. The remainder of this act becomes effective October 1, 1999, and applies to loans made or entered into, payments deferred, and loans modified, renewed, extended, or amended on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:35 a.m. this 22nd day of July, 1999