State of Rhode Island and Providence Plantations
Department of Business Regulation
Division of Banking and Securities
233 Richmond Street, Suite 231
Providence, RI 02903-4231

Banking Division
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NOTICE OF PROPOSED REGULATION AND NOTICE OF PUBLIC HEARING

Notice is hereby given, in accordance with R.I. Gen. Laws §§ 34-25.2-12, 42-14-17, and 42-35-3, that the Director of the Department of Business Regulation ("Department") proposes to enact the following permanent Regulation:

BANKING REGULATION 3-HOME LOAN PROTECTION ACT

The purpose of this regulation is to set forth procedures, interpretations, and clarifications in order to provide guidelines and requirements to Regulated Institutions as defined in R.I. Gen. Laws § 19-1-1 (unless otherwise exempt) and Lenders and Loan Brokers as defined in R.I. Gen. Laws § 19-14-1 to ensure compliance with and the promotion of the purposes of the provisions of R.I. Gen. Laws § 34-25.2-1 *et seq.* entitled *Rhode Island Home Loan Protection Act* (hereinafter referred to as "the Act"). The actions and information required by this regulation are hereby declared to be necessary and appropriate to the public interest. This regulation is promulgated to clarify requirements necessary in order to comply with the Act.

This proposed regulation is intended to be permanent after the expiration of the current Banking Regulation 3-Home Loan Protection Act which was filed as an emergency regulation pursuant to the Department's authority in R.I. Gen. Laws § 42-35-3(b) and was effective as of December 31, 2006 and expires April 30, 2007. Notice is also hereby given, in accordance with R.I. Gen. Laws § 42-35-2, the Department of Business Regulation will hold a public hearing beginning at **10:00 a.m. on March 8, 2007**, in the Main Hearing Room of the Department of Business Regulation, 233 Richmond Street, Providence, Rhode Island 02903, regarding the Proposed Regulation.

Copies of the Proposed Regulation are on file at the Department and copies may be obtained from the Legal Division, Department of Business Regulation, 233 Richmond Street, Providence, Rhode Island 02903 during normal working hours on regular business days or by mail upon request. The Proposed Regulation may also be obtained from the Department's website www.dbr.state.ri.us.

In the development of the Proposed Regulation, consideration was given to overlapping approaches, overlap and duplication with other statutory and regulatory provisions, and economic impact on small business and cities and towns.

All interested persons may submit their view, data or arguments regarding the Proposed Regulation, including information relating to alternative approaches, duplication or overlap with other state rules or regulations and the economic impact of the Regulation on small business and/or cities and towns, orally at the public hearing or in writing, either by delivering the same in person or United States mail with postage pre-paid thereon to the Department of Business Regulation, 233 Richmond Street, Providence, Rhode Island 02903 to: Neena Sinha Savage, Esq., Hearing Officer.

ALL WRITTEN SUBMISSION MUST BE RECEIVED NO LATER THAN March 8, 2007 AT 10:00 a.m.

The hearing room is accessible to the handicapped. Individuals requesting interpreter services for the hearing impaired must notify the Office of Legal Counsel at (401) 222-5400 or TTY 711 not less than ninety-six (96) hours in advance of the hearing date.

A. Michael Marques
Director, Department of Business Regulation

STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF BANKING
233 RICHMOND STREET, SUITE 231
PROVIDENCE, RHODE ISLAND 02903

BANKING REGULATION 3

HOME LOAN PROTECTION ACT

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Section 1. AUTHORITY.

This regulation is promulgated pursuant to the authority granted in R.I. Gen. Laws §§ 34-25.2-12 and 42-35-3(b).

Section 2. PURPOSE.

The purpose of this regulation is to set forth procedures, interpretations, and clarifications in order to provide guidelines and requirements to Regulated Institutions as defined in R.I. Gen. Laws § 19-1-1 (unless otherwise exempt) and Lenders and Loan Brokers as defined in R.I. Gen. Laws § 19-14-1 to ensure compliance with and the promotion of the purposes of the provisions of R.I. Gen. Laws § 34-25.2-1 *et seq.* entitled *Rhode Island Home Loan Protection Act* (hereinafter referred to as "the Act"). The actions and information required by this regulation are hereby declared to be necessary and appropriate to the public interest. This regulation is promulgated to clarify requirements necessary in order to comply with the Act. This regulation does not duplicate the requirements of the Act, but rather is a supplement to aid in the enforcement and understanding of certain components and requirements of the Act.

Section 3. SEVERABILITY.

If any provision of this regulation or the application thereof to any Person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this regulation are severable.

Section 4. DEFINITIONS.

Unless otherwise provided by this regulation or unless the context clearly requires otherwise, terms used in this regulation shall have the same meaning as the terms as defined in Title 19 of the Rhode Island General Laws or the Act. To the extent that this regulation references federal law, Regulated Institutions as defined in R.I. Gen. Laws § 19-1-1 (unless otherwise exempt) and Lenders and Loan Brokers as defined in R.I. Gen. Laws § 19-14-1 are required to comply with all federal legal requirements in effect at the relevant time. Any references to 12 U.S.C., 12 C.F.R. or R. I. Gen. Laws § 19-1-1 *et seq.* contained in the Act shall mean respectively 12 U.S.C., 12 C.F.R., or R. I. Gen. Laws § 19-1-1 et seq., as amended, and in effect from time to time.

The following terms are defined as follows:

A. **"Affiliate"** means any company that controls, is controlled by, or is under common control with another company as set forth in 12 U.S.C. § 1841.[1]

B. **"Annual Percentage Rate"** means the annual percentage rate for the loan calculated according to the provisions of 12 C.F.R. Part 226.[2]

C. **"Applicant"** means a Person who applies for a home loan subject to the Act.

D. **"Bona Fide Discount Points"** means an amount knowingly paid by the borrower for the express purpose of reducing, and which in fact does result in a bona fide reduction of, the interest rate applicable to the home loan; provided the undiscounted interest rate for the home loan does not exceed the conventional mortgage rate by two (2) percentage points for a home loan secured by a first lien, or by three and one-half (3.5) percentage points for a home loan secured by a lien other than a first mortgage. The amount of the interest rate reduction purchased by the discount points must be reasonably consistent with established industry norms and practices for secondary market mortgage transactions. For purposes of the Act it is presumed that a point is a bona fide loan discount point if it reduces the interest rate by a minimum of 25 basis points or ¼ of a point provided all other terms of the loan remain the same. Undiscounted interest rate shall mean

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[1] See Appendix 1-Relevant parts of 12 U.S.C. § 1841. All Federal Statutes and Regulations may be accessed at http://www.gpoaccess.gov/cfr/index.html . NOTE: All Persons subject to this Regulation must ensure that they are complying with the federal statutes and regulations in effect at the time of the transaction.

[2] See Appendix 2-Relevant parts of 12 C.F.R. 226.22 All Federal Statutes and Regulations may be accessed at http://www.gpoaccess.gov/cfr/index.html . NOTE: All Persons subject to this Regulation must ensure that they are complying with the federal statutes and regulations in effect at the time of the transaction.

the contract rate of interest that would be contained in the promissory note if the bona fide discount point(s) had not been paid by the borrower.

E. "Bona Fide and Reasonable Fees"

The following fees are examples of fees that are considered to be bona fide and reasonable:

(i) a tax payment service fee as evidenced by an invoice or substantially similar document from the tax payment service provider and the amount of the fee does not exceed the customary fee for such service; (R.I.Gen. Laws §19-9-2 prohibits any mortgagee holding the mortgagor's funds in escrow for the payment of taxes from charging an annual "tax service fee" or other annual) fee for ascertaining whether or not the real estate taxes have in fact been paid;

(ii) flood certification fees that do not exceed the amount charged by the flood certification service provider as evidenced by a verifiable invoice or substantially similar document;

(iii) pest infestation fees that do not exceed the amount charged by the pest infestation inspector service provider, as evidenced by a verifiable invoice or substantially similar document;

(iv) flood determination fees that that do not exceed the amount charged by the flood determination service provider as evidenced by a verifiable invoice or substantially similar document;

(v) appraisal fees that do not exceed the amount charged by the appraiser as evidenced by a verifiable invoice or substantially similar document;

(vi) inspection fees relative to inspections performed prior to closing that do not exceed the amount charged by the inspection service provider as evidenced by a verifiable invoice or substantially similar document;

(vii) credit report fees that do not exceed the amount charged by the credit report service provider as evidenced by a verifiable invoice or substantially similar document;

(viii) survey fees that do not exceed the amount charged by the survey service provider as evidenced by a verifiable invoice or substantially similar document;

(ix) attorney fees that do not exceed the amount charged by the attorney as evidenced by a verifiable invoice or substantially similar document;

E. "Bona Fide and Reasonable Fees" (continued)

(x) notary fees that do not exceed customary fees for such service and that do not exceed the amount charged by the notary service provider as evidenced by a verifiable invoice or substantially similar document;

(xi) escrow charges that do not exceed customary fees for such service and that do not exceed the amount charged by the escrow service provider as evidenced by a verifiable invoice or substantially similar document;

(xii) title insurance premium, fire and hazard insurance premiums, and flood insurance premiums for insurance that do not exceed the amount charged by the insurance provider as evidenced by a verifiable invoice or substantially similar document Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property includes single interest insurance if the insurer waives all right of subrogation against the consumer.

In order for any of the fees specified in the above paragraph to be excluded fees under the provisions of R. I. Gen. Laws § 34-25.2-4(o)(9) the following conditions must be met:

(i) The insurance coverage may be obtained from a person of the consumer's choice and this fact is disclosed. (A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer); and

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under 12 C.F.R. 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

F. "**Compensation**" means payments, costs, benefits, and/or fees whether paid to a Regulated Institution as defined in R.I. Gen. Laws § 19-1-1 (unless otherwise exempt) or Lender or Loan Broker as defined in R.I. Gen. Laws § 19-14-1 in connection with a home loan.

G. **"Conventional Mortgage Rate"** means the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in statistical release H.15 or any publication that may supersede it, as of the applicable time set forth in 12 C.F.R. 226.32(a)(1)(i).[3]

H. **"Creditor" means** any person who regularly makes available a home loan and shall include a loan broker

I. **"Current Note Rate" means** the rate of interest payable by a borrower on a previous home loan. If the previous home loan is an adjustable rate home loan, the current note rate shall be calculated by giving effect to the maximum interest rate adjustment on the previous home loan that would take effect within the twelve (12) month period following the date of application based on market conditions as they exist as of the date of the application.

J. **"Excluded Points and Fees" means** the items delineated in R.I. Gen. Laws § 35-25.2-4(o)(9).

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[3] See Appendix 3-Relevant parts of 12 C.F.R. 226.32(a)(1)(i). All Federal Statutes and Regulations may be accessed at: http://www.gpoaccess.gov/cfr/index.html NOTE: All Persons subject to this Regulation must ensure that they are complying with the federal statutes and regulations in effect at the time of the transaction.

K. "Flipping a Home Loan" means the making of a home loan to a borrower that refinances an existing home loan ("Previous Loan" as defined in Section 4(R) herein) that was consummated within the prior sixty (60) months when the new loan does not have reasonable, tangible net benefits in accordance with subsection 34-25.2-4(q) to the borrower considering all of the circumstances, including, but not limited to, the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.

L. "Fully Indexed Rate" means, for a any home loan, the maximum contract interest rate provided in the loan documents for the home loan, taking into account any adjustable rate feature. In taking into account an adjustable rate feature, the contract interest rate shall be calculated using a fully indexed rate taking into account the maximum adjustments permitted under and in accordance with the timing required by the loan documents and using a value of the index used for interest rate adjustments in effect within the forty-five (45) day period immediately preceding the consummation of the home loan. The principles used in calculating the annual percentage rate for a loan with an adjustable rate feature may be applied in calculating the fully indexed rate.

M. "High-Cost Home Loan" means a home loan in which the terms of the loan meet or exceed one or more of the thresholds as defined in R.I. Gen. Laws § 34-25.2-4(r).

N. Home Loan" means a loan, including an open-end credit plan, other than a reverse mortgage transaction where the loan is secured by:

(i) a mortgage or deed of trust on real estate in the State of Rhode Island upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one (1) to four (4) families which is or will be occupied by a borrower as the borrower's principal dwelling; or

(ii) a security interest on a manufactured home located or to be located within the State of Rhode Island which is or will be occupied by a borrower as borrower's principal dwelling.

O. "Negative Amortization" means a gradual increase in mortgage debt that occurs when the monthly payment is insufficient to cover the interest due, and the balance owed keeps increasing.

P. "Person" means (as defined in R.I. Gen. Laws § 19-1-1(10)) individuals, partnerships, corporations, limited liability companies or any other entity however organized.

Q. "Points and Fees" means:

(i) All items included in the definition of finance charge in 12 C.F.R. 226.4(a) and 12 C.F.R. 226.4(b)[4] except interest or the time price differential;

(ii) All items described in 12 C.F.R. 226.32(b)(1)(iii);[5] Any such fees shall be supported by a verifiable invoice or substantially equivalent document from the service provider and shall not exceed the amount stated on said invoice.

(iii) All compensation paid directly by a borrower to a loan broker including a loan broker that originates a loan in its own name in a table-funded transaction; direct Compensation shall include any fees or benefit paid by a borrower to a loan broker.

(iv) All compensation paid indirectly to a loan broker from any source other than the borrower in excess of one percentage point of the total loan amount, including a loan broker that originates a loan in its own name in a table-funded transaction; Indirect Compensation shall include any fees or benefit paid to a loan broker from any source other than the borrower.

(v) The cost of all premiums financed by the creditor, directly or indirectly for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

(vi) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents; and

(vii) All prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan originated or currently held by the same creditor or an affiliate of the creditor. This would apply to any creditor who originates or extends credit with respect to a home loan where the previous loan was either originated or funded by the same creditor or an affiliate of the same creditor or, at the time of origination of the new loan the existing loan is held by the same creditor or is held by an affiliate of the same creditor.

(viii) For open-end loans, the points and fees are calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the loan documents, plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit

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[4] See Appendix 3-Relevant parts of 12 C.F.R. 226.4(a) and 12 C.F.R. 226.4(b). All Federal Statutes and Regulations may be accessed at http://www.gpoaccess.gov/cfr/index.html. NOTE: All persons subject to this Regulation must ensure that they are complying with the federal statutes and regulations in effect at the time of the transaction

[5] See Appendix 3-Relevant parts of 12 C.F.R 226.32(a)(i) and 12 C.F.R. 226.32(b)(1)(iii)

line. This section should be construed to include the minimum fee that can be charged pursuant to the provisions of the loan documents during the term of the loan. The minimum fees that borrow would be required to pay to draw down the loan shall include:

(a) in cases where the draw fee is calculated as a percentage of each draw, said percentage applied to the total amount of credit available under the open-end loan. To illustrate, if the total amount of credit available under the open-end loan is $50,000 and the draw fee is 1.0% of the amount drawn, the draw fees to be included would be $500 ($50,000 x .01);

(b) in cases were the draw fee is a stated dollar amount (i.e. $25 for each draw) and the loan contract does not provide for a minimum draw amount, the amount of the minimum specified draw fee (i.e. in this example, $25) To illustrate, if the draw fee is $25 per draw, the draw fees to be included would be $25;

(c) in cases where the draw fee is a stated dollar amount and the loan contract provides for a maximum draw amount, the amount of the draw fees to be included would be calculated as follows: (Total dollar amount available under the open-end loan divided by the maximum draw amount) times the stated draw fee dollar amount. To illustrate, if the draw fee is $25 per draw and the maximum draw amount on a $100,000 open-end loan is $1,000, the draw fees to be included would be $2,500 ([$100,000/$1,000]x$25)

(d) These examples demonstrate the minimum fees possible to draw down an amount equal to the total credit line. The above three (3) examples are not all inclusive and may not describe all possible terms with respect to draw fees. Therefore, it is the Creditor's duty to perform the correct good-faith analysis resulting in the inclusion of all additional minimum fees.

(ix) **Points and fees shall not include**:

(a) Points and fees up to and including one percent (1%) of the total loan amount attributable to bona fide fees paid to a federal or state government agency that insures payment of some portion of a home loan plus an amount not to exceed two percent (2%) of the total loan amount attributable to a bona fide discount points or a conventional prepayment penalty. In no case shall the total excluded points and fees in connection with a home loan exceed three percent (3%) of the total loan amount; "Excluded points and fees" are limited to 3% of the total loan amount regardless whether the terms of the loan include a 2% percent prepayment penalty as well as 2% bona fide discount points. To illustrate, if the total loan amount is $100,000 and the loan terms include bona fide discount points of 2%, a prepayment penalty of 2%, and bona fide fees paid to a federal or state government agency that insures

payment of some portion of the loan that total 2% of the loan amount, the total amount of excluded points and fees permitted under this section shall not exceed $3,000 ($100,000 x .03).

(b) 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; or

(c) Bona fide and reasonable fees paid to a person other than the creditor or an affiliate of the creditor for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees; notary fees; escrow charges, so long as not otherwise included under subparagraph (1) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met; [6] The reference to "subparagraph (1) of this paragraph" in this subsection shall mean R. I. Gen. Laws § 34-25.2-4 (o)(1).

R. "Previous Loan" means the outstanding home loan to be refinanced through the proceeds of the new home loan made to the same borrower. A loan is a previous loan even though there is not complete identity between the obligors on the previous home loan and the new home loan, so long as at least one borrower is obligated on both the previous home loan and the new home loan. See Section 4(Q)(vii) of this Regulation.

S. "Regularly Makes Available" A person regularly makes available a home loan if, in any consecutive 12-month period, the person originates or extends more than one home loan. See definition of Creditor in Section 4(H) of this Regulation.

T. "Undiscounted Interest Rate" means the contract rate of interest that would be contained in the promissory note that would have been stated in the promissory note if the bona fide discount point(s) had not been paid by the borrower.

Section 5. PROVISIONS.

A. Records/Record-Keeping

(i) Each Person subject to the requirements of the Act shall maintain records for each and every loan file supporting and substantiating the "Tangible Net Benefit" and/or "High Cost Loan" analysis performed during the transaction. Each Person subject to the requirements of the Act must keep a list of all loans in which the "Tangible Net Benefit" has been assented to by the borrower for purposes of guarding against the prohibition against "Flipping a

[6] See Appendix 4-Relevant parts of 12 C.F.R. 226.4(d)(2). All Federal Statutes and Regulations may be accessed at http://www.gpoaccess.gov/cfr/index.html. NOTE: All Persons subject to this Regulation 3 must ensure that they are complying with the federal statutes and regulations in effect at the time of the transaction

home loan" as described in R.I. Gen. Laws § 34-25.2-5. The Creditor is required to maintain on file and be in possession of documentation clearly identifying and substantiating the "tangible net benefit" that existed at the time the home loan was consummated. Failure to clearly identify, document, and substantiate the respective "tangible net benefit" prior to the consummation of the respective home loan will be deemed a violation of this Regulation, of R.I. Gen. Laws § 34-25.2-5(b), and a basis for administrative action pursuant to R.I. Gen. Laws § 19-14-13. The analysis performed regarding whether the borrower has a "Tangible Net Benefit" must be accurate and reflect verified information and must be provided to the borrower pursuant to the other requirements of this Regulation. These records must be available to the Director of the Department of Business Regulation and his or her designee at all times.

(ii) Each Person subject to the requirements of the Act must keep a list of all loans in which the "High-Cost Home Loan" has been assented to by the borrower. The analysis performed regarding whether or not a loan is a "High Cost Loan" must be accurate and reflect verified information and must be provided to the borrower pursuant to the other requirements of this Regulation. The Creditor is required to maintain on file and be in possession of documentation clearly identifying and substantiating the "tangible net benefit" that existed prior to and at the time the home loan was consummated. Failure to clearly identify, document, and substantiate the respective "High-Cost Home Loan" prior to the consummation of the respective home loan will be deemed a violation of this Regulation, of R.I. Gen. Laws § 34-25.2-5(b), and a basis for administrative action pursuant to R.I. Gen. Laws § 19-14-13. These records must be available to the Director of the Department and his or her designee at all times.

(iii) The individual authorizing the loan after reviewing said "Tangible Net Benefit" and/or "High Cost Loan" analysis shall date and sign the written record of analysis by confirming that he/she has reviewed the analysis and confirms whether or not the loan is a "High Cost Loan" under the terms of the Act.

(iv) All applicants must be provided with Disclosure Forms 1 and 2 within three (3) days of application. Verification of submission to applicant and fully executed copy of Disclosure Forms 1 and 2 (attached hereto in Appendix 5) must be maintained in each loan file.

(v) All Applicants who have been determined to fall under the prohibited acts and practices described in R.I. Gen. Laws § 34-25.2-5(b) as "flipping a home loan" must also provide Disclosure Form 3 entitled "Rhode Island Home Loan Protection Act Disclosure-Tangible Net Benefit" as soon as it is determined by the

Creditor that the applicant/borrower may fall under the prohibition, but no later than ten (10) business days prior to closing of the loan. Verification of submission date and a fully executed copy of the disclosure forms must be maintained in each loan file.

(vi) All Applicants who are applying for a "High-Cost Home Loan" must be provided Disclosure Form 4 (attached hereto in Appendix 5) at such time that it is determined by the Creditor and loan broker that the new loan is a "High-Cost Home Loan," but no later than ten (10) business days prior to closing the loan. Verification of submission date and a fully executed copy of the disclosure forms must be maintained in each loan file.

(vii) All Persons subject to the Act must use the exact disclosure forms attached herein in Appendix 5. The disclosures shall not be altered or changed in any manner.

B. <u>Five (5) Prohibited Acts and Practices on All Home Loans</u>

(i) **Financing of Credit Insurance Premiums or Any Other Health or Life Insurance Premiums or Debt Cancellation Charges.**
No financing, either directly or indirectly, of any credit life, credit disability, credit unemployment, or credit property insurance, or any other life or health insurance, or any payments either directly or indirectly for any debt cancellation or suspension agreement or contract. Any insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed.

(ii) **Flipping a Home Loan.**
No knowing or intentional engagement in the unfair act or practice of "flipping a home loan." Flipping a home loan is the making of a home loan to a borrower that refinances an existing home loan ("Previous Loan" as defined in Section 4(R) of this Regulation) that was consummated within the prior sixty (60) months when the new loan does not have reasonable, tangible net benefits in accordance with subsection 34-25.2-4(q) to the borrower considering all of the circumstances, including, but not limited to, the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.

(a) **Tangible Net Benefit:** In order to make a loan to a borrower that refinances an existing home loan ("Previous Loan" as defined in Section 4(R) of this Regulation) that was consummated within the prior sixty (60) months (including the first day of the consummation of the loan and the last day of the sixtieth (60th) month) the lender or loan broker must confirm in writing and maintain a record of that analysis. The lender and loan broker must explain and provide the copy of the Disclosure Form 3 as soon as it is determined but no later than ten (10) business days prior to closing that the applicant/borrower may be required to present and the

lender and loan broker is required to confirm a "tangible net benefit" as defined in the following subsections (1)-(6):

(1) **New Monthly Payment:** The borrowers new monthly payment(s) must be lower than the total of all monthly obligations being financed, taking into account the costs and fees as disclosed on the HUD-1 settlement statement. The "new monthly payment" on any loan product other than a conventional fixed rate mortgage would be the payment that fully amortizes the mortgage loan over the term of the loan at the highest rate of interest that may be charged under the contract over the term of the loan. Costs and fees as disclosed on the HUD-1 settlement statement shall include all costs and fees regardless of whether incorporated into and financed through the subject loan. The "taking into account" and time for recouping of such costs and fees shall be calculated over a period of twenty-four (24) months and said amount should be added for the calculation of the final "new monthly payment" for purposes of R.I. Gen. Laws § 34-25.2-4(q)(1).

(2) **Beneficial Change in Amortization Period.** There must be a beneficial change in the amortization period of the new loan(s).

(3) **Borrower Receives Cash in Excess of Costs and Fees.** The Borrower receives cash in excess of the costs and fees as disclosed on the HUD-1 settlement statement as part of the refinancing.

(4) **Current Interest Rate is Reduced:** The current note rate of interest is reduced or in the event that more than one loan is being refinanced, the weighted average note rate of the current loans is reduced. For a borrower whose current note rate of interest is one in which there is a temporary reduction which may be adjusted within six (6) months to one (1) year, the current rate subject to adjustment must be higher than the loan that is being refinanced.

(5) **Change from Adjustable Rate Loan to a Fixed Rate Loan.**

(6) **Bona Fide Personal Need:** The refinancing is necessary to respond to a bona fide personal need as verified in Disclosure Form 3 (Attached hereto in Appendix 5). The borrower must disclose and the Creditor must verify the specific nature of the "bona fide personal need."

(iii) **Encouraging or Recommending Default.**
No lender or loan broker shall recommend or encourage default on an existing loan or other debt prior to and in connection to the

closing or planned closing of a home loan that refinances all or any portion of such existing loan or debt.

(iv) **Acceleration in Creditor's Sole Discretion.**
No home loan may contain a provision that permits the creditor (lender or loan broker), in its sole discretion, to accelerate the indebtedness. This provision does not prohibit the acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

(v) **Requiring Borrowers to Assert Claims in Less Convenient, More Costly, or More Dilatory Forum.**
No home loan may contain a provision that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in this state where the borrower may otherwise properly bring a claim or defense or limits in any way a claim or defense the borrower may have.

C. Prohibited Acts: High-Cost Home Loans

Pursuant to R.I. Gen. Laws § 34-25.2-6 a High-Cost Home Loan is also subject to additional limitations and prohibited practices listed in following subsections (i-xii):

(i) In connection with a High-Cost Home Loan, no Creditor shall directly or indirectly finance any points or fees which total is greater than five percent (5%) of the total loan amount or eight hundred dollars ($800) whichever is greater.

(ii) No prepayment fees or penalties shall be included in the loan documents for a High-Cost Home Loan

(iii) 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.

(iv) No high-cost home loan may include payment terms under which the outstanding principal balance or accrued interest will increase at any time over the course of the loan because the regularly scheduled periodic payments do not cover the full amount of interest due.

(v) No high-cost home loan may contain a provision that 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.

(vi) No high-cost home loan may include terms under which more than two (2) periodic payments required under the loan are consolidated

and paid in advance from the loan proceeds provided to the borrower.

(vii) A creditor may not make a high-cost home loan without first receiving certification from a counselor with a third-party nonprofit organization approved by the United States Department of Housing and Urban Development that the borrower has received counseling on the advisability of the loan transaction

(viii) A high-cost home loan shall not be extended to a borrower unless a reasonable creditor would believe at the time the loan is closed that one or more of the borrowers will be able to make the scheduled payments associated with the loan based upon a consideration of his or her current and expected income, current obligations, employment status, and other financial resources, other than the borrower's equity in the collateral that secures the repayment of the loan. There is a rebuttable presumption that the borrower is able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, said borrower's total monthly debts, including amounts under the loan, do not exceed fifty percent (50%) of said borrower's monthly gross income as verified by tax returns, payroll receipts, and other third-party income verification.

(ix) 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 signed and dated completion certificate 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.

(x) 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.

(xi) A creditor shall not make available a high-cost home loan that provides for a late payment fee except as follows:

(a) The late payment fee shall not be in excess of three percent (3%) of the amount of the payment past due.

(b) The late payment fee shall only be assessed for a payment past due for fifteen (15) days or more or ten (10) days or more in cases of bi-weekly mortgage payment arrangement.

(c) The late payment fee shall not be imposed more than once with respect to a single late payment. If a late payment fee is deducted from a payment made on the loan, and the deduction causes a subsequent default on a subsequent payment, no late payment fee may be imposed for the default.

(d) A creditor shall treat each payment as posted on the same business day as it was received.

(xii) All high-cost home loan documents that create a debt or pledge property as collateral shall contain the following notice on the first page in a conspicuous manner in at least 12 point font: "Notice: This a high-cost home loan subject to special rules under state law. Purchasers or assignees of this high-cost home loan may be liable for all claims and defenses by the borrower with respect to the home loan."

D. Additional Provisions Regarding High Cost Home Loans

(i) **Rate Threshold:** In determining whether the interest rate on a home loan meets or exceeds the "Rate Threshold" in R.I. Gen. Laws § 34-25.2-4(r)(1):

(a) the interest rate used shall be the fully indexed rate; and

(b) the yield on comparable United States treasury securities in effect on the fifteenth (15th) day of the month immediately preceding the month in which the loan application was received by the creditor shall be determined using statistical release H.15 or any publication that may supersede it as published by the Board of Governors of the Federal Reserve System, applying the principles set forth in 12 C.F.R. 226.32(a)(1)(i).

(ii) **Points and Fees Threshold**: In determining whether total points and fees meets or exceeds the points and fees threshold in R.I. Gen. Laws § 34-25.2-4(r)(2), total loan amount is defined as:

(a) the face amount of the loan for closed-end credit;

(b) the total line of credit allowed as of the closing for open-end credit.

(iii) **Counseling:** Upon determination that an applicant is obtaining a high-cost home loan, the loan broker and lender must provide the applicant with Disclosure Form 4 attached hereto in Appendix 5. This disclosure must be explained and provided to the applicant as soon as a high-cost home loan disclosure is made, but no later than ten (10) days prior to the closing of the loan. The lender and loan broker must provide the applicant a referral to a third-party non-profit counselor approved by the United States Department of Housing and Urban Development ("HUD") with the following written notice:

Search online for a HUD certified counseling agency near you at: http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=RI, or call HUD's interactive voice response system at: (800) 569-4287.

The lender must receive a certification from a HUD approved counseling agency certifying that the borrower was counseled face-to-face by said agency representative with a signed, dated form attached hereto as Form 5 in Appendix 5 which delineates the date and time of the counseling as well as a description of the reason for the counseling, signature by borrower, and a signature by the duly authorized representative of said HUD approved counseling agency.

E. <u>Typographical Error in R.I. Gen. Laws § 34-25.2-6(a)</u>:

R.I. Gen. Laws § 34-25.2-6(a) should be construed as "In connection with a high-cost home loan, no creditor shall directly or indirectly finance any points or fees which total is greater than five percent (5%) ***or*** eight hundred dollars ($800), whichever is greater." (The inclusion of "of" where the "or" is written in bold, is not consistent with the legislative intent and renders the subsection nugatory.)

F. R.I. Gen. Laws § 34-25.2-5(e) does not prohibit the waiver of the homestead exemption.

Section 6. ENFORCEMENT

Any violation of this Regulation may constitute a basis for administrative action against a licensee of the Department pursuant to R.I.Gen. Laws § 19-14-13.

Section 7. EFFECTIVE DATE.

Effective date: All licensees are required to comply with these regulatory requirements upon the promulgation of the Emergency Regulation; however, the Department will not take any enforcement actions on said regulatory requirements for any issues related to the use of disclosures prior to February 1, 2007.

FORM 1 HLPA

PROHIBITED ACTS OF LENDERS AND LOAN BROKERS IN R.I. GEN. LAWS § 34-25.2-1 *ET SEQ.*

PROHIBITED ACTS AND PRACTICES DISCLOSURE REGARDING ALL HOME LOANS

1. **No financing, either directly or indirectly**, of any credit life, credit disability, credit unemployment, or credit property insurance, or any other life or health insurance, or any payments either directly or indirectly for any debt cancellation or suspension agreement or contract. Any insurance premiums or debt cancellation or suspension fees that are **CALCULATED and PAID IN FULL** on a monthly basis shall not be considered financed.

2. No **knowing or intentional** engagement in the unfair act or practice of **"flipping a home loan."** Flipping a home loan is **the making of a home loan** to a borrower that refinances an existing home loan that was consummated within the prior 60 months when the new loan does not have reasonable, **tangible net benefits** in accordance with subsection 34-25.2-4(q) to the borrower considering all of the circumstances, including, but not limited to, the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.

3. No lender or loan broker **shall recommend or encourage default** on an existing loan or other debt prior to and in connection to the closing or planned closing of a home loan that refinances all or any portion of such existing loan or debt.

4. No home loan may contain a provision that **permits the creditor** (lender or loan broker), **in its sole discretion**, to **accelerate the indebtedness**. This provision does not prohibit the acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

5. No home loan may contain a provision that allows a party **to require a borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory** for the resolution of a dispute than a judicial forum established in this state where the borrower may otherwise properly bring a claim or defense or limits in any way a claim or defense the borrower may have.

Loan Broker:_____ Date:_____

Lender:_____ Date:_____

Borrower(s):_____ Date:_____

THIS FORM MUST BE PROVIDED NO LATER THAN THREE (3) BUSINESS DAYS OF APPLICATION.

PROHIBITED ACTS OF LENDERS AND LOAN BROKERS IN R.I. GEN. LAWS § 34-25.2-1 *ET SEQ.*

PROHIBITED ACTS AND PRACTICES REGARDING HIGH-COST HOME LOANS

1. In connection with a high-cost home loan, no creditor **shall directly or indirectly finance** any **points or fees** which total is greater than **five percent (5%) of the total loan amount or eight hundred dollars ($800)** whichever is **greater**.

2. **No prepayment fees or penalties** shall be included in the loan documents for a high-cost home loan.

3. 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.

4. No high-cost home loan may include **payment terms under which the outstanding principal balance or accrued interest will increase at any time over the course of the loan** because the regularly scheduled periodic payments **do not cover the full amount of interest due**.

5. No high-cost home loan may contain a provision that **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.

6. No high-cost home loan may include terms under which **more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds** provided to the borrower.

7. A creditor **may not make a high-cost home loan** without first **receiving certification from a counselor with a third-party nonprofit organization approved by the United States Department of Housing and Urban Development** that the borrower has received face-to-face counseling on the advisability of the loan transaction.

8. A high-cost home loan shall not be extended to a borrower unless **a reasonable creditor** would believe at the time the loan is closed that one or more of the borrowers will be able to make the scheduled payments associated with the loan based upon a consideration of his or her current and expected income, current obligations, employment status, and other financial resources, other than the borrower's equity in the collateral that secures the repayment of the loan. There is a rebuttable presumption that the borrower is able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, **said borrower's total monthly debts, including amounts under the loan, do not exceed fifty percent (50%) of said borrower's monthly gross income as verified by tax returns, payroll receipts, and other third-party income verification**.

9. **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 signed and dated completion certificate** 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.

10. 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.

11. A creditor shall not make available a high-cost home loan that provides for a **late payment fee** except as follows:

(a) The **late payment fee shall not** be in excess of **three percent (3%)** of the amount of the **payment past due**.

(b) The **late payment fee** shall only be assessed for a payment past due **for fifteen (15) days or more or ten (10) days or more in cases of bi-weekly mortgage** payment arrangement.

(c) The **late payment fee shall not** be imposed **more than once** with respect to a single late payment. If a late payment fee is deducted from a payment made on the loan, and the deduction causes a subsequent default on a subsequent payment, no late payment fee may be imposed for the default.

(d) A creditor shall **treat each payment as posted on the same business day** as it was received.

12. All high-cost home loan documents that create a debt or pledge property as collateral shall contain the following notice on the **first page in a conspicuous manner**: **"Notice: This a high-cost home loan subject to special rules under state law. Purchasers or assignees of this high-cost home loan may be liable for all claims and defenses by the borrower with respect to the home loan."**

Loan Broker:_____ Date:_____

Lender:_____ Date:_____

Borrower(s):_____ Date:_____

THIS FORM MUST BE PROVIDED NO LATER THAN THREE (3) BUSINESS DAYS OF APPLICATION.

FORM 3 HLPA

RHODE ISLAND HOME LOAN PROTECTION ACT DISCLOSURE

TANGIBLE NET BENEFIT

This disclosure is being provided to you in order to afford you the protections intended by R.I. Gen. Laws § 34-25.2-1 *et seq.*, ***The Rhode Island Home Loan Protection Act,*** which protects consumers from certain loan brokering and lending practices. One of these practices is "Flipping a home loan."
WHAT IS FLIPPING A HOME LOAN? Flipping a home loan is the making of a home loan to a borrower that refinances an existing home loan that was consummated within the prior sixty (60) months or five (5) years when the new loan does not have a reasonable "tangible net benefit."

Therefore, since you are refinancing your home loan within five (5) years of the prior loan, the lender and/or loan broker is required by law to meet certain guidelines. In order for your loan broker or lender to recommend or make this loan, this loan **MUST** meet at least one of the following criteria:

1. **Your new monthly payment must be lower** than the total of all monthly obligations being financed. The loan broker and/or lender must take into account the costs and fees, as disclosed on the HUD-1 Settlement Statement, as part of the refinancing.
2. There must be a **beneficial change** in the amortization period of the new loan(s).
3. **You receive cash in excess of the costs and fees**, as disclosed on the HUD-1 settlement statement, as part of the refinancing;
4. **Your current note rate of interest is reduced**, or in the event more than one loan is being refinanced, the weighted average note rate of the current loans is reduced;
5. There is a **change from an adjusted rate loan(s) to a fixed rate loan(s)** or
6. The refinancing is necessary to respond to a **bona fide personal need** or an order of a court of competent jurisdiction.

BASED UPON THE LOAN BROKER'S/LENDER'S REVIEW OF ALL OF THE CIRCUMSTANCES CONCERNING THIS LOAN AND ANY DEBTS TO BE PAID FROM THE PROCEEDS FROM THIS PROPOSED LOAN(S), THERE IS A:

- ❑ **LOWER MONTHLY PAYMENT WHICH IS:**_____
- ❑ **BENEFICIAL CHANGE IN THE AMORTIZATION PERIOD OF THE NEW LOAN WHICH IS:**_____
- ❑ **RECEIPT OF CASH IN EXCESS OF THE COSTS AND FEES:**_____
- ❑ **REDUCTION IN CURRENT NOTE RATE OR WEIGHTED AVERAGE:**_____
- ❑ **CHANGE FROM AN ADJUSTED RATE LOAN TO A FIXED RATE LOAN:**_____
- ❑ **"BONA FIDE PERSONAL NEED" ON BEHALF OF ONE OR MORE OF THE BORROWER(S). THE "BONA FIDE PERSONAL NEED" IS:**_____

The undersigned Lender and Loan Broker hereby certify that the "Tangible Net Benefit" analysis has been performed by the Lender and Loan Broker and that they have conveyed confirmation of this analysis to the Borrower. The Lender and Loan Broker have diligently verified all information in support of this analysis.
The Borrower hereby acknowledges and certifies that this refinancing is necessary for a tangible net benefit as specifically identified in this disclosure.

Loan Broker:_____ Date:_____

Lender:_____ Date:_____

Borrower(s):_____ Date:_____

FORM 4 HLPA

RHODE ISLAND HOME LOAN PROTECTION ACT DISCLOSURE

HIGH-COST HOME LOAN

This disclosure is being provided to you in order to afford you the protections intended by R.I. Gen. Laws § 34-25.2-1 *et seq.*, ***The Rhode Island Home Loan Protection Act,*** which protects consumers from certain loan brokering and lending practices. One of these statutory protections, R.I. Gen. Laws § 34-25.2-6, imposes certain requirements and prohibited practices upon "high-cost home loans."

WHAT IS A "HIGH-COST HOME LOAN?" It is a home loan (other than a reverse mortgage transaction) in which the terms of the loan meet or exceed **one or more** of the following rate or points and fees thresholds:

THE RATE

1. For a first lien mortgage home loan: the interest rate equal to eight (8) percentage points over the yield on comparable United States treasury securities on the fifteenth (15th) day of the month immediately preceding the month in which the loan application was received by the lender; and
2. For a subordinate mortgage lien, an interest rate equal to nine (9) percentage points over the yield on comparable United States treasury securities on the fifteenth (15th) day of the month immediately preceding the month in which the loan application was received by the lender.

POINTS AND FEES

1. For loans in which total amount that is borrowed (as reflected on the face amount of the note) is **$50,000 or more**: the total points and fees payable in connection with the home loan less any excluded points and fees exceed five percent (5%) of the total loan amount.
2. For loans in which total amount that is borrowed (as reflected on the face amount of the note) is **less than $50,000**: the total points and fees payable in connection with the home loan less any excluded points and fees exceed eight percent (8%) of the total loan amount.

My lender and loan broker have told me that I: *(CHECK ONE)* **DO _____OR DO NOT_____ HAVE A HIGH-COST HOME LOAN.**

MY FULLY INDEXED INTEREST RATE IS:_____(*TO BE FILLED OUT BY LENDER/LOAN BROKER AND SIGNED/CONFIRMED BY BORROWER*))

Borrower:_____ Date:_____

LENDERS AND LOAN BROKERS ARE REQUIRED BY LAW AND REGULATION FROM ENGAGING IN CERTAIN PRACTICES THAT PERTAIN TO ALL HOME LOANS AND ADDITIONAL PRACTICES THAT APPLY TO HIGH-COST HOME LOANS. AT THE TIME YOUR APPLICATION WAS SUBMITTED YOU SHOULD HAVE RECEIVED TWO DISCLOSURES ENTITLED "PROHIBITED ACTS AND PRACTICES REGARDING HOME LOANS AND HIGH-COST HOME LOANS" WHICH INFORM YOU OF THESE PROHIBITIONS AND/OR LIMITATIONS.

The Lender and Loan Broker hereby certify that they have provided you with TWO Disclosures (IN ADDITION TO THIS DISCLOSURE) to inform you of the Prohibited Acts and Practices Regarding Home Loans and High-Cost Home Loans. You should read, sign and date the disclosures, and keep copies for your records.

Loan Broker:_____ Date:_____

Lender:_____ Date:_____

Borrower(s):_____ Date:_____

THIS FORM IS TO BE PROVIDED TO THE BORROWER AS SOON AS HIGH-COST HOME LOAN IS DETERMINED BY LENDER OR LOAN BROKER BUT NO LATER THAN TEN (10) BUSINESS DAYS PRIOR TO CLOSING. BORROWER MUST COMPLETE AND LENDER AND LOAN BROKER MUST RECEIVE CERTIFICATE OF FACE-TO-FACE COUNSELING WITH A THIRD PARTY NONPROFIT ORGANIZATION APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PRIOR TO MAKING ANY HIGH COST HOME LOAN.

FORM 5 HLPA

RHODE ISLAND HOME LOAN PROTECTION ACT DISCLOSURE

CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE AND CERTIFICATION

If you obtain this loan, which pursuant to Rhode Island law is a High-Cost Home Loan, the Lender will have a mortgage on your home. You could lose your home, and the money you have put into it, if you do not meet your obligations under the loan.

You should shop around and compare loan rates and fees. Mortgage loan rates, and closing costs, and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, the loan to value requested, and the type of property that will secure your loan. The loan rate and fees could vary based on which lender or mortgage you select. Higher rates and fees may be related to the individual circumstances of a particular consumer's application.

Rhode Island law requires the lender and loan broker to receive certification from a non-profit third party housing counseling agency approved by the United States Department of Housing and Urban Development that you have received face-to-face counseling regarding this High-Cost Home Loan.

Search online for a HUD certified counseling agency near you at: http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=RI, or call HUD's interactive voice response system at: (800) 569-4287.

After you receive this face-to-face counseling, you should have an authorized representative of the Counseling Agency sign, date, and confirm the subject matter and date/time that you attended the counseling ON THIS FORM.

I hereby certify that *(insert name of Borrower/Applicant)* _____ _____attended on *(insert date/time)*_____face-to-face counseling that both informed and explained the risks associated with this High-Cost Home Loan and any other issues related to this financial transaction.

Borrower:_____ **Date:**_____

Authorized Counselor:_____ **Date:**_____

Agency:_____ **Date:**_____

THE APPLICANT SHOULD RECEIVE NOTICE OF COUNSELING AT LEAST TEN (10) BUSINESS DAYS PRIOR TO THE CLOSING OF THE LOAN.

APPENDIX 1 BANKING REGULATION 3

NOTE: This Appendix of the Bank Holding Company Act is as of December 31, 2006; It is the Duty and Responsibility of the Licensee to Maintain Knowledge of All Amendments and Revisions of this Appendix. You May Obtain Such Information online at: http://www.gpoaccess.gov/uscode/index.html

12 U.S.C. § 1841 states in pertinent part:

(2) Any company has control over a bank or over any company if--

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For the purposes of any proceeding under paragraph (2)(C) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 per centum of any class of voting securities of a given bank or company does not have control over that bank or company.

(4)In any administrative or judicial proceeding under this chapter, other than a proceeding under paragraph (2)(C) of this subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 per centum or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under paragraph (2)(C).

(5) Notwithstanding any other provision of this subsection--

(A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (g) of this section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; except that this limitation is applicable in the case of a bank or company acquiring such shares prior to December 31, 1970, only if the bank or company has the right consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year after December 31, 1970.

(B) No company is a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis.

(C) No company formed for the sole purpose of participating in a proxy solicitation is a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation.

(D) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until

two years after the date of acquisition. The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.

(E) No company is a bank holding company by virtue of its ownership or control of any State-chartered bank or trust company which--

(i) is wholly owned by 1 or more thrift institutions or savings banks; and

(ii) is restricted to accepting--

(I) deposits from thrift institutions or savings banks;

(II) deposits arising out of the corporate business of the thrift institutions or savings banks that own the bank or trust company; or

(III) deposits of public moneys.

(F) No trust company or mutual savings bank which is an insured bank under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] is a bank holding company by virtue of its direct or indirect ownership or control of one bank located in the same State, if (i) such ownership or control existed on December 31, 1970, authorized by applicable State law, and (ii) the trust company or mutual savings bank does not after that date acquire an interest in any company that, together with any other interest it holds in that company, will exceed 5 per centum of any class of the voting shares of that company, except that this limitation shall not be applicable to investments of the trust company or mutual savings bank, direct and indirect, which are otherwise in accordance with the limitations applicable to national banks under section 24 of this title.

APPENDIX 2 BANKING REGULATION 3

NOTE: This Appendix of the Code of Federal Regulations Regulation Z, 12 CFR 226 (Truth in Lending) is as of December 31, 2006; It is the Duty and Responsibility of the Licensee to Maintain Knowledge of All Amendments and Revisions of this Appendix.

You May Obtain Such Information online at:
http://www.federalreserve.gov/Regulations/regref.htm.

12 CFR 226.22 states, in pertinent part, that:

(a) Accuracy of annual percentage rate. (1) The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made. The annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method. Explanations, equations and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth in appendix J to this regulation

(b) Computation tools. (1) The Regulation Z Annual Percentage Rate Tables produced by the Board may be used to determine the annual percentage rate, and any rate determined from those tables in accordance with the accompanying instructions complies with the requirements of this section. Volume I of the tables applies to single advance transactions involving up to 480 monthly payments or 104 weekly payments. It may be used for regular transactions and for transactions with any of the following irregularities: an irregular first period, an irregular first payment, and an irregular final payment. Volume II of the tables applies to transactions involving multiple advances and any type of payment or period irregularity.

(2) Creditors may use any other computation tool in determining the annual percentage rate if the rate so determined equals the rate determined in accordance with appendix J, within the degree of accuracy set forth in paragraph (a) of this section.

(c) Single add-on rate transactions. If a single add-on rate is applied to all transactions with maturities up to 60 months and if all payments are equal in amount and period, a single annual percentage rate may be disclosed for all those transactions, so long as it is the highest annual percentage rate for any such transaction.

(d) Certain transactions involving ranges of balances. For purposes of disclosing the annual percentage rate referred to in Sec. 226.17(g)(4) (Mail or telephone orders--delay in disclosures) and (h) (Series of sales--delay in disclosures), if the same finance charge is imposed on all balances within a specified range of balances, the annual percentage rate computed for the median balance may be disclosed for all the balances. However, if the annual percentage rate computed for the median balance understates the annual percentage rate computed for the lowest balance by more than 8 percent of the latter rate, the annual percentage rate shall be computed on whatever lower balance will produce an annual percentage rate that does not result in an understatement of more than 8 percent of the rate determined on the lowest balance.

APPENDIX 3 BANKING REGULATION 3

NOTE: This Appendix of the Code of Federal Regulations Regulation Z, 12 CFR 226 (Truth in Lending) is as of December 31, 2006; It is the Duty and Responsibility of the Licensee to Maintain Knowledge of All Amendments and Revisions of this Appendix. You May Obtain Such Information online at: http://www.federalreserve.gov/Regulations/regref.htm.

Sec. 226.32(a)(i) states, in pertinent part:

Requirements for certain closed-end home mortgages.

(a) Coverage. (1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(i) The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.

Sec. 226.32(b)(1)(iii) states, in pertinent part:

All items listed in Sec. 226.4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor;

Sec. 226.4(c)(7) Real-estate related fees. The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.

(iii) Notary and credit report fees.

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest infestation or flood hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

APPENDIX 4 BANKING REGULATION 3

12 C.F.R 226.4(d)(2) states, in pertinent part, that:

(i) The insurance coverage may be obtained from a person of the consumer's choice, and this fact is disclosed.

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under Sec. 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.