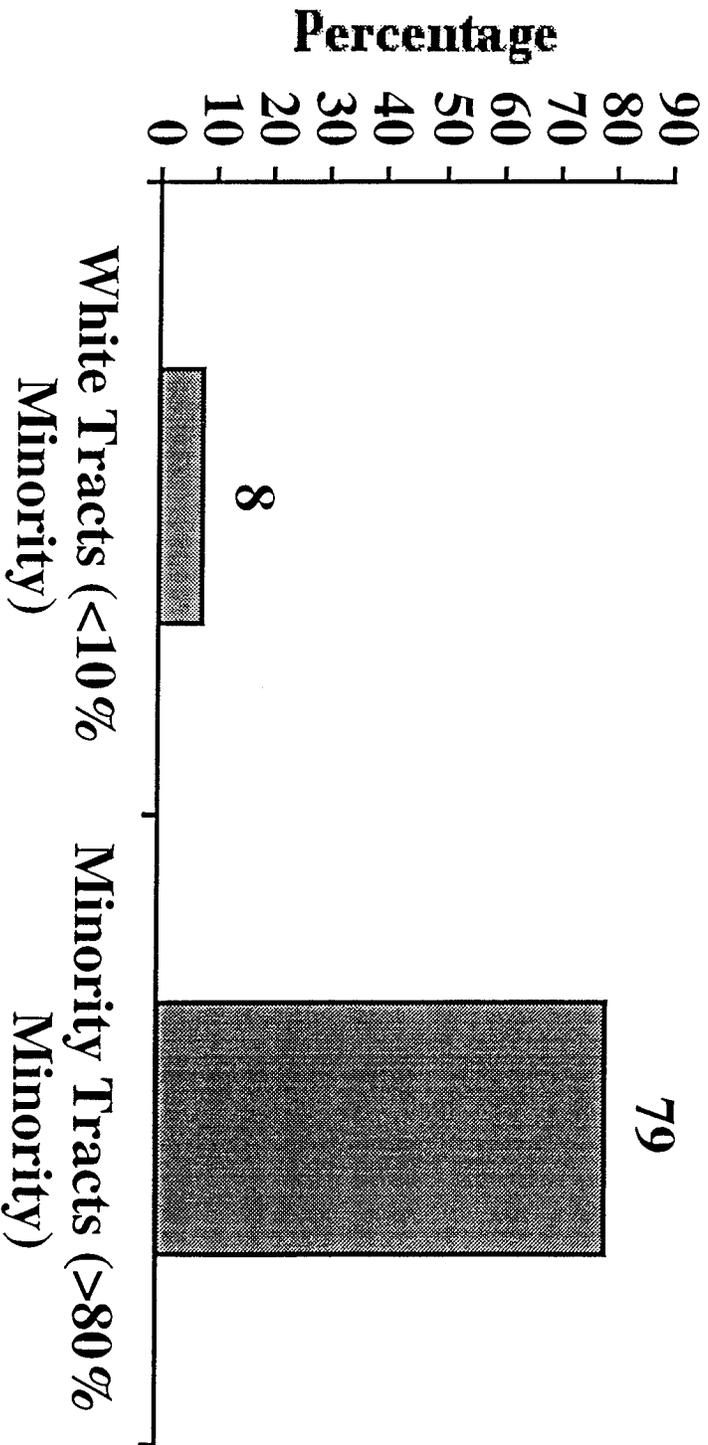
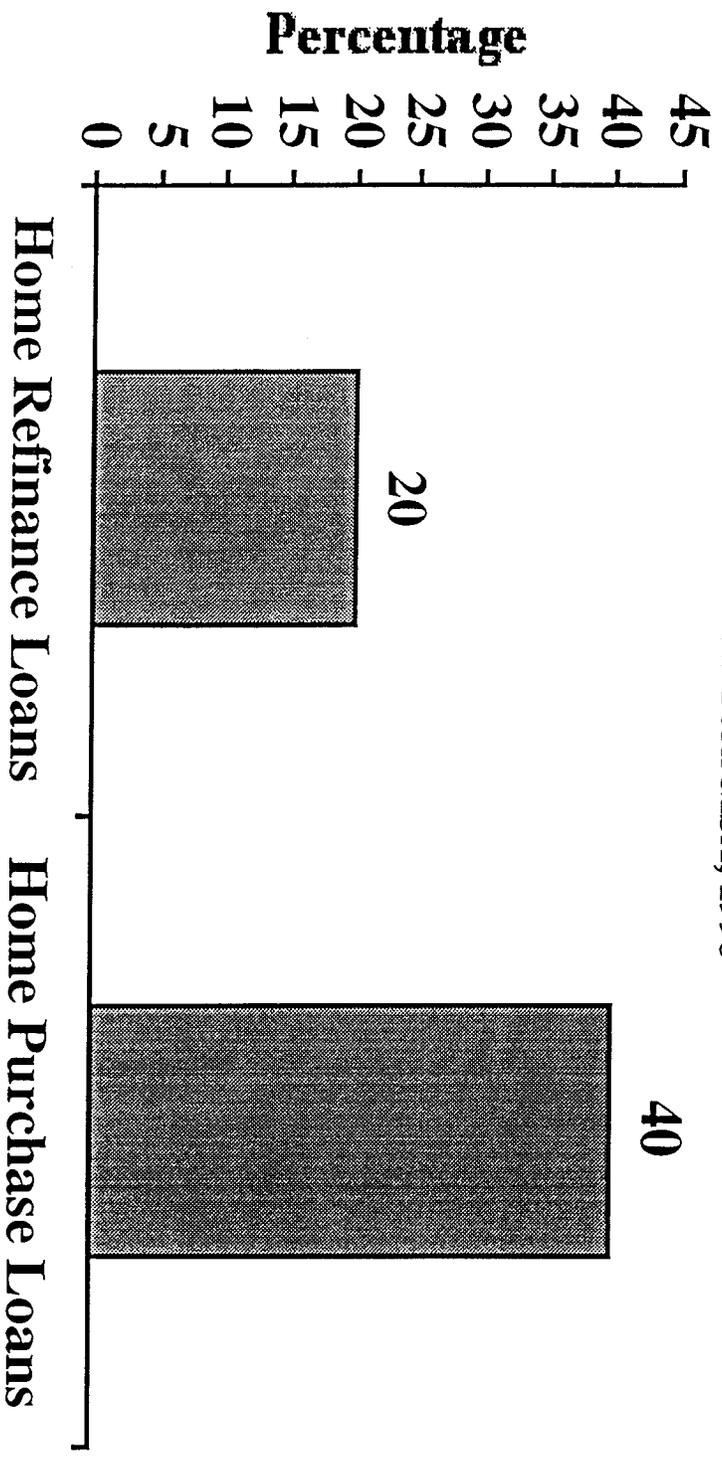


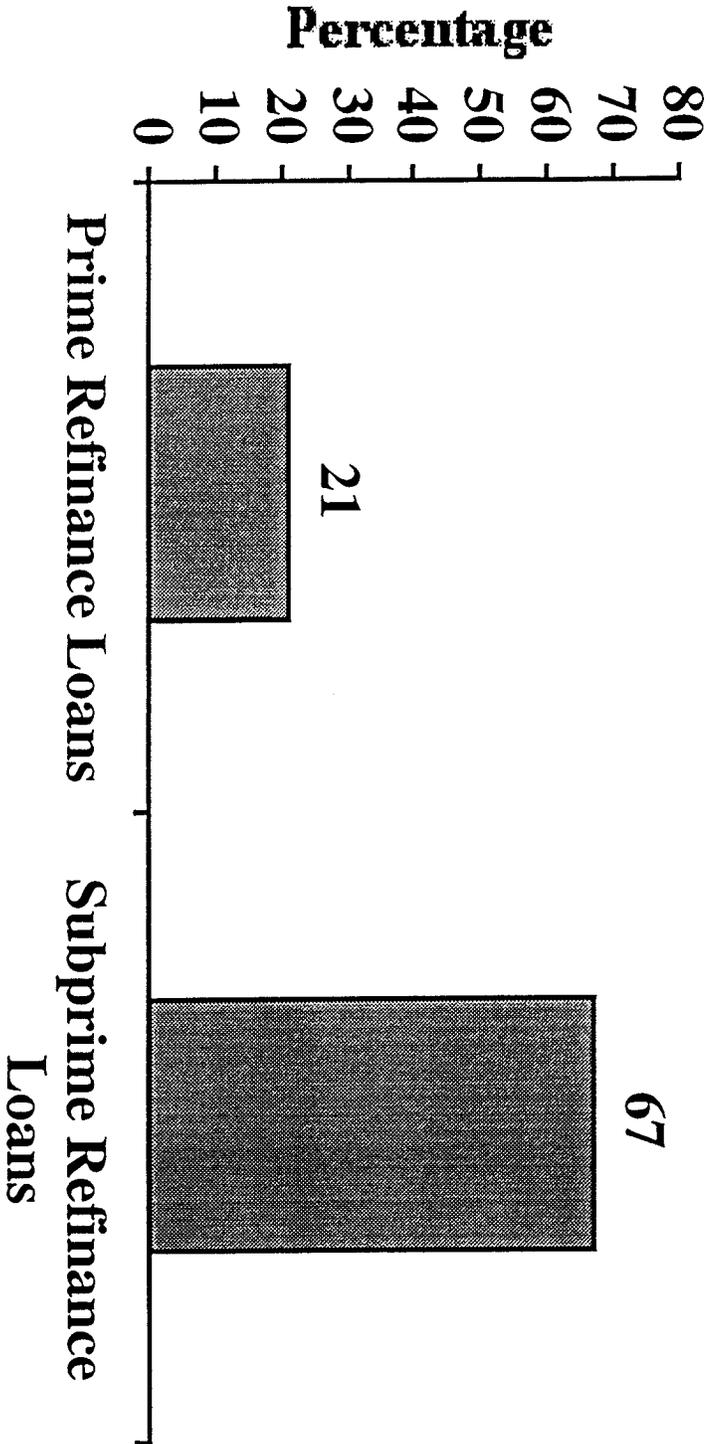
*NCRRC Analysis*  
**% of Home Refinance Loans Made by Subprime Lenders  
Among Top Twenty Lenders  
New York MSA, 1998**



*NCCRC Analysis*  
% of Subprime Loans Made in Substantially Minority Census Tracts by  
CRA-Regulated Lenders or their Affiliates  
(Top Twenty Lenders)  
New York MSA, 1998

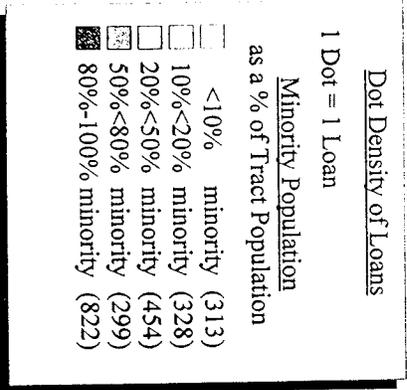


*NCRRC Analysis*  
**% of Prime and Subprime Home Refinance Loans Purchased by Wall  
Street Firms and Other Financial Institutions  
All Lenders Nationwide  
1998**



# 1998 Delta Funding Corporation Lending Conventional Refinance (Owner-Occupied) Loans In the New York City Five-Borough Area

Produced by NCRC



## **NCRC Model Anti-Predatory Lending Bill**

The bill provides safeguards against abuse for all dwelling-secured loans. It then defines a high cost loan, and provides additional protections against abuse associated with high cost loans.

### **Coverage**

- Covers creditors and institutions that do not originate the loans but are involved in the application process such as brokers.
- Covers dwelling-secured credit transactions including home purchase, refinance, home improvement, and reverse mortgage lending. Also covers open-ended credit if such credit is secured by a dwelling.

### **Safeguards Required for All Loans**

- No lender may make, directly or indirectly, any false, deceptive, or misleading statements in connection with making the loan.
- Prohibits any prepayment fees or penalties when a borrower pays off the loan before it is due.
- Outlaws the financing of credit life, credit disability, credit unemployment insurance, or other life or health insurance premiums.
- Forbids flipping, which is defined as refinancing the existing loan with a new one that does not offer any benefits such as improved terms and conditions.
- Disallows a lender from making a loan unless the lender believes the borrower has the capacity to make scheduled payments. It is assumed that the borrower can repay if the total debt-to-income ratio is less than 50 percent and there is a minimum left over for other necessities after all housing expenses are covered.
- Prohibits a lender from encouraging a consumer to default on an existing loan, and then to refinance with the lender.
- Outlaws a creditor from charging a fee for a service or product that is not actually provided.
- Disallows a lender's payment directly to a home improvement contractor; instead the financial institution makes a loan to the homeowner who then pays the contractor. No claim or lien shall be placed upon the property for the work for which the loan is made.
- Requires a lender to obtain an inspection for home improvement work from an inspector certified by a state agency prior to paying more than 70 percent of the contract amount for home improvement work.

- Outlaws a lender from making a loan for an amount substantially larger than an appraisal of the property that had been conducted in accordance with the standards established in federal regulations of Real Estate and Lending Appraisals (12 C.F.R. sect. 34, subpart C). It also outlaws lenders' influencing the independent judgment of the appraiser.
- Requires a lender to submit home loan data in a HMDA format to a state agency if the lender is exempt from HMDA (Home Mortgage Disclosure Act). The lender is required to ask for the gender and race of borrower if the loan application is made via telephone, mail or through the Internet. The state agency shall provide any additional home loan data to the Federal Financial Institutions Examination Council (FFIEC).
- The lender must disclose to the borrower his or her credit score if the lender uses a credit score in a loan decision. The lender must also disclose the method used for the calculation of the credit score.
- Disallows a lender from asking the borrower to sign a contract with blanks to be filled in later by the lender.

### **Definition of a High Cost Loan**

- A first mortgage loan that has an annual percentage rate (interest rate plus fees) that exceeds the rate of securities issued by the U.S. Department of Treasury by 4 percentage points or more.
- A second mortgage loan that has an annual percentage rate that exceeds the rate of securities issued by the U.S. Department of Treasury by 5 percentage points or more.
- Any mortgage loan in which total points and fees exceeds 6 percent of the loan amount. This is based on Maryland's experience. If this is too high for your state, this threshold should be adjusted downward. All the costs the borrower is required to pay in order to get the loan are considered "points and fees."

### **Limitations and Protections Associated with High Cost Loans**

- A high cost loan cannot contain a provision that accelerates indebtedness. This includes a prohibition on balloon payments, or the practice of scheduling a payment that is larger than past payments.
- Prohibits the practice of negative amortization. This means that payments cannot be structured in such a way that the principal actually increases.

- Disallows a lender from charging fees or other charges to modify, renew, or extend a high cost loan if after the modification the loan is still a high cost loan.
- Lenders are required to establish interest bearing escrow accounts for property taxes and homeowners insurance.
- Outlaws a lender from requiring mandatory arbitration and otherwise limiting the right of the borrower to sue and seek redress through the judicial system.
- Prohibits a lender from making a high cost loan unless the borrower has received homeownership counseling from an organization certified by the Department of Housing and Urban Development, or by a counselor trained according to the standards of a state agency. Allows the borrower to cancel the loan transaction up to three days after receiving counseling.
- A high cost loan cannot finance any points or fees payable to third parties if the points and fees cause the total number of points and fees to exceed the threshold established in the definition of a high cost loan.
- A financial institution making a high cost loan must report to a state agency loan information including the purchase price of the dwelling, the monthly housing payment, annual percentage rate, credit score, total monthly borrower income and debts, and closing costs including points and fees.
- If a borrower has established an acceptable credit history for a period of one year, the lender will reduce the interest rate of a high cost loan by one percentage point. This procedure repeats in subsequent years until the interest rate is comparable to loans held by borrowers with good credit history. A lender offering a high cost loan must report good payment histories to a credit bureau on an annual basis.
- In the event of default, the lender shall provide the borrower with the opportunity of foreclosure prevention assistance from a state-approved agency. The foreclosure prevention agency can arrange for special forbearance, a modification of the terms of the mortgage, or a pre-foreclosure sale. Foreclosures will be conducted through a judicial procedure.
- The interest rate or principal of a high cost loan cannot increase after default.
- The bill contains civil and criminal penalties for any violations of its terms. It allows for private enforcement and enforcement by state attorney generals.

# Anti-Predatory Lending Model Legislation

## 1. Definitions.

The following definitions apply for the purposes of this section:

- 1.1. "Creditor" means any person that:
  - 1.1.1. In any twelve-month period extends, renews, consolidates or continues more than one dwelling-secured credit transaction as defined in this Part. or that
  - 1.1.2. In any twelve-month period arranges for the extension, modification, consolidation, renewal or continuation of more than one dwelling-secured credit transaction
  - 1.1.3. Act in concert with the other named persons, or who formulate or control their practices.
- 1.2. "Obligor" means each borrower, co-borrower, cosigner, or guarantor obligated to repay a credit.
- 1.3. "Person" means one or more individuals, or entities as defined in the federal Fair Housing Act (42 U.S.C. § 3602).
- 1.4. "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.
- 1.5. "Commissioner" means the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation [Please insert here the appropriate agency for your state].
- 1.6. "Annual percentage rate" means the annual percentage rate for the credit transaction calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. section 1601 et. seq.), and the regulations promulgated thereunder by the Federal Reserve Board, as said Act and regulations are amended from time to time.
- 1.7. "First mortgage Commissioner's rates" means annual percentage rates for first mortgages which shall be set by the Commissioner, and that must not exceed by more than four percentage (4%) points the yield on United States Treasury securities having comparable periods of maturity to the credit transaction maturity, measured as of the 15th day of each month.

- 1.8. "Junior mortgage Commissioner's rates" means annual percentage rates for junior mortgages which shall be set by the Commissioner, and that must not exceed by more than five percentage (5%) points the yield on United States Treasury securities having comparable periods of maturity to the credit transaction maturity, measured as of the 15th day of each month.
- 1.9. "Total credit amount" means the total amount financed minus any cost listed in section 1.13.
- 1.10. "Junior mortgage" means a dwelling-secured second or third mortgage, home equity loan, or home equity credit plan.
- 1.11. A "dwelling-secured credit transaction" means all credit transactions, including but not limited to an open-end credit plan as defined in Regulation Z of the Truth In Lending Act (12 C.F.R. § 226.2(a)(20)), that are secured by the obligor's dwelling.
- 1.12. A "dwelling-secured high-cost credit transaction" means a dwelling-secured credit transaction, as defined in section 1.11 of this bill in which:
- 1.12.1. The principal amount of the dwelling-secured credit transaction does not exceed the conforming credit size limit for a comparable dwelling as established from time to time by the Federal National Mortgage Association;
- 1.12.2. The credit transaction is secured by a mortgage or deed of trust; and
- 1.12.3. The terms of the dwelling-secured credit transaction exceed one or more of the following thresholds:
- a) the credit transaction is secured by a first mortgage on the obligor's dwelling and the annual percentage rate at consummation, calculated to include any lower introductory rate, exceeds the first mortgage Commissioner's rate for a comparable period of maturity to the credit transaction maturity measured as of the 15th day of the month immediately preceding the month in which the application for the dwelling-secured credit transaction is received by the creditor; or b) the credit transaction is secured by a junior mortgage on the obligor's dwelling and the annual percentage rate at consummation, calculated to include any lower introductory rate, exceeds the junior mortgage Commissioner's rate for a comparable period of maturity to the credit transaction maturity measured as of the 15th day of the month immediately preceding the month in which the application for the dwelling-secured credit transaction is received by the creditor; or c) the total points and fees payable by the obligor at or before credit transaction closing exceeds six percent (6%) of the total credit amount.

- 1.13. "Points and fees" means the costs the obligor is required to pay to get the credit, including:
- 1.13.1. All items required to be disclosed under sections 12 C.F.R. § 226.4(a) and 12 C.F.R. § 226.4(b) of Regulation Z of the Truth In Lending Act, as amended from time to time, except interest or the time-price differential;
  - 1.13.2. Application fee, annual fee for open-end plan, credit report, appraisal/survey, creditor's inspection fee (pre-consummation), pest inspection, tax/flood certification, assumption fee (pre-consummation), document preparation (credit related), mortgage insurance, settlement or closing fee, abstract or search/title examination fees, title insurance/binder (creditor coverage), notary fees (for mortgage), attorney fees (creditor), recording fees (mortgage, release); state/city/county tax/stamps (mortgage), lock-in fee; and
  - 1.13.3. All compensation paid by the creditor or the obligor, directly or indirectly to a mortgage broker, including a broker that originates a credit in its own name in a tablefunded transaction, not otherwise included in 1.13.1.
- 1.14. "Total debt-to-income ratio" means the ratio of the obligor's total monthly debts, including amounts owed under the credit transaction, to the obligor's monthly gross income.
- 1.15. "Estimated monthly shelter expenses" means a accurate good faith estimate of expenses, based on the type, condition and location of the particular property including:
- i) Mortgage payment (Principal and Interest)
  - ii) Property taxes
  - iii) Hazard insurance (including flood if appropriate)
  - iv) Other required insurance
  - v) Special assessments
  - vi) Ground rent
  - vii) Maintenance
  - viii) Local utilities (including heat)
  - ix) Other foreseeable expenses of owning the property

- 1.16. "Total monthly debts" means monthly debt payments and job-related expenses. Significant debts mean debts and obligations with a remaining term of 10 months or more, and debts with a term less than 10 months that if included in the calculation of the total debt-to-income ratio, would increase the value of the ratio by more than 10 percent.
- 1.17. "Residual income" means the amount of income remaining after deducting total monthly debts, obligations and estimated monthly shelter expenses, to cover family living expenses such as food, health care, clothing, and gasoline.
- 1.18. "Minimum residual income" means the residual income according to the current guidelines established for the region by the Department of Veterans Administration, based on family size according to the figures compiled by the Department of Labor.
- 1.19. "Delinquent account" means an account on which at least one payment is due but unpaid.
- 1.20. "Default" means when a mortgagor fails to perform under any covenant of the mortgage and the failure continues for 30 days.
- 1.21. "Business day" means a day as defined in Regulation Z of the Truth In Lending Act (12 C.F.R. § 226.2 (a) (6)).
- 1.22. "Dwelling" means a residential structure as defined in Regulation Z of the Truth In Lending Act (12 C.F.R. § 226.2 (a) (19)).
- 1.23. "Flipping a credit" means the making of a dwelling-secured credit transaction to an obligor that refinances an existing dwelling-secured credit transaction when the new credit does not have reasonable, tangible net benefits to the obligor considering all of the circumstances, including the terms of both the new and refinanced credits, the cost of the new credit, and the obligor's circumstances.
- 1.24. "Sales contract" means both a present sales of goods and a contract to sell goods at a future time.

## **2. Prohibited Acts and Practices Regarding Dwelling-Secured Transactions.**

- 2.1. No prepayment fees or penalties may be imposed for paying all or part of the principal of a dwelling-secured credit transaction, before the date on which the principal is due.

- 2.2. It shall be unlawful for any creditor in a dwelling-secured credit transaction to finance, directly or indirectly, any prepaid insurance including but not limited to credit life, credit disability, or credit unemployment insurance, or any other life or health insurance premiums.
- 2.3. No creditor may engage in the "flipping" of a dwelling-secured credit transaction.
- 2.4. No creditor may make a dwelling-secured high-cost credit transaction unless the creditor reasonably believes at the time the credit transaction 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 obligor's equity in the dwelling which secures repayment of the credit). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the credit transaction is consummated, the total debt-to-income ratio is less than 50 percent, and the residual income (as determined in accordance with subdivision 1.17. above) exceeds the required minimum (as defined in subdivision 1.18) by at least 20 percent.
  - 2.4.1. A creditor must, to verify the obligor's income and disabilities of the obligor, rely at a minimum on documents such as a recent credit report, recent verification of employment and income by obligor's employer, copies of recent W-2 forms, and copies of the obligor's recent income tax declaration obtained from the IRS.
- 2.5. No creditor may recommend or encourage an obligor to stop making payments on an existing credit transaction or other debt prior to and in connection with the closing or planned closing of a dwelling-secured credit transaction that refinances all or any portion of the existing credit or debt.
- 2.6. No creditor may charge a fee for a product or service where the product or service is not actually provided, or misrepresent the amount charged by or paid to a third party for a product or service.
- 2.7. No creditor may pay a contractor under a home-improvement contract from the proceeds of a dwelling-secured credit transaction other than (i) by an instrument payable to the obligor or jointly to the obligor and the contractor, or (ii) at the election of the obligor, through a third-party escrow agent in accordance with terms established in a written agreement signed by the obligor, the creditor, and the contractor prior to the disbursement of funds to the contractor.

- 2.7.1. Before the creditor shall make partial or full payments to the home improvement contractor, the creditor must receive reasonable assurance, through releases or other certifications from all subcontractors that have worked on the residence up to that point in time, that no claim or mechanics lien shall be placed upon the property for that portion of the work for which the payment is made.
- 2.7.2. Prior to paying more than 70% of the full price contracted for under the home improvement contract, the creditor shall obtain 1) an inspection from an independent inspector (from a list maintained by the Department of Housing and Community Development [Please insert here the appropriate agency for your state]) who shall supply a completion certification stating that the home improvements were satisfactorily completed, and 2) a final certificate showing compliance with all applicable housing or building codes, if required by state or local law.
- 2.7.3. It shall be a complete defense to payment on a home improvement credit agreement if payment of more than seventy percent of the contract price is made by a creditor to a contractor or broker without having fully complied with the requirements of this section.
- 2.7.4. When the home improvements financed by a home improvement credit agreement are not completed as warranted, in addition to any other remedy provided by law or by this bill, an obligor may make scheduled installment payments due on the home improvement credit agreement into an escrow account established by a licensed attorney. Proof that the scheduled payments are made in a timely manner into the escrow account shall be provided to the creditor. The creditor may not accelerate the balance of the payments on the home improvement credit agreement while the obligor pays installments into an escrow account in a timely manner. The obligor must give the creditor notice in a reasonable manner, that this action is being taken, and the reasons for it. At its own expense, the creditor may procure a written opinion from an independent inspector, obtained from a list maintained by the Department of Housing and Community Development [Please insert here the appropriate agency for your state], and must provide the obligor a complete copy of the written opinion from the independent inspector. If the independent inspector finds that there is no reasonable basis for the obligor's claim that the home improvements are not as warranted, and the obligor does not contest the inspector's opinion within 60 days after the creditor has provided the opinion to the obligor, the creditor may demand and receive all payments made into the escrow account. If the creditor fails to obtain such an opinion from an independent inspector within one year of the first payment into the escrow, the full

amount of the funds held in escrow shall revert to the obligor, and the balance due on the agreement shall be considered to be paid in full. Prior to the expiration of this one year period, the creditor, at its option, may allocate some or all of the funds held in the escrow account to complete the home improvement work financed by the home improvement credit agreement in a workmanlike manner. If additional funds are necessary, the creditor may, at its option, provide such funds.

- 2.8. No creditor or any other person party to a dwelling-secured transaction may make or cause to be made, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a dwelling-secured credit transaction including, without limitation, a false, deceptive, or misleading statement or representation regarding the obligor's ability to qualify for any mortgage product, or regarding the value of the dwelling.
- 2.8.1. No creditor may falsify or induce others to falsify the purpose of a credit extension.
- 2.9. No creditor may influence, or attempt to influence the independent judgment of the appraiser with respect to the value of the property that is to be covered by a dwelling-secured credit transaction or is being offered as security according to an application for a mortgage credit. Appraisals must be performed according to the standards established in the federal regulations of Real Estate Lending and Appraisals (12 C.F.R. § 34 subpart C), and if the seller purchased the property within a period of a year, that information must be disclosed in the appraisal report together with the price paid by any seller during that time period, and justification for the higher sales price.
- 2.10. Any appraiser who conducts an appraisal of a dwelling in the State of \_\_\_\_\_ on behalf of an obligor or on behalf of a creditor shall provide one copy of the appraisal report, without additional charge, to the obligor at the same time the appraiser provides the appraisal report to the creditor. A homeownership counseling certificate shall not be issued without the review of the appraisal, as part of the counseling.
- 2.11. No creditor may, make or purchase a dwelling-secured credit transaction for an amount substantially larger than a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as a proper price or cost in the light of the market prevailing conditions, the physical condition of the dwelling, and in accordance with the standards established in the federal regulations of Real Estate Lending and Appraisals (12 C.F.R. § 34 subpart C).

- 2.12. No creditor or any other person party to a dwelling-secured transaction may ask or cause to be asked, directly or indirectly an obligor to sign a contract in which blanks are left to be filled in after the contract is signed by the obligor.
- 2.12.1. No dwelling-secured credit transaction contract in which blanks are left to be filled in after the contract is signed by the obligor is enforceable.
- 2.13. Any creditor that originates or purchases dwelling-secured credit transactions, or for which receives applications where either the obligor is a resident of the state of \_\_\_\_\_, or the property is located within the state of \_\_\_\_\_, and that it is exempt from the reporting requirements of the Home Mortgage Disclosure Act (12 U.S.C. § 2803), must report to the Commissioner the same information that other creditors are required to report under the section on Itemization of Loan Data of the Home Mortgage Disclosure Act (12 U.S.C. § 2803(b)) as amended, with the exception that the information must be grouped by block groups. Creditors must submit the information required in this section according to the regulations established by the Office of the Comptroller of the Currency pursuant to the section on Submission to Agencies of the Home Mortgage Disclosure Act (12 U.S.C. § 2803(h)(1)).
- 2.13.1. If the application is made by telephone, by mail, or through the Internet, the creditor will ask for the sex and race or national origin of the applicant, and will inform the applicant that the state government is requesting this information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating against applicants on these bases. If the applicant chooses not to provide the information, the creditor will note this fact and will note the data, to the extent possible, on the basis of visual observation by a party to the closing of the credit transaction. If the transaction is closed with no other party present, the creditor will note this fact and will note the data, to the extent possible, on the basis of surname or voice of the applicant.
- 2.13.2. The Commissioner will compile each institution's data into disclosure statements. The Loan Application Registry and the disclosure statements will be made available to the public.
- 2.13.3. The Commissioner shall forward a copy of the information received under section 2.12 or section 3.17 of this bill, to the Federal Financial Institutions Examination Council.

- 2.14. A creditor must disclose in writing to the obligor his/her credit score, if the creditor obtains or calculates the credit score of the obligor. A creditor must also disclose any method used for the evaluation of the obligor credit score, including but not limited to the statistical basis for the calculation of the obligor's score from his/her credit history.

### 3. **Limitations and Prohibited Practices for Dwelling-secured high-cost credits.**

A dwelling-secured high-cost credit transaction shall be subject to the following limitations and prohibited practices:

- 3.1. No call provision. No dwelling-secured high-cost credit transaction may contain a provision which permits the creditor, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the credit transaction has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the credit transaction documents unrelated to the payment schedule.
- 3.2. No balloon payment. No dwelling-secured high-cost credit transaction may contain a scheduled payment that is larger than 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 obligor. Open-end dwelling-secured high-cost credits may not contain a scheduled minimum payment that is higher than the percentage of the balance subject to finance set as the percentage to be used to calculate the minimum payment in the original agreement.
- 3.3. No negative amortization. No dwelling-secured high-cost credit transaction may contain a payment schedule with regular periodic payments that cause the principal balance to increase. This shall not prohibit negative amortization as a consequence of a foreclosure prevention procedure as described in section 3.18 of this bill.
- 3.4. No increased interest rate. No dwelling-secured high-cost credit transaction may contain a provision that increases the interest rate, or the amount of the credit after default. This provision does not apply to interest rate changes in a variable rate credit transaction otherwise consistent with the provisions of the credit transaction documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.
- 3.5. No advance payments. No dwelling-secured high-cost credit transaction may include terms under which periodic payments required under the credit transaction are consolidated and paid in advance from the credit transaction proceeds provided to the obligor.

- 3.6. No modification or deferral fees. A creditor may not charge an obligor any fees or other charges to modify, renew, extend, or amend a dwelling-secured high-cost credit transaction or to defer any payment due under the terms of a dwelling-secured high-cost credit transaction if, after the modification, renewal, extension or amendment, the credit is still a high-cost credit transaction or, if no longer a dwelling-secured high-cost credit, the annual percentage rate has not been decreased by at least two percentage points. This provision shall not apply if the existing dwelling-secured high-cost credit transaction is in default and the modification, renewal, extension, amendment or deferral is part of a work-out process.
- 3.7. No limitation on seeking judicial relief. No dwelling-secured high-cost credit transaction may be subject to a mandatory arbitration clause or other provision that limits in any way the right of the obligor to seek relief through the judicial process.
- 3.8. No settlement without homeownership counseling certificate. A dwelling-secured high-cost credit transaction and the sales contract may not be settled unless the creditor has first received a copy of a certificate of homeownership counseling, as defined herein, and the cancellation period, as defined herein, has expired without cancellation.
- 3.8.1. The creditor at the time of the credit transaction application and the real estate agent at the time of signing the sales contract, must independently inform the obligor in a disclosure document, of the requirement for the counseling certificate and of the right of the obligor to cancel the transaction.
- 3.9. Homeownership counseling certificate. Homeownership counseling under this section:
- 3.9.1. Is conducted by a counseling agency approved by the Department of Housing and Urban Development, and by a counselor who maintains a counseling certification from a housing counseling training agency that provides training according to standards set by the Department of Housing and Community Development [Please insert here the appropriate agency for your state].
- 3.9.2. A certificate of homeownership certifies that the obligor have received counseling on:
- i) the advisability of the credit transaction and the appropriateness of the credit transaction for the obligor;

- ii) the obligor's right to select his or her own creditor, title company, real estate agent, closing attorney, and home inspector;
- iii) the benefits of a home inspection, and how to select a home inspector;
- iv) the role and responsibilities of a Buyer's Broker, and how to select one with Accredited Buyer's Representation training;
- v) the obligor's right to cancel the sales contract and the credit transaction as provided in this section;
- vi) the fact that any verbal agreements made to the obligor by the seller, must be included in the sales contract, and may not be enforceable after settlement.
- vii) any other matters likely to assist the obligor to understand the rights and obligations of ownership and the process of buying a dwelling.

3.9.3. A certificate of homeownership counseling certifies that the obligor and counselor have reviewed the documents for the sale and the credit transaction for completeness, truthfulness, and consistency, including:

- i) the sales contract;
- ii) the credit transaction application and all appropriate supporting documentation of the obligor's financial condition.;
- iii) the obligor's credit report;
- iv) the good faith estimate;
- v) the terms of the proposed credit;
- vi) the tax assessed value of the property;
- vii) any appraisals of the property;
- viii) any home inspection reports or building code violation notices;  
and
- ix) any other documentation of terms or conditions of the sale and credit;

- 3.10. Source of counselors. The Department of Housing and Community Development [Please insert here the appropriate agency for your state] or assignee, will maintain a current list of certified counselors. The certified counselors shall provide, and complete the counseling within two weeks of receiving an obligor's request. The creditor and the real estate agent independently must provide the Department of Housing and Community Development [Please insert here the appropriate agency for your state] or assignee telephone number. Neither the creditor nor the real estate agent may suggest a particular counselor to the obligor.
- 3.11. Cancellation period. The obligor may withdraw the credit transaction application, cancel the credit transaction and/or the sales contract by providing written notice of cancellation by certified mail, return receipt requested, post marked on or before midnight of the 3<sup>rd</sup> business day after the date the certificate of homeownership counseling is issued, with the effects described in Regulation Z of the Truth In Lending Act (12 C.F.R. § 226.23(d)).
- 3.11.1. The right of cancellation shall be disclosed according to section 3.8.1 of this bill.
- 3.11.2. This right of cancellation may not be waived. There may be no fee or penalty for canceling.
- 3.11.3. The obligor must exercise good faith and due diligence in obtaining housing counseling. If the obligor has not used due diligence to seek a housing counseling certificate within 30 days of the date of the credit transaction application, the seller and creditor may void the sales contract and/or credit transaction application.
- 3.12. Immunity for counselor. Neither the homeownership counselor nor the homeownership counseling agency who counsels the obligor shall be liable to any person whether or not the obligor exercises his right to cancel the sales contract or the credit transaction application.
- 3.13. Funding.
- 3.14. No financing of fees or charges. In making a dwelling-secured high-cost credit, a creditor may not directly or indirectly finance any points and fees or any other charges payable to third parties. This condition will not apply if the points and fees, calculated as described on section 1.13, are under the threshold values described in section 1.12.3 (c).

- 3.15. No refinancing of existing dwelling-secured high-cost credit transaction with new dwelling-secured high-cost credit. A creditor may not charge an obligor points and fees in connection with a dwelling-secured high-cost credit transaction if the proceeds of the dwelling-secured high-cost credit transaction are used to refinance an existing dwelling-secured high-cost credit.
- 3.16. Reporting requirements. A creditor that originates or purchases dwelling-secured credit transactions, must report to the Commissioner the information that creditors are required to report under the section on Itemization of Loan Data of the Home Mortgage Disclosure Act (12 U.S.C. § 2803(b)) as amended, according to section 2.13 of this bill. In addition, the creditor must also report to the Commissioner the following information:
- i) age of obligor;
  - ii) number of years in present line of work for the obligor;
  - iii) interest rate of the credit;
  - iv) rate cap (if variable-rate credit);
  - v) annual percentage rate;
  - vi) obligor's total monthly debts;
  - vii) monthly housing payment comprising the sum of principal, interest, home owners insurance and real estate taxes;
  - viii) gross total monthly income of obligor;
  - ix) obligor's total assets;
  - x) credit score;
  - xi) purchase price of the dwelling;
  - xii) mortgage amount (credit limit, if open-ended credit);
  - xiii) down payment amount;
  - xiv) closing costs including points and fees.

3.16.1. A creditor must submit the information required under this section in a format similar to that in which a creditor reports information to the Office of the Comptroller of the Currency pursuant to the section on Submission

to Agencies of the Home Mortgage Disclosure Act (12 U.S.C. § 2803(h)(1)).

- 3.17. No lending without placing property taxes and homeowner insurance in escrow. In making a dwelling-secured high-cost credit, a creditor shall establish interest bearing escrow accounts for property taxes and homeowners insurance, for the purpose of paying the annual homeowner insurance premium and the property taxes . A creditor shall collect property taxes and homeowners insurance as monthly payments.
- 3.18. Foreclosure prevention. No creditors may foreclose a dwelling-secured high-cost credit transaction unless he has first performed a foreclosure prevention workout plan according to this section.
- 3.18.1. A creditor must notify the obligor at the time of the credit transaction application, that in the event of delinquency of the account, the creditor must refer the account to a foreclosure prevention agency.
- 3.18.2. A creditor shall contact the delinquent property owner in writing between the 35th and 45th day of delinquency. At a minimum the following information must be included in the written notice:
- i) a toll free number for the property owner to use to contact the creditor to discuss their delinquent account;
  - ii) a TDD number for property owner to use to contact the creditor;
  - iii) information regarding how to avoid foreclosure
  - iv) total number of payments due plus any late charges and the dates of when payments were due.
  - v) The date by when payments must be received by creditor.
  - vi) notification that the property owner will be contacted by a foreclosure prevention agency. Name and telephone number of the agency.
  - vii) a request for financial information
- 3.18.3. The Department of Housing and Community Development [Please insert here the appropriate agency for your state] or assignee, will maintain a current list of certified foreclosure counselors. The listed certified foreclosure counselors shall provide, and complete the counseling within

two weeks of receiving an obligor's request to do so. The creditor shall contact the Department of Housing and Community Development [Please insert here the appropriate agency for your state] or assignee to obtain the name, and contact information for the foreclosure prevention agency closest to the dwelling.

3.18.4. The creditor shall notify said agency of the delinquent account. The agency shall contact the delinquent property owner, by telephone and letter within one week of the notification.

3.18.5. The foreclosure prevention agency will assist the delinquent property owner, and the mortgage holder (or the entity with delegated authority to foreclose) to establish a default management plan. The mortgage holder (or the entity with delegated authority to foreclose) shall seriously consider all reasonable means to address delinquency at the earliest possible timeframe. These means will include, but will not be limited to:

- i) special forbearance;
- ii) permanent mortgage modification: interest rate reductions, extension of credit payment period, reamortization with capitalization of arrears, reduction of principal balance;
- iii) temporary interest rate reduction;
- iv) recasting of missed payments;
- v) pre-foreclosure sale, either full or short;
- vi) deed-in-lie of foreclosure.

3.18.6. The obligor must exercise good faith and due diligence in obtaining foreclosure counseling. If the obligor has not used due diligence to obtain a foreclosure counseling within 21 days of the date of receipt of the written notice from the creditor, the creditor would be considered to have fulfilled its obligation under this section.

3.19. Foreclosure procedures. A creditor may foreclose a dwelling-secured high-cost credit transaction once he has first performed a foreclosure prevention workout plan according to section 3.18, and in accordance with the procedures described in this section.

3.19.1. Foreclosure of a dwelling-secured high-cost credit transaction agreement shall not be obtained except by judicial foreclosure.

3.19.2. Before a creditor in a dwelling-secured high-cost credit transaction accelerates the maturity of a financing agreement and commences foreclosure or other legal action to take possession of the dwelling securing the agreement, the creditor shall give the obligor notice of such intention at least 30 days in advance of such action, as provided in subsection 3.19.3.

3.19.3. Notice of intention to take action as specified in subsection (3.19.2) of this section shall be in writing, sent to the obligor by registered or certified mail, return receipt requested, at the obligor's last known address, and if different, to the address of the property which is the subject of the financing agreement.

3.19.4. The written notice shall clearly and conspicuously state in a manner calculated to make the obligor aware of the situation:

- i) the particular obligation or real estate security;
- ii) the nature of default claimed;
- iii) the right of the obligor to cure the default as provided in subsection 3.19.5 of this section;
- iv) what performance, including the sum of money, if any, and interest, shall be tendered to cure the default as of the date specified under paragraph (v) of this subsection;
- v) the date by which the obligor shall cure the default to avoid initiation of foreclosure, or other action, which date shall not be less than 30 days after the date the notice is effective, and the name and address and phone number of a person to the payment or tender shall be made;
- vi) that if the obligor does not cure the default by the date specified under paragraph (v) of this subsection, the creditor may take steps to terminate the obligor's ownership in the property by commencing a foreclosure suit or other action in a court of competent jurisdiction;
- vii) that if the creditor takes the steps indicated in paragraph (vi) of this subsection, an obligor shall have the right to cure the default pursuant to subsection 3.19.5 of this section, but that the obligor shall be responsible for the creditor's court costs;
- viii) the right, if any, of the obligor to transfer the dwelling to another person subject to the security interest, and that the

transferee may have the right to cure the default as provided in this bill.

- ix) that the obligor is advised to seek counsel from an attorney of the obligor's choice;
- x) the possible availability of financial assistance for curing a default from programs operated by the State or federal government or non-profit organizations, if any, as identified by the Department of Housing and Community Development [Please insert here the appropriate agency for your state].
- xi) the name and address of the creditor and the telephone number of a representative of the creditor whom the obligor may contact if the obligor disagrees with the creditor's assertion that a default has occurred or the correctness of the creditor's calculation of the amount required to cure the default.

3.19.5. Notwithstanding any other law to the contrary, as to any dwelling-secured high-cost credit transaction agreement for which a notice of intention to foreclose is required to be given pursuant to subsection 3.19.2 of this section, whether or not such required notice was in fact given, the obligor, or anyone authorized to act on the obligor's behalf, shall have the right at any time, up to the entry of final judgment to cure the default, decelerate and reinstate the home improvement credit transaction agreement by tendering the amount or performance as specified in subsection 3.19.6. The obligor may exercise the right to cure a default as to a particular dwelling-secured high-cost credit transaction financing contract only once every 18 months. The 18 month time period shall run from the date of cure and reinstatement.

3.19.6. To cure a default, an obligor shall pay or tender all sums included in the notice to the person identified in the notice provided pursuant to section 3.19.2 of this section.

3.19.7. To cure a default under this subsection, an obligor shall not be required to pay any charge, fee or penalty attributable to the exercise of the right to cure a default as provided for in this section.

3.19.8. Cure of default reinstates the obligor to the same position as if the default had not occurred. It nullifies, as of the date of the cure, any acceleration of any obligation under the mortgage, or note arising from the default.

- 3.19.9. If a default is cured prior to the filing of a foreclosure or other action to seize the residence, the creditor shall not institute the foreclosure or other action for that default. If a default is cured after the filing the foreclosure or other action, the creditor shall give written notice of the cured to the court. Upon such notice, the court shall dismiss the action without prejudice.
- 3.19.10. Rights in addition to other law. The rights conferred by this section are independent of and in addition to any other rights under other laws.
- 3.20. Rebates. No dwelling-secured high-cost credit transaction may be subject to a refund calculated by a method less favorable than the actuarial method, as described in Regulation Z of the Truth In Lending Act (12 C.F.R. § 226.32(d)(5)), for rebates of interest arising from a loan acceleration due to default.
- 3.21. Credit history reevaluation. A holder (or its delegate) of a dwelling-secured high-cost credit transaction shall review the credit history of the obligor after one year of the credit transaction origination.
- 3.21.1. If the obligor has maintained an acceptable credit history, according to industry standards, the creditor shall reduce the interest rate of the credit transaction by one percent. Same procedure will apply in the following years of the credit, until the interest rate of the credit transaction is similar to the current rate for equivalent dwelling-secured credit transactions to an obligor with good credit history.
- 3.21.2. A creditor must report the good payment history of the obligor to a nationally recognized credit history bureau at least annually.
4. Investments. A creditor shall not make investments that are backed by dwelling-secured credit transactions that violate section 2 or section 3 of this regulation.
5. Notice to assignee. A creditor may not sell or otherwise assign a dwelling-secured credit transaction subject to section 3 of this bill without furnishing the following statement to the purchaser or assignee: "Notice: This is a credit transaction subject to special rules under the \_\_\_\_\_ Anti-Predatory Lending Bill. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."
6. Applicability. This bill shall apply to all credit transactions made or entered into after the effective date of this bill. Credit transactions made prior to the effective date of this bill but foreclosed, sold, or used as backing for investments after the effective date of this regulation shall also be covered.

- 6.1. The provisions of this bill shall apply to any person that seeks to avoid its application by any device, misrepresentation, subterfuge or pretense whatsoever.
7. Violation. In addition to any other rights or remedies available in law, failure to comply with any part of this bill is an unfair or deceptive trade practice under Title 13 of the Commercial Law Article.
8. Civil Action. An obligor may commence a civil action in the State of \_\_\_\_\_, against original creditors, current and past mortgage holders, or any other person party to a dwelling-secured transaction not later than 3 years after the discovery of a violation of any part of this bill. The remedies provided herein are cumulative. Current and past mortgage holders may seek similar relief against the original creditors.
- 8.1. The computation of such 3-year period shall not include any time during which an administrative proceeding under this bill was pending with respect to a complaint or charge under this bill based upon such violation.
- 8.2. In a civil action under this section if the court finds that a violation of this bill has occurred or is about to occur, the court:
- 8.2.1. may grant, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, declaratory or other equitable relief (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate);
- 8.2.2. shall award to the plaintiff actual, non-economical and consequential damages;
- 8.2.3. may award punitive damages, if the defendant has shown reckless disregard for the rights of the obligor;
- 8.2.4. shall award a statutory penalty equal to an amount not less than the credit transaction finance charges plus ten percent of the principal amount of the dwelling-secured credit transaction or the time price differential plus ten percent of the cash price.
- 8.3. In a civil action under this section a prevailing plaintiff may also seek, and the court shall award, reasonable costs and attorney fees.

- 8.4. Any dwelling-secured credit transaction in the State of \_\_\_\_\_ in which the obligor was the victim of fraud, misrepresentation, an unfair or deceptive trade practice, or any criminal act that was committed in the course of obtaining and settling upon the dwelling secured credit transaction renders the dwelling-secured credit transaction void, and the creditor shall have no right to collect, receive or retain any principal, interest, or other charges whatsoever with respect to the credit, and the obligor may recover any payments made under the agreement.
- 8.5. The voiding of a dwelling-secured credit transaction, under section 8.4, shall not reflect negatively in the credit history of the obligor, and cannot be considered by a creditor for the extension of future credit to the obligor.
- 8.6. The obligor may bring a class action suit to enforce this bill.
- 8.7. Upon timely application, the \_\_\_\_\_ Attorney General may intervene in a civil action under this section, if the Attorney General certifies that the case is of general public importance. Upon such intervention the \_\_\_\_\_ Attorney General may obtain such relief as would be available to the \_\_\_\_\_ Attorney General under section 9.1.
- 8.8. The remedies provided in this section are not intended to be the exclusive remedies available to an obligor nor must an obligor exhaust any administrative remedies provided under this Bill or any other applicable law before proceeding under this section.
9. Enforcement by \_\_\_\_\_ Attorney General. Whenever the \_\_\_\_\_ Attorney General has reason to believe that any person, or group of persons is engaged in a pattern or practice of violations to this bill, or that any group of persons has been affected by the violation of this bill, and such violation raises an issue of general public importance, the \_\_\_\_\_ Attorney General may commence a civil action.
- 9.1. On a civil action under this section the court may:
- 9.1.1. grant any of the remedies described in section 8.2
- 9.1.2. to vindicate the public interest, assess a civil penalty against the respondent:
- i) in a minimum amount of \$50,000 for a first violation;
  - ii) in a minimum amount of \$100,000, for any subsequent violation.

- 9.2. Upon timely application, any person may intervene in a civil action commenced by the \_\_\_\_\_ Attorney General under section 9, which involves an alleged violation with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a prevailing plaintiff in a civil action under section 8.
10. Criminal action. Any person, including members, officers, and directors of the creditor, who knowingly violates this bill is guilty of a misdemeanor and, on conviction:
- 10.1. If the person has not previously been convicted, shall be subject to a fine not exceeding \$1,000 or to imprisonment not exceeding 6 months, or both.
- 10.2. If the person has previously once been convicted, shall be subject to a fine not exceeding \$5,000 or to imprisonment not exceeding 1 year, or both.
- 10.3. If the person has previously more than once been convicted, shall be subject to a fine not exceeding \$25,000 or to imprisonment not exceeding 3 year, or both.
11. Affirmative Claims and Defenses. Notwithstanding any other law, all creditors, assignees, holders, and purchasers of a dwelling-secured credit transaction contract, as defined in this bill, are subject to all affirmative claims and defenses which the obligor may have against the seller, the broker, or creditor.