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A Primer on Defenses to Predatory Lending

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I. [5.1] WHAT IS PREDATORY LENDING?

There is no fixed or accepted definition of "coercive" or "predatory" lending. The following are three attempts to describe the process.

a. Typically, prime and sub-prime lenders make loans with the expectation that their loans will be repaid. By contrast, predatory lenders make loans to borrowers without the ability to repay because the real purpose of the loan is to strip the equity from the mortgaged property or seize the equity-rich property through foreclosure. *Emery v. American General Finance, Inc.*, 71 F.3d 1343 (7th Cir. 1995).

b. "Predatory lending" is any unfair credit practice that harms the borrower or promotes a credit system that fosters inequality and poverty.

c. A "predatory loan" is one that is based on a borrower's equity in the property without reference to that borrower's ability to repay the loan.

II. [5.2] EXAMPLES OF PREDATORY LENDING PRACTICES

While in no way exhaustive, the list below gives some idea of the scope and range of predatory lending, which can include

a. failing to employ meaningful underwriting criteria;

b. loan flipping or excessive refinancing;

c. imposing unnecessary insurance charges;

d. charging high interest rates;

e. using high broker fees and undisclosed kickbacks;

f. charging high interest rates as a penalty for late payments;

g. creating balloon payments that conceal the true cost of financing;

h. charging erroneous or undisclosed late fees or penalties;

i. using abusive debt collection measures; and

j. violating of state and federal statutes. See this chapter's discussion on the Truth in Lending Act (§§5.15 – 5.19), the Home Ownership and Equity Protection Act of 1994 (§§5.20 – 5.25), and the Equal Credit Opportunity Act (§5.32).

For descriptions of common predatory lending practices, see, *e.g., Equity Predators: Stripping, Flipping, and Packing Their Way to Profits, Hearings Before the Senate Special Committee on Aging*, 105th Cong. (1998); Earl Peattie, NAVIGATING THE SUBPRIME MORTGAGE MARKET, A WORKBOOK FOR FAIR HOUSING ADVOCATES, CREDIT COUNSELORS, AND CONSUMER ADVOCATES (1998). *See also Emery v. American General Finance Inc.*, 71 F.3d 1343 (7th Cir. 1995) (holding by Chief Judge Posner that allegations of lender's "loan flipping" stated a civil RICO claim); *Stewart v. Associates Consumer Discount Co.*, 183 F.R.D. 189, 197 – 198 (E.D.Pa. 1998) (granting motion for class certification in predatory lending lawsuit under the Racketeer Influenced Corrupt Organizations Act, the federal Truth in Lending Act, and state consumer protection statutes); *D.C. Code Ann.* §26-1014 (prohibiting various predatory practices).

III. [5.3] PATTERNS OF LENDING ABUSE

In general, many of the predatory lending abuses are variations of "equity stripping." This occurs when a lender charges excess fees, points, or settlement charges and finances them into the principal of the loan, thereby increasing the amount of a home owner's debt burden and reducing the equity the borrower has in the home. There are many combinations and variations of equity stripping; however, §§5.4 – 5.10 below discuss the more common forms with which one should be familiar.

A. [5.4] Asset-Based Lending/Imprudent Lending

Some predatory mortgage lenders purposely structure loans the borrower cannot afford with the expectation that the borrower will default and foreclosure will result or that the borrower will be forced to refinance and with each successive refinance will lose more of his or her equity to fees and costs. This practice is particularly prevalent among senior home owners who tend to be on fixed incomes. They are equity rich and cash poor. A loan should not be made only and solely on the value of the residence, but should be based on a borrower's ability to repay.

Many borrowers who qualify for conventional loans because they have good credit are steered to sub-prime lenders or are wrongfully denied access to conventional loans. The conventional lender and the high-rate lender are often affiliated. It is hoped that because it is now possible for each borrower to find his or her own credit score, a dent will be put into the unfair practice of asset-based lending.

B. [5.5] Loan Flipping

"Loan flipping" involves successive, repeated refinancing of a loan by rolling the existing loan into a new loan instead of simply making a separate new loan for the amount the borrower really needs. "Flipping" is also the successive, repeated refinancing of a loan within a short period of time. With each refinancing, the lender charges additional points and fees and other charges that drive up the principal of the loan. Think of an owner's equity as a loaf of bread; every refinancing slices off part of that loaf and gives it to the creditor in terms of new fees, interest, points, costs, and charges. In the end, the home owner has nothing and the predator owns the whole loaf. Flipping always results in higher charges because the borrower always pays more interest by rolling the original amount into a new loan than if the borrower had paid off each loan separately.

C. [5.6] Credit Insurance Packing/Force-Placed Insurance

Predatory lenders market and sell credit insurance as part of their loans, often without the knowledge or consent of the borrower and almost always without a full understanding by the borrower, who is usually poorly educated or financially unsophisticated. Force-placed insurance is in not itself predatory, but sometimes lenders pull the "trigger" too early. The premiums that are financed into the cost of the loan are exorbitant and are not based on any loss experience. Typically, the insurance does not even cover the loss. Worse yet, it is common to have this insurance sold by an insurance company that is either an affiliate or a subsidiary of the lender or enjoys a lucrative commission arrangement. The insurance company provides great profits to the lender and little benefit to the buyer. "Force-placed insurance" refers to the following situation: the mortgage documents allow the lender to force-place an insurance policy when the homeowner fails to maintain insurance and then add the premium to the loan balance. Once again, the possibility of abuse in this situation is enormous.

D. [5.7] Loan in Excess of 100 Percent to Value/Shifting Unsecured Debt into Mortgage

To understand why so much lending abuse takes place today, it is necessary to consider the changing role of the American family residence. Home equity used to be inviolate; refinancing occurred only for remodeling and extreme circumstances such as illness or genuine family emergencies. Now the equity in a residence is the centerpiece of an asset-based transaction. During the last five years, consumers have rolled billions of dollars of credit card debt into home equity loans and other arrangements that use the home as collateral. It is true that consumers have succeeded in avoiding high credit card rates, but at the greatly increased risk of foreclosure; however, now boats, vacations, tuition, every type of short-term debt is rolled into a mortgage with more interest, fees, and costs. In this climate, prominent sport figures hawk loan-to-value ratios of over 100 percent on television. This locks in the homeowner forever because when the loan exceeds the fair market value of the asset, it cannot be sold or refinanced except on clearly horrendous terms. Also, these loans carry the threat of personal deficiency judgments. In a perfect world, if the homeowner consolidated all of his or her credit cards into a home equity loan, the homeowner would avoid higher credit card costs if he or she never used those credit cards again. But, human nature being what it is, within six months or a year most consumers will have new credit card debt and the increased mortgage burden. Remember, rolling over unsecured debt into a home mortgage of any kind increases closing costs because such costs are based on a percentage basis. Any increase in the loan balance increases the chance of foreclosure and other coercive practices.

E. [5.8] Equity Skimming

"Equity skimming" is a scheme that works like this: The equity skimmer reviews recent foreclosures, judgments, tax sales, and/or makes misleading sales pitches to the equity owner. The typical approach is as follows: "You have a lien (or judgment, foreclosure, or tax sale) against your house. Undoubtedly, you will lose it. If you will convey your property to me, I will refinance in my name since my credit is good and pay off your debt. Then, I will give you an option to repurchase or a long-term lease." The homeowner conveys the property, the equity skimmer refinances the loan, pockets the proceeds, then fails to pay the new mortgage and the new lender forecloses. The predator has skimmed-off the equity. Or, the predator will hold on to the property and seek to evict the homeowner because the homeowner is unable to pay a "rent" that is far too high.

F. [5.9] Home Improvement Contractors

A general description of how home improvement scams work is as follows: Many predatory loans begin with a homeowner needing repair work. The contractor sends the homeowner to a predatory lender to finance the work. The contractor charges exorbitant prices and does shoddy work and is paid directly from the loan proceeds. The homeowner has no control over disbursement and is stuck making payments on bad work or else risking foreclosure. A specific situation is as follows: Sometime into the job, the contractor asks the homeowner to sign a "paper." When asked, the contractor will say it is a "completion statement" or that he or she needs it "for the bank." In some cases, it is a deed or trust deed. The contractor goes to the willing lender and sells the paper at a substantial discount. The lender forecloses and/or the contractor fails to finish the project, and the homeowner invariably faces a foreclosure and an uncompleted job. For suggestions on how to litigate this situation, see §5.46.

In some cases, homeowners are deprived of their rescission rights. The homeowner obtains a cash contract stating that financing will be arranged. After the three-day rescission right has passed, the lender steers the contractor to a high-interest-rate mortgagor, asserts that it is a holder in due course, and since the lender had no notice by the homeowner of any defective or unfinished work, claims that it has no obligation.

G. [5.10] Abusive Loan Servicing/Improper Loan Servicing

The borrower sometimes does not receive a payment book at or after closing that would indicate the specific monthly payments owed to the lender. In addition, the borrower does not receive any written document indicating specific monthly amounts to be paid into escrow. The lender assesses charges and fees to the borrower's account without notifying the borrower or applies the borrower's payments in such as a way as to extort fees or force the borrower into default. Additional examples of abusive loan practices include

1. improper crediting of payments with subsequent assignments of the loan;

2. transfer of servicing rights with inadequate notification to the borrower, which results in lost payments; and

3. improper notification to the borrower of the proper payment address, causing lost payments and potentially default and foreclosure on the loan.

IV. [5.11] WHAT IS SUB-PRIME LENDING?

"Sub-prime lending" is lending that provides credit to borrowers who by various credit tests, not always accurate, have poor credit histories, judgments, bankruptcies, and/or repossessions that make them a poor credit risk. Sub-prime lending done properly and legitimately is not objectionable. Lenders argue that it is a necessity and that higher rates are required because the risks to the lender are greater. Thus, the creditor is entitled to greater rewards. The problem is that studies have shown that the increase in foreclosures corresponds roughly to increases in originations of sub-prime loans.

Many of the coercive lending practices seem to relate to sub-prime loans. For instance, borrowers who are likely candidates for sub-prime loans are usually the elderly, minorities, and low-income families who are the primary targets of coercive lending practices. Refinance lending by sub-prime companies in Chicago's African-American communities grew by almost 30 times from 1993 – 1998 as compared with 2.5 times increase in predominately Caucasian areas. There were 856,000 sub-prime mortgage loans issued in 1999, six times as many as in 1994. Jeff Glaser, *Sometimes a Deal is Too Good To Be True: Big-Bank Lending and Inner-City Evictions,* U.S. News & World Report, Mar. 5, 2001, at 42.

Further, sub-prime lending is entering the mainstream as large-money-center banks finance and securitize sub-prime loans.

V. MORTGAGE BROKERS

A. [5.12] In General

Mortgage brokers originate over 50 percent of sub-prime loans. Predatory lenders originate loans through local mortgage brokers. Illinois courts recognize a fiduciary relationship between the broker and the borrower requiring the broker to find the best deal for the homeowner. Often, however, brokers do not. Frequently, mortgage brokers represent themselves as working for the borrower. They are not. The broker gets paid out of the closing, and if the borrower defaults on the very next payment, it is of no concern to the broker who has already collected brokers' fees for his or her part in the transaction. Many times, the rate charged to a borrower is increased to cover the broker's fee which, because it is paid by the borrower, is capitalized in the loan. More reprehensible is a whole system of referral fees, rebates, and yield-spread premiums that further inflate the borrower's costs.

B. [5.13] Securitization

Lenders now routinely package loans and create securities from these bundled loans. The process is called "securitization." When the mortgages are securitized, they are sold on the secondary market to provide capital as part of the cycle. When loans are securitized, borrowers cannot defend on the grounds that the lenders engaged in one of the many predatory practices related to the loan. This is called the "holder-in-due-course" doctrine. However, if a lender retains a loan in its portfolio, the borrower can raise the originator's unlawful actions as a defense.

VI. DEFENSES

A. [5.14] Federal Statutory Defenses

To combat the problems discussed above, there is a set of related and independent federal legislation. The following statutes are each worth a separate chapter. They are complex, and their requirements for disclosure, notice of right to cancel, and other matters are highly technical. If the practitioner is in doubt, the issue should be discussed with counsel who have expertise in this area.

B. [5.15] Truth in Lending Act

The Truth in Lending Act (TILA), 15 U.S.C. §1600, *et seq.*, was enacted in 1968 and amended or "simplified" in 1980. TILA is implemented by the Federal Reserve Board's Regulation Z (Reg. Z), 12 C.F.R. Part 226, and by the Federal Reserve Board's Official Staff Commentary to Reg. Z. These regulations are invaluable resources for interpreting TILA.

TILA was further amended in September 1994 by the 103rd Congress in the Home Ownership and Equity Protection Act of 1994 (see §5.20), implemented by §§226.31 and 226.32 to Reg. Z to expand protections for consumers with "high cost" home loans.

The 104th Congress, on September 30, 1995, amended TILA in what is generally referred to as the "Rodash relief" legislation to cut back on some consumer protections, offering retroactive and prospective relief to creditors for certain violations.

1. [5.16] Purpose

Prior to TILA, there was lack of uniformity in disclosure of the terms of loans. Because there were no generally required definitions of loan terms, consumers were unable to compare interest rates and other loan costs to evaluate the cost of their credit and to choose the most advantageous loan. Scams and fraud were pervasive.

TILA was intended to provide a uniform manner of calculating and presenting terms of a loan to enable consumers to compare costs and to make more informed choices about credit. Thus, TILA imposes disclosure requirements that are intended to facilitate the consumer's understanding of the loan transaction. Some of those disclosure requirements are considered so important — "material disclosures" — that a creditor's failure to provide any one of them or failure to provide them properly, in addition to providing a remedy for damages, gives rise to a remedy by rescission. The rescission remedy is so valuable in assisting homeowners who are victimized by abusive loans that the discussion of TILA in this chapter centers around its use.

2. [5.17] Rescission

Congress decided that a decision to secure debt with one's home has such potentially serious consequences that a consumer/homeowner who is refinancing his or her mortgage or placing a new mortgage on the home has an absolute right to cancel the loan and void the mortgage for a period of three business days after the loan has been signed. The homeowner can cancel for no reason or for any reason. 15 U.S.C. §1635; Reg. Z §226.23.

When the lender has failed to make and deliver correct material disclosures of the loan terms or has failed to afford the homeowner his or her three-day cancellation period, the three-day right to rescind is extended to three years. Therefore, TILA rescission is an invaluable tool to save a client's home from foreclosure.

Rescission has the following effects:

a. The creditor's security interest (mortgage or deed of trust) is void. Without a valid security interest, the creditor cannot pursue foreclosure.

b. The creditor may not collect any interest or fees on the entire loan, meaning that the creditor must return (or credit against principal) all interest paid and all settlement charges paid by the consumer.

c. The homeowner is required to pay only the net amount owing after all interest and fees have been credited.

d. Payments made by borrower prior to recession are applied entirely to principal of the loan.

The following is an example of rescission:

The consumer borrows $100,000 secured by a note and deed of trust on the consumer's home but rescinds the transaction because material loan terms were not properly disclosed. Suppose the consumer had already paid the following in settlement charges: $4,000 broker's fee, $2,000 settlement fees (attorneys' fees, appraisal costs, and filing costs), and $3,000 in points or loan origination fees. The consumer is then entitled to subtract the $9,000 in settlement charges from the $100,000 charged on the note and deed of trust.

$100,000
– 9,000
$91,000

Suppose the consumer has also paid mortgage payments on interest and principal totaling $14,000. The consumer is entitled to subtract this $14,000 from the amount owing on the note and deed of trust.

$ 91,000
– 14,000
$ 77,000

Following rescission, the consumer must repay only $77,000! In addition, if the lender refuses to honor a valid rescission, the consumer is entitled to an additional $2,000 in statutory damages, reducing the rescission amount to $75,000.

3. [5.18] Bases for Asserting the Right To Rescind

There are five items that are considered to be material disclosures. Each of these items must be properly disclosed and delivered to the consumer by the lender prior to consummation of loan. A lender's failure to deliver any one of these disclosures gives the consumer an extended right to rescind the transaction:

a. finance charge;

b. approved percentage rate (APR) definition;

c. amount financed (definition);

d. schedule of payments; and

e. total payment;

4. [5.19] Definitions

A loan subject to the right to rescind is a non-purchase money consumer loan that is secured by the borrower's principal residence and funded by a person or entity defined as a "creditor" under TILA. Reg. Z §§226.23(a), 226.23(f).

A "creditor" is a person or entity that has made six mortgage-secured loans in the previous calendar year or has made two high-cost mortgage loans during any twelve-month period or has made one high-cost mortgage through a mortgage broker during any twelve-month period. Reg. Z §226.2(a)(17).

C. [5.20] The Home Ownership and Equity Protection Act of 1994

To address the needs of consumers who fall prey to high-cost lenders and to protect these consumers from the abuses that often accompany these loans, the 103d Congress passed the Home Ownership and Equity Protection Act of 1994 (HOEPA), Pub.L. No. 103-325, 108 Stat. 2190, to provide enhanced protections under TILA to consumers whose mortgages are defined as "high-rate, high-fee" or "high-cost" mortgages. These mortgages are referred to as "§32 mortgages" by the Federal Reserve Board, corresponding with the new Reg. Z §226.32. HOEPA and the implementing Reg. Z §226.32 became effective on October 1, 1995, and apply to mortgage transactions consummated after October 1, 1995.

Section 32 mortgages are defined in Reg. Z §226.32. Section 32 mortgages fall into two categories. The first is "high-cost" and applies if the APR exceeds certain established rates by ten percentage points. The second category is based on points and fees charged to the borrower and is deemed "high-cost" when points and fees exceed the greater of $400 (as adjusted each year by inflation) or eight percent of the total loan amount. A loan that satisfies either criteria is subject to HOEPA.

1. [5.21] Prohibited Loan Terms in §32 Mortgages

The inclusion of any of the following prohibited loan terms in a §32 mortgage gives rise to the right to rescind:

a. a balloon payment (if the loan term is less than five years);

b. negative amortization (which occurs when the borrower's payments are less than the interest accruing on the loan, causing the principal to grow over the course of the loan instead of decreasing as in an amortizing loan);

c. advance payment (defined as a payment schedule that consolidates more than two periodic payments and pays them in advance from loan proceeds);

d. an interest rate that increases after default;

e. rebates that are calculated by a method unfavorable to the consumer; and

f. prepayment penalties, with certain exceptions. Reg Z §226.32(d).

2. [5.22] Summary of the Home Ownership and Equity Protection Act of 1994

HOEPA affords important new protections, primarily an enhanced right to rescind, to consumers whose loans fall within the definition of §32 mortgages. These new protections are crucial to those consumers who are victimized by abusive mortgage lenders and are critically important in light of the changes to TILA enacted by the 104th Congress and discussed in §§5.23 – 5.25 below. However, as sub-prime lenders have become more sophisticated, their predatory loans are often calculated to fall just below the HOEPA triggers and, thus, escape these protections.

a. [5.23] Additional Disclosure Requirements

HOEPA creates additional disclosure requirements applicable only to §32 mortgages. These additional disclosures are defined as *material disclosures* and, therefore, the failure to provide properly for them gives rise to an additional basis for rescinding a §32 mortgage loan. Reg. Z §§226.23(a)(3), 226.32(c).

Additional HOEPA disclosures must be provided at least three business days before the loan is signed. In contrast, the standard TILA disclosures (which must also be provided) are usually provided on the same day the loan documents are signed. Thus, the intent of the additional disclosure requirements is to afford a HOEPA borrower a longer period in which to evaluate and decide either to forego or cancel the loan. As with all refinance loans, the creditor must delay *disbursing* the loan proceeds for the three-business-day rescission period so that the consumer has the opportunity to rescind.

b. [5.24] Content of Additional HOEPA Disclosures

The following must be included in a HOEPA disclosure:

1. a statement to the effect that "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home and any money you have put into it if you do not meet your obligations under the loan.";

2. the APR;

3. the dollar amount of the regular payment; and

4. for variable rate loans, a statement from the creditor informing the borrower that the interest rate and monthly payment amount may increase and disclosing to the borrower the maximum possible monthly payment.

To calculate points and fees, the advocate must add up

1. everything in the finance charge, except interest and the time-price differential;

2. all compensation to mortgage broker paid directly by or on behalf of the consumer (unless already counted in item 1),

3. all settlement charges as defined in §226.4(c)(7) that are unreasonable or that are paid to an affiliate or paid directly or indirectly to a creditor. Reg Z §226.32(b)(1).

c. [5.25] Total Loan Amount

The total loan amount is derived through a convoluted and complicated calculation that starts with the amount financed and subtracts certain points and fees. For example, the amount financed is $93,000 on a loan secured by a $100,000 note and deed of trust. The consumer was charged $2,000 in settlement charges (as defined in §226.4(c)(7)). While some of the settlement charges may have been reasonable, the appraisal cost of $1,000 was both unreasonable and financed by the creditor. Therefore, this amount is subtracted from the amount financed of $93,000 to yield a total loan amount of $92,000. Since $8,000 in points and fees is greater than both $400 and 8 percent of $92,000 (or $7,360), the loan is a §32 mortgage.

D. [5.26] The Real Estate Settlement Procedures Act

The Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. §2601, *et seq.,* and 24 C.F.R., Part 3500, *et seq.,* were enacted in 1974 to protect homeowners from unnecessarily high settlement costs and fraud and abuse in the home purchase/home refinance process. RESPA currently covers virtually all home-secured loans, imposing disclosure requirements and prohibiting kickbacks and referrals in the real estate transaction.

1. Disclosure Provisions

a. [5.27] Early Disclosure Provisions

The consumer must be given a good-faith estimate (GFE) of settlement costs no later than three days after the consumer makes an application for a mortgage loan. This document provides an extensive itemization of the costs that the consumer is expected to incur in connection with the closing of the mortgage loan. The GFE includes, for example, the mortgage broker's fee, the

real estate agent's fee, the tax and recordation charges, the appraisal charge, the closing attorney's fee, and any other costs that will be incurred. At settlement, borrowers often are confronted with an array of "document preparation" fees, bogus attorneys' fees, and excessive title, mailing, and delivery costs that are questionable and frequently do not accurately reflect funds disbursed.

b. [5.28] HUD-1 or HUD-1A Settlement Sheet

This document, which must be provided to the homeowner at settlement, contains the final itemization of all funds disbursed in connection with the mortgage loan/home purchase. It provides a road map for understanding the transaction and is an extremely important document to review in assessing whether the TILA disclosure accurately reflects the transaction or whether other claims can be raised under state law. For example, it provides much of the information necessary to calculate the finance charge and amount financed under TILA.

c. [5.29] Remedies

Individuals do not have a private claim under RESPA for failure to provide an accurate GFE or HUD-1, but they may have a claim under state law.

d. [5.30] Servicer Obligations

RESPA includes a section on servicer obligations. As discussed earlier, RESPA is the tool against a broker's and/or lender's failure to credit payments properly.

2. [5.31] Prohibition on Kickbacks and Referral Fees

RESPA's prohibition on kickbacks, fee splitting, and referral fees is a potent means of responding to abusive practices. RESPA makes it illegal for settlement service providers to pay or receive fees or to share fees for the referral of borrowers. This broad prohibition states that "[n]o person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise" for the referral of a settlement service. 12 U.S.C. §2607.

"Settlement services" are broadly defined to include everything paid for in the real estate transaction, including such items as appraisal, title search, title insurance, the loan process itself, including mortgage broker fees, processing fees, etc., surveys, and attorneys' fees. 12 U.S.C. §2602(3). For example, real estate agents may not be paid by mortgage brokers to refer their clients.

Yield-spread premiums are the kickback du jour in mortgage transactions. The problems that existed when RESPA was passed — the more blatant exchanges of gifts and money for referrals among various providers — have evolved to a much more sophisticated system of referral fees among lenders and mortgage brokers.

Current challenges of RESPA kickbacks arise predominantly in "table-funded" transactions in which yield-spread premiums are paid to mortgage brokers. These are loans in which the broker is named on the loan documents as "lender," but the funds for the loan are actually provided by another

entity, *i.e.*, the "table-funding" or "wholesale" lender. The "lender" functions like a broker with the "wholesale" lender advancing the loan funds often by wiring them to the broker and taking a simultaneous assignment of the loan. Borrowers are understandably confused about the "lender"/broker's role in these transactions, and the broker is usually reluctant to clarify it.

It works something like this: A wholesale lender issues rate sheets in which it offers certain rates and fees on loans for borrowers who meet credit and other requirements established for those loans. The rate sheets are provided to mortgage brokers who function as intermediaries between borrowers and wholesale lenders originating these loans. The broker sets its owns rates and fees for the loan based on the wholesale lender's offering and does not necessarily offer the borrower the best deal that the wholesale lender is willing to make available. The wholesale lender makes a payment to the broker — a yield-spread premium — if the broker delivers the loan at an interest rate and fees that are higher than the wholesale lender's.

Brokers do not generally offer the borrower an array of loan choices (even in the "prime" market). Instead, brokers tend to offer the borrower one loan with specific terms. The broker's compensation is embedded in those terms but cannot always be discerned by the borrower.

For example, a broker may offer the borrower a loan that charges 1 point ($1,000) and 8 percent interest on a $100,000 loan. The borrower is likely to conclude or may have been told that the $1,000 covers the broker's fee. Unbeknownst to the borrower, the broker is also receiving payment of $1,500 (1½ points) from the lender in the form of a yield-spread premium.

The yield-spread premium reflects the premium that the lender is willing to pay the broker for delivering the loan at a higher interest rate than that at which the borrower is qualified to receive. Whether the yield-spread premium is a kickback or a payment for goods and services is the question (as of yet unanswered) that has spawned litigation throughout the country. A key problem is the significant tension that exists in RESPA between the prohibition on referral fees and the permission for "other payments for goods or facilities actually furnished or for services actually performed." 12 U.S.C. §2607(c)(2).

The mortgage industry has sought to justify the payment of yield-spread premiums by showing (retroactively) that the total compensation to the broker (received from both borrower and wholesale lender) is a reasonable price to pay for the work done by the broker and the payment is therefore a payment for goods, services, and/or facilities.

E. [5.32] Equal Credit Opportunity Act

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. §1691, *et seq.*, prohibits certain forms of discrimination with respect to all credit transactions. 15 U.S.C. §1691(a). *See also Newton v. United Compare Financial Corp.*, 24 F.Supp.2d 444 (E.D.Pa. 1998), discussing HOEPA and TILA violations.

F. Miscellaneous

1. [5.33] Reverse Redlining

Reverse redlining is the practice of concentrating predatory and coercive loan schemes on minorities, poor, aged, and/or uneducated individuals to the exclusion of the more knowledgeable and affluent members of society who presumably are less susceptible to fraud and overreaching by mortgage companies.

Reverse redlining is also defined as the intentional targeting of minorities, especially the elderly, African-Americans, and Hispanics, for fraudulent loan practices that are designed to take away their homes. As a lawyer who has great experience in defending foreclosure once told me, "My advice to an elderly African-American woman who has a home with a substantial equity is to go home, lock the doors, pull down the shades, and never answer the phone if she wants to save her house."

Reverse redlining is a violation of the Fair Housing Act (FHA), 42 U.S.C. §3601, *et seq.* Any harm related to housing is a direct violation of the FHA. Redlining also violates the ECOA. Courts have construed the phrase "make unavailable or deny" to include barriers to home ownership created by mortgage barriers.

2. [5.34] State Consumer Fraud Remedies

Almost all states have a consumer fraud law or other similar anti-consumer-fraud statute. *See United Companies Lending Corp. v. Sargeant,* 20 F.Supp.2d 192 (D.Mass. 1998).

The Illinois Consumer Fraud and Deceptive Business Practice Act, 815 ILCS 505/1, *et seq.,* states that

> **unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 or the Uniform Deceptive Trade Practice Act . . . in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been mislead, deceived or damaged thereby.** 815 ILCS 505/2.

While there is some question about who is a "consumer" under this Act, there is also a consumer-nexus test. *See Stephan Co. v. Winter Panel Corp.,* 948 F.Supp. 802 (N.D.Ill. 1996). This test asserts that one may bring a claim under the Consumer Fraud and Deceptive Business Practice Act as long as the challenged conduct involves trade practices directed to the market generally or otherwise relates to consumer protection issues. Coercive lending and the exploitation of minorities are certainly consumer protection issues.

3. [5.35] Illinois Interest Act

The Illinois Interest Act, 815 ILCS 205/0.01, *et seq.,* limits the amount of certain charges, including "points," "service charges," "discounts," and "commissions," for loans with an interest rate in excess of eight percent per annum that are secured by residential real estate to not more than three percent of the principal amount. 815 ILCS 205/4.1a(f). If a plaintiff's actions were done "knowingly" as that term is used pursuant to 815 ILCS 205/6, then the plaintiff's statutory liability is not less than twice the total interest, discounts, or charges determined by the loan contract. The borrower is entitled to a setoff against all of the amounts that the plaintiff claims are due under the terms of the mortgage of not less than twice the total interest, discounts, or charges under the terms of the mortgage. 815 ILCS 205/6. Unlike many federal statutes, breach of the statutory formula under the Illinois Interest Act is easy to calculate and apply.

4. [5.36] Common Law Fraud

Common law fraud or unconscionability is always available as a defense. To state a claim for common law fraud, a plaintiff must allege (a) a false statement of material fact, (b) that is known to be or believed to be false by the party making it, (c) is intended to induce the plaintiff to act, (d) leads to subsequent action by the plaintiff in reliance on the validity of the representation, and (e) results in damage to the plaintiff. *See Honorable v. Easy Life Real Estate System, Inc.,* 182 F.R.D. 553 (N.D.Ill. 1998).

When unconscionability is claimed, *Williams v. Walker-Thomas Furniture Co.,* 350 F.2d 445 (D.C.Cir. 1965), describes two elements of unconscionability: (a) the absence of meaningful choice on the part of one party to a transaction and (b) contract terms that are unreasonably favorable to one of the parties. *See also Chedick v. Nash,* 151 F.3d 1077 (D.C.Cir. 1998).

VII. LEGISLATIVE INITIATIVES

A. Local Initiatives

1. [5.37] Chicago Municipal Code Provisions

Chicago was the first city in the country to pass an ordinance on coercive lending. Since that time, Cook County as well as several other cities nationwide have used the Chicago model to pass similar ordinances.

The ordinance is a depository in nature, meaning that it doesn't forbid predatory practices per se, stating only that the city will not deposit funds with a lender that as an entity or through its officials has engaged in predatory practices.

The Municipal Code of Chicago's recently amended §2-32-455 states:

> **No financial institution may be designated as a city depository if it or any of its affiliates has been determined by the chief financial officer or the city comptroller to be a predatory lender.**

A "predatory lender" for the purpose of the city ordinance is defined as follows:

"Predatory lender" means a financial institution that has made, within the previous 12 month period, predatory loans that comprise either (1) five percent of the total annual number of loans made, or (2) 25 individual loans; whichever is less. Each financial institution and affiliate shall be considered separately for the purposes of these calculations. Chicago Municipal Code §2-32-455(b).

The term "predatory loan" applies only to refinancing transactions, not the purchase of mortgages. The threshold is five base points or six percent over the T-bill rate (1st liens) and six base points or eight percent over the T-bill rate for second or junior liens.

The ordinance defines "predatory loan" as follows:

"Predatory loan" means a loan that was made under circumstances that involve any of the following acts or practices:

(1) Fraudulent or deceptive acts or practices, including fraudulent or deceptive marketing sales efforts to sell threshold loans.

(2) Prepaying penalties: (i) that apply to a prepayment made after the expiration of the 36-month period following the date the loan was made, or (ii) that are more than three percent of the total loan amount if the prepayment is made within the first 12-month period following the date the loan was made, or more that two percent of the total loan amount if the prepayment is made within the second 12-month period after the date the loan was made, or more than one percent of the loan amount if the prepayment is made within the third 12-month period following the date the loan was made.

(3) Balloon payments: A threshold loan that has a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance, except for bridge loans connected with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling, and except for loans with a final balloon payment that have a term of not less than 180 months provided such balloon payment is conspicuously disclosed to the borrower, and except for home equity loans.

(4) Loan flipping [defined in the ordinance as the refinancing of a high-fee loan within 12 months of another high-fee loan with no tangible benefit for the borrower]**.**

(5) Negative amortization: A threshold loan, other than a loan secured only by a reverse mortgage, with terms under which the outstanding balance will increase at any time over the course of the loan because the regular periodic payments do no cover the full amount of the interest due, unless the negative amortization is the consequence of temporary forbearance sought by the borrower.

(6) The financing of points and fees in excess of six percent of the loan amount. Chicago Municipal Code §2-32-455(b).

Section 2-32-455(b) continues by including as a predatory loan

> **(8) Lending without due regard to repayment ability: The lender makes a loan if the lender does not reasonably believe at the time the loan is consummated that the borrower or the borrowers (when considered collectively in the case of multiple borrowers) will be able to make the scheduled payments to repay the obligation based upon a consideration of their current expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan).**
>
> **(9) The payment by a lender to a contractor under a home improvement contract from the proceeds of a threshold loan, other than:**
>
> > **(i) by an instrument payable to the borrower or jointly to the borrower and the contractor; or**
> >
> > **(ii) at the election of the borrower, by a third party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender and the contractor before the date of payment.**
>
> **(10) The payment by a lender to a contractor under a home repair or improvement contract from loan proceeds, where the contractor has been, on two or more occasions within the previous 24-month period, determined by a court or the department of administrative hearings to be in violations of any law or ordinance prohibiting deceptive practices or similar conduct, unless: (i) the lender has no knowledge of the determinations; (ii) the lender has received a written affidavit from the contractor stating that there have not been two or more such determinations regarding the contractor within the previous 24-month period; and (iii) notice of the determinations is not posted on the City's web site.** Chicago Municipal Code §2-32-455(b).

2. [5.38] The NORMAL Loan Fund Through Neighborhood Housing Services of Chicago

An innovative program has been initiated by Neighborhood Housing Services, Inc. (NHS) with the aid of the City of Chicago. The discussion below outlines the characteristics of this pilot plan.

Borrowers who are victims of predatory loans can obtain 15-, 20-, and 30-year fixed-rate loans secured by first mortgages. NHS will provide its services for a period of 6 to 18 months with a goal to sell performing loans to participating lenders. Participating lenders may acquire whole loans, servicing released.

Borrowers pay a 1-percent loan origination fee. Other closing costs, such as typical third-party fees (title insurance, recording fees, etc.), may be included in the financing. Eligibility will require that (a) the borrower be an owner-occupant of a 1 – 4 unit building located in an NHS-targeted neighborhood; (b) the borrower has refinanced in the past three years; and (c) that one of the following situations pertains:

1. the borrower's equity prior to refinance was in excess of 50 percent; loan to value is now greater than 90 percent and either fees exceed 3 percent of the amount refinanced or the interest rate is not justified by credit history (*e.g.,* APR on the loan was more than 2 percent more than the APR on a comparable conventional loan at the time the loan was originated);

2. the borrower is more than 62 or has owned property for more than 20 years, and either fees exceed 3 percent of the refinanced amount or the interest rate is not justified by credit history (as above);

3. the refinance included "home improvements" that were not completed, were overpriced, or were completed in an unacceptable manner;

4. the borrower has had more than one refinance in the past three years and the refinances were initiated or originated through a mortgage broker;

5. the borrower's existing loan exhibits abusive and/or predatory characteristics, as identified by the NHS staff.

As part of its "pre-loan" counseling, NHS will work toward negotiated payoff amounts with existing lenders (perhaps with assistance from Legal Assistance Foundation). Such negotiated payoff amounts may be the total amount of predatory fees originally charged. NHS counseling both prior to and after the loan will be required. Other resources for long-term budget counseling may also be used.

The City of Chicago, through an investment of $1.2 million (re-use of Emergency Loan Fund program funds), provides recourse in the form of a loan-loss reserve of up to a maximum of six percent of the outstanding loan balance for period up to two years from date of origination. Loan-loss reserve would protect against losses resulting from foreclosure within the two-year period, whether such losses are incurred by the lender that acquires the loan or by NHS/Neighborhood Lending Services, Inc. (NLS) (if the loan is held in servicing by NHS/NLS). In those situations in which the Legal Assistance Foundation becomes involved in the loan negotiation/loan workout, the seven percent fee for loan origination and counseling will be shared between NHS and the Foundation.

The City of Chicago funds would be used in every transaction as the interim funding prior to capital calls to the participating investors. Upon funding of the capital call, city funds wold be allocated at the six-percent level for the loan-loss reserve and to pay operating costs to NHS (seven percent of the loan amount). The balance of city funds would be available as interim capital for ongoing originations. The City of Chicago investment would leverage $10 million of investment funds in this loan pool over a period of three – four years.

3. [5.39] Other Local Initiatives

Fannie Mae has made available five million dollars in the "City of Chicago Anti-Predatory Refinance Initiative." Section 5.52 provides a breakdown of the participating banks' qualifications and eligibility.

B. [5.40] New Approaches of the Federal Housing Administration

In order to understand the basis of the recent moratorium ordered by HUD (see §5.45), it is necessary to examine a brief history. HUD essentially abandoned the homeowner when it disbanded its assignment program on April 26, 1996. Under the assignment program, HUD would pay the investor, take the loan into inventory, and work out a lease or other arrangement with its borrower.

The legislation that disbanded the assignment program also made some additional new tools to avoid foreclosures available to lenders. In many cases, preventing foreclosure is not only a humane response to financial hardship, but it also is a way to reduce insurance losses. Foreclosure is very expensive for the FHA. See FHA Mortgagee Letter 96-25.

Under the new authority, lenders will be making decisions about whether to provide forbearance to borrowers and on what terms. The FHA will try to design incentives to encourage lenders to make decisions that will be cost effective and avoid foreclosure when possible.

The FHA's existing program regulations already authorize lenders to use some foreclosure avoidance tools such as special forbearance, streamlined refinancing, mortgage modifications, deeds-in-lieu of foreclosure, and pre-foreclosure sales. The use of these existing tools will be expanded and made more flexible when the additional tools authorized by this legislation are implemented.

These tools will not help all of the same people who were once helped by the assignment program. For example, the foreclosure avoidance measures will not help those facing a long-term reduction in income; however, for those borrowers who lenders believe have a reasonable prospect of regaining the ability to pay their mortgage, these tools may help them avoid losing their homes.

1. [5.41] Incentive Payments to Lenders

The FHA will be offering financial incentives to lenders who are successful in using alternatives to foreclosure to address delinquent mortgages. The program will be designed to get lenders to work with borrowers earlier in the delinquency, increasingly the likelihood that the borrowers ultimately will be able to remain in their homes.

2. [5.42] Partial Claims

For borrowers who will be able to resume their monthly mortgage payments but not necessarily repay arrearages accumulated during temporary hardship, the FHA will pay those arrearages (of up to 12 months' payments) to lenders on behalf of the borrowers. The borrowers will remain obliged to repay this amount to the FHA, but repayments will be made under a deferred payment plan.

3. [5.43] Mortgage Modifications

The FHA allows lenders to modify FHA-insured mortgages to lower interest rates or extend mortgage terms in order to finance repayments of arrearages. The FHA will increase lenders' willingness to use this tool by either accepting assignment of modified mortgages or by finding new ways for these mortgages to be re-pooled.

While these new approaches sound fresh and new, for the most part, they are existing remedies that have been given a new paint job and leave borrowers vulnerable. Coupled with HUD Mortgage Letter 96-11, which reminds lenders of their obligations to intervene as quickly as possible to prevent losses to HUD, the real fact of the matter is that the lenders are now in charge of determining which troubled borrowers will survive. Since HUD has withdrawn its support for the borrower, lenders have been left with a wide open field in which to operate.

B. [5.44] State Initiatives

On April 17, 2001, the Illinois Office of Banks and Real Estate (OBRE) adopted rules and amendments to the Illinois Administrative Code. See 38 Ill.Admin. Code, Parts 345, 1000, and 1050. OBRE spent the 18 months prior to the rule changes gathering testimony on the high foreclosure rates on residential property occurring in Illinois. The purpose of these rules is to enable OBRE to begin gathering data immediately that will aid in the calculation of reasonable default and foreclosure rates.

The regulations define a segment of the sub-prime loan sector as "high-risk loans." The definition is conservative, covering 25 – 35 percent of the sub-prime market. The proposal does not prohibit loans over this threshold but subjects such loans to certain consumer protections. The definition thresholds are in line with those the U.S. Departments of the Treasury and Housing and Urban Development recommended during 2000. For high-cost loans only, the proposal will

- limit the financing of more than six percent of the loan amount in up-front fees (if fees go above this, the borrower must pay for the excess fees in cash; conventional lenders rarely charge more than one percent to one and one-half percent in such fees; excessive up-front fees strip out homeowners' equity and encourage high foreclosures because lenders do not concern themselves as much with the borrower's ability to repay the loan; the limit on financing of fees is double the three percent that the Treasury and HUD recommended last year);

- prohibit the packing of loans with lump sum financed credit life insurance, which increases the costs of loans (the Treasury and HUD recommended banning this product);

- require lenders to document that the borrower can repay the loan;

- limit prepayment penalties that can trap borrowers in high-cost debt; and

- prohibit less than 15-year balloon payments that lenders use to compel repeated refinancing and do not need in making these loans.

The rulemaking pursuant to the several sections of the Illinois Administrative Code pertains to banks, charters, and licensees, respectively, who are servicers of Illinois residential mortgage loans. All banks, charters, and licensees under the jurisdiction of the OBRE are now required to file semiannual reports, on or before October 1 and April 1 of each year, detailing their institution's individual default and foreclosure rate on conventional loans. For each loan in default or foreclosure, the report shall include the following: the name of borrowers, the address of the mortgaged property, the census tract of the mortgaged property, the status of the loan (whether default or foreclosure), the date the loan

was consummated, the name and license number of any licensee under the Residential Mortgage Licensing Act who originated the loan, and the name and address of any nonlicensed or exempt entity that originated the loan. 38 Ill.Admin. Code §§345.130(b), 1000.3650(b), 1050.1910(b).

The data compiled from the semiannual reports will be essential in enabling OBRE to calculate what constitutes a reasonable default and foreclosure rate. Appropriate rates will be determined by calculating the average of the default and foreclosure rates on conventional mortgage loans in the same area for the same period of time. Any institution's rate that exceeds the average shall be considered unusually high and shall warrant corrective action.

C. [5.45] Moratorium

One of the great problems in the area of coercive lending is that lenders work at wholesale and borrowers work at retail. What this means is that while lenders file hundreds of cases monthly, borrowers must painfully defend themselves on a case-by-case basis. If a law firm representing lenders files three hundred cases of which five are litigated, even if all five of these are lost to the borrower, the balance of the cases slide through. A moratorium is a device that levels the playing field by getting the borrowers beyond the case-by-case approach. Moratoriums on foreclosure first arose during the great depression among Minnesota farmers.

While HUD used the moratorium device on individual lenders in Chicago in 1998, on August 15, 2000, almost out of the blue, HUD imposed an absolute moratorium on foreclosure for certain zip codes in New York, Atlanta, Chicago, and Los Angeles. The moratorium was for a period of 90 days.

In HUD Mortgage Letter 2001-21, in response to the events of September 11, 2001, HUD announced a 90-day foreclosure moratorium effective as to single-family mortgages of "affected borrowers" as defined in the letter, essentially the passengers and crew of the airliners, individuals employed in or near the World Trade Centers or the Pentagon, and individuals whose financial viability was affected by the events of September 11, 2001.

VIII. APPENDIX

A. [5.46] Amended Third-Party Complaint Setting Out Nine Separate Claims for Predatory Lending Activity

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Credit Company,	)	
Plaintiff,	)	
	)	
vs.	)	No. 99CH00000
	)	
Barbara Borrower,	)	
Defendant and Third Party Plaintiff,	)	
	)	
vs.	)	
	)	
Mortgage Company, Financial Corporation,	)	
and Leon Loaner,	)	
Third Party Defendants.	)	

AMENDED THIRD-PARTY COMPLAINT

Now comes the Defendant, Barbara Borrower, by and through her attorneys, the Legal Assistance Foundation of Chicago, and hereby files her Third-Party Complaint against Mortgage Company and Leon Loaner, and in support thereof states:

1. Ms. Borrower currently resides in her home with her 39-year-old daughter and her four grandchildren.

2. Third-Party Defendant Company Mortgage Company is a corporation engaged in the business of mortgage lending that provided Defendant Barbara Borrower funds with which to refinance the existing mortgage on her home.

3. Third-Party Defendant Financial Corporation is a registered Illinois corporation doing business in Cook County, Illinois, and at all times relevant to this action, in the residential mortgage trade.

4. Third-Party Defendant Leon Loaner is a person residing in Illinois who is in the business of conducting real estate transactions and who, on information and belief, acted as Mortgage Company's and Financial's agent in arranging the loan with Ms. Borrower.

5. Ms. Borrower, as a senior citizen whose income is limited to Social Security retirement benefits and sporadic rental payments but with substantial equity in her home, was a prime target for predatory mortgage lenders and brokers.

6. Between June 1996 and March 1999, Ms. Borrower entered into at least three refinancing agreements with various lenders and brokers.

7. In or around March 1999, Ms. Borrower's monthly mortgage payments were approximately $700 a month.

8. In or around March 1999, Ms. Borrower was contacted through a phone solicitation by a mortgage broker, Financial, who promised Ms. Borrower that she could get a new loan that would refinance her two existing mortgages, provide her with $5,000 in extra cash, and lower her monthly mortgage payments. Ms. Borrower, in need of cash to repair her kitchen, agreed to meet with the broker.

9. Two or three days after the phone solicitation, Leon Loaner, as agent of Financial, came to Ms. Borrower's home and stated that he "was ready to do" her loan.

10. Loaner asked to see proof of Ms. Borrower's Social Security income and her photo identification. After reviewing the documents, Loaner repeated Financial's promise that he could provide Ms. Borrower with an affordable loan that would lower existing mortgage payments and provide her with up to $5,000 in extra cash.

11. Loaner attempted to befriend Ms. Borrower and successfully gained Ms. Borrower's trust by claiming that he "liked her as a person" and that he "liked and wanted to help senior citizens" because his own father had recently died of cancer.

12. Based on Loaner's promises and representations, Ms. Borrower agreed to refinance her existing mortgages.

13. Within several weeks of his initial visit, Loaner returned to Ms. Borrower's home and presented her with a myriad of papers to sign.

14. Ms. Borrower, who suffers from vision problems and has a limited education, was not able to read the documents carefully. In fact, after looking over only a few of the papers she stopped because her eyes became too tired to continue.

15. Nonetheless, based on Loaner's promises and representations that the loan would provide her with cash to repair her kitchen and lower her mortgage payments, Ms. Borrower signed the loan documents. Ms. Borrower was not provided with copies of any of the documents.

16. The mortgage documents presented by Loaner created a loan transaction between Ms. Borrower and Mortgage Company.

17. On information and belief, Mortgage Company was aware of Loaner and Financial's misrepresentations and other fraudulent activities against Ms. Borrower.

18. Nonetheless, Mortgage Company agreed to originate the loan transaction with Ms. Borrower.

19. On information and belief, Mortgage Company made a substantial profit from the consumer credit contract.

20. The loan transaction between Mortgage Company and Ms. Borrower was for the principal amount of $90,100, with an annual percentage rate of 14.819 percent. See Exhibit A.

21. The transaction created a 15-year loan with monthly mortgage payments of $994.57 (excluding taxes and insurance) with a balloon payment on the 180th month of $79,722.61. See Exhibit A.

22. Under the terms of this loan, Ms. Borrower's mortgage payments were not lowered, but instead were increased by over $200. Additionally, the final balloon payment, which becomes due when Ms. Borrower is 86 years old, was greater than the secured debt on her home before she entered into this agreement. See Exhibit B.

23. Financial, for arranging the loan for Mortgage Company, received payment of $9,010 (10 percent of the loan's principal). See Exhibit B.

24. Despite Loaner and Financial's earlier assertions, Ms. Borrower received no money from the proceeds of this transaction. See Exhibit B.

FIRST CLAIM
Mortgage Company's Improvident Lending in Violation of the Illinois Consumer Fraud and Deceptive Practices Act

25. This defense is asserted pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*

26. At the time Mortgage Company entered into the mortgage agreement with Ms. Borrower, it was aware that her income was only $1270 per month and that her home was worth at least $106,000.

27. On information and belief, the appraised value of her home was at least $106,000.

28. Pursuant to the terms of the alleged transaction described above, Ms. Borrower was required to make monthly mortgage payments of $994.57.

29. Mortgage Company entered into a loan agreement with Ms. Borrower that requires her to pay approximately 80 percent of her monthly income in mortgage payments, an amount Mortgage Company was aware she could not afford to pay.

30. As detailed above, Mortgage Company's practices with respect to the instant transaction were deceptive, unfair, immoral, unethical, and unscrupulous in that it provided a loan to Ms. Borrower the terms of which it knew full well she could not afford to pay with the deliberate intent to acquire the equity in Ms. Borrower's property. *See Fidelity Financial Services, Inc. v. Hicks,* 214 Ill.App.3d 398, 574 N.E.2d 15, 20, 158 Ill.Dec. 221 (1st Dist. 1991).

31. Mortgage Company's practices offended public policy.

32. As a result of Mortgage Company's unfair practices, in violation of the Consumer Fraud Act, 815 ILCS 505/1, *et seq.*, Ms. Borrower suffered substantial injury in that she is now faced with the loss of her home.

Wherefore, Barbara Borrower prays that this Honorable Court

A. award her actual damages in an amount to be determined at trial;
B. award her punitive damages;
C. award her costs and expenses; and
D. award other, further and different relief as the court deems equitable, just, and proper.

SECOND CLAIM
Mortgage Company's extending credit to Ms. Borrower based on the value of her home and not her ability to repay in violation of the Truth in Lending Act

33. Ms. Borrower realleges paragraphs 1 – 29.

34. With respect to the loan transaction, Mortgage Company was a "creditor" as that term is defined in the Truth in Lending Act, 15 U.S.C. §1602(f), and Regulation Z, 12 C.F.R. §226.2(a)(17).

35. The transaction between Mortgage Company and Ms. Borrower was a "consumer credit transaction" as that term is defined in the Truth in Lending Act, 15 U.S.C. §1602(h), and Regulation Z, 12 C.F.R. §226.2(a).

36. The transaction between Mortgage Company and Ms. Borrower was a "closed-end credit transaction" as the term is defined in 12 C.F.R. §226.2(10) and is subject to the requirements for such transactions set forth in 15 U.S.C. §1638 and 12 C.F.R. §§226.17 – 226.24.

37. The transaction between Mortgage Company and Ms. Borrower was one in which a security interest was taken in Ms. Borrower's principal place of residence.

38. The transaction between Mortgage Company and Ms. Borrower was for the principal amount of $90,100.

39. As part of the transaction, Ms. Borrower was charged at least $9,760 in points in fees as defined in 15 U.S.C. §1602(aa)(4) and 12 C.F.R. §226.32(b)(1). See Exhibit A.

40. The "total loan amount" for the transaction, as defined in 15 U.S.C. §1602(aa)(1)(B) and 12 C.F.R. §226.32(a)(1)(ii) was therefore a maximum of $80,340.

41. The total points and fees charged by Mortgage Company to Ms. Borrower were at least 12.1 percent of the total loan amount.

42. When the total points and fees are greater than 8 percent of the total loan amount, the mortgage is defined as a "high rate" mortgage pursuant to 15 U.S.C. §1602(aa).

43. The transaction between Mortgage Company and Ms. Borrower was therefore a high rate mortgage.

44. A high rate mortgage is subject to the provisions of 15 U.S.C. §1639(h) and 12 C.F.R. §226.32(e)(l).

45. A creditor extending mortgage credit may not engage in a pattern or practice of extending such credit to a consumer based on the consumer's collateral if the consumer, considering the consumer's current and expected income, will be unable to make the scheduled payments to repay the obligation. 15 U.S.C. §1639(h) and 12 C.F.R. §226.32(e)(1).

46. Mortgage Company provided Ms. Borrower with a loan based on the value of her collateral and not her current or expected income.

47. On information and belief, Mortgage Company's assignor has engaged in a pattern and practice of providing high fee loans based on the value of collateral and not the current or expected income of persons similarly situated to Ms. Borrower in violation of 15 U.S.C. §1639(h) and 12 C.F.R. §226.32(e)(1).

48. Mortgage Company's violations of 15 U.S.C. §1639 and 12 C.F.R. §226.32 give rise to a continuing right of rescission on the part of Ms. Borrower. Ms. Borrower has elected to rescind this agreement.

49. Mortgage Company's violation of TILA is a violation that subjects it to a civil penalty of actual damages and statutory damages of $2,000. 15 U.S.C. §1640(a).

50. Mortgage Company's violation of TILA is a violation that subjects it to an amount equal to the sum of all finance charges and fees paid by Ms. Borrower. 15 U.S.C. §1640(a).

Wherefore, Barbara Borrower prays that this Honorable Court

A. award Ms. Borrower an amount equal to the sum of all finance charges and fees paid by her;
B. award Ms. Borrower $2,000 in statutory damages for Mortgage Company's disclosure violations;
C. award Ms. Borrower actual damages in an amount to be determined at trial;
D. award Ms. Borrower costs and expenses; and
E. award other, further, and different relief as the Court deems equitable, just, and proper.

THIRD CLAIM
Loaner and Financial's Breach of Fiduciary Duty

51. Ms Borrower realleges paragraphs 1 – 29.

52. Ms. Borrower is entirely inexperienced and unsophisticated in matters involving consumer lending.

53. Conversely, Financial and Loaner are in the business of conducting real estate transactions, with extensive experience and sophistication in transactions involving residential mortgages.

54. In light of the disparity in the commercial background and needs of the parties, and the trust and confidence Ms. Borrower placed in Financial and Loaner to obtain mortgage loan financing on fair terms, Financial and Loaner owed Ms. Borrower a fiduciary duty.

55. By undertaking the task of financing for Ms. Borrower, Financial and Loaner created an agent-principal relationship and thus owed her a fiduciary duty. *See Allabastro v. Cummins,* 90 Ill.App.3d 394, 413 N.E.2d 86, 87 – 88, 45 Ill.Dec. 753 (1st Dist. 1980).

56. As her mortgage broker and agent, Financial and Loaner had a fiduciary duty to procure financing for Ms. Borrower's home repair loan that was competitively priced.

57. As her mortgage broker and agent, Financial and Loaner had a fiduciary duty to disclose all material facts relevant to the subject matter of the loan.

58. As her mortgage broker and agent, Financial and Loaner had a fiduciary duty to put the interests of Ms. Borrower, their principal, above those of themselves.

59. Financial and Loaner breached their fiduciary duties by not shopping around Ms. Borrower's credit to find a competitively priced loan, but instead referred the loan directly to Mortgage Company.

60. Financial and Loaner breached their fiduciary duties by arranging a loan for Ms. Borrower that she was unable to afford.

61. Financial and Loaner breached their fiduciary duties by collecting a mortgage broker fee of $9,010.

62. As a result of Financial's and Loaner's actions in violation of their fiduciary duties, Ms. Borrower paid a higher interest rate than was necessary.

63. As a result of Financial's and Loaner's actions in violation of their fiduciary duties, Ms. Borrower received a loan that she could not afford.

64. As a result of Financial's and Loaner's actions in violation of their fiduciary duties, Ms. Borrower received a loan that was not competitively priced, resulting in higher interest rates, excessive finance charges or closing costs, and higher monthly payments.

Wherefore, Barbara Borrower prays that this Honorable Court

A. award her actual damages in an amount to be determined at trial;
B. award her punitive damages;
C. award her costs and expenses; and
D. award other, further, and different relief as the Court deems equitable, just, and proper.

FOURTH CLAIM
Loaner's and Financial's Common Law Fraud

65. Ms. Borrower realleges paragraphs 1 – 29.

66. Loaner and Financial knowingly made false statements of material fact to Ms. Borrower regarding the terms and conditions of the mortgage agreement.

67. Loaner and Financial offered these statements as fact, not opinion, with the intent to induce Ms. Borrower to enter into the mortgage agreement.

68. Loaner and Financial's statements were false and misleading at the time they were made.

69. Ms. Borrower had a reasonable right to rely, and in fact reasonably relied, on Loaner's and Financial's statement of facts in agreeing to enter into the mortgage agreement.

70. Had Ms. Borrower known the truth about the terms and conditions of the mortgage agreement, she would not have entered into the agreement.

71. Loaner and Financial's fraud was intentional, gross, and malicious.

72. As a direct and proximate result of plaintiffs' false and misleading statements, and Ms. Borrower's reasonable reliance on those statements, Ms. Borrower has suffered substantial damages.

Wherefore, Barbara Borrower prays that this Honorable Court

A. award her actual damages in an amount to be determined at trial;
B. award her punitive damages;
C. award her costs and expenses; and
D. award other, further, and different relief as the Court deems equitable, just, and proper.

FIFTH CLAIM
Loaner's and Financial's Violation of the Illinois Consumer Fraud Act

73. Ms. Borrower realleges paragraphs 1 – 29.

74. This defense is asserted pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*

75. Financial and Loaner are in the business of conducting real estate transactions with extensive experience and sophistication in transactions involving residential mortgages.

76. Conversely, Ms. Borrower is inexperienced and unsophisticated in matters involving consumer lending.

77. Loaner and Financial knowingly made false statements of material fact to Ms. Borrower regarding the terms and conditions of the mortgage agreement.

78. Loaner and Financial promised Ms. Borrower that they would provide her with an affordable loan that would lower her existing mortgage payments and provide her with up to $5,000 in cash.

79. However, the loan transaction between Mortgage Company and Ms. Borrower increased her monthly mortgage payments to $994.57 (excluding taxes and insurance) and did not provide her with any cash.

80. Loaner and Financial intended that Ms. Borrower rely on such representations and statements of fact, in violation of the Consumer Fraud Act, 815 ILCS 505/2.

81. Loaner's and Financial's representation of the terms and conditions of the loan agreement was material and induced Ms. Borrower to enter into a mortgage loan contract.

82. Loaner's and Financial's fraud, as described above, was intentional, gross, and malicious.

Wherefore, Barbara Borrower prays that this Honorable Court

A. award her actual damages in an amount to be determined at trial;
B. award her punitive damages;
C. award her costs and expenses; and
D. award other, further, and different relief as the Court deems equitable, just, and proper.

SIXTH CLAIM
Mortgage Company's Conspiracy in Violation of the Illinois Consumer Fraud Act

83. Ms. Borrower realleges paragraphs 1 – 29 and 75 – 82.

84. This claim is asserted pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*

85. At all relevant times Ms. Borrower was a "consumer" and Mortgage Company, Financial and Loaner were engaged in "commerce" as those terms are defined by the Illinois Consumer Fraud and Deceptive Business Practices Act. 815 ILCS 505/1(e) and 505/1(f).

86. Mortgage Company knew that Loaner and Financial had engaged in a pattern of fraudulent activity.

87. Mortgage Company nonetheless conspired with Loaner and Financial in their plot by knowingly agreeing to provide the loan money necessary to further their fraudulent activity against Ms. Borrower.

88. In a conspiracy, the acts of co-conspirators are attributable to each other.

Wherefore, Barbara Borrower prays that this Honorable Court:

A. award Ms. Borrower actual damages in an amount to be determined at trial;
B. award her punitive damages;
C. award Ms. Borrower costs and expenses; and
D. award other, further, and different relief as the Court deems equitable, just, and proper.

SEVENTH CLAIM
Mortgage Company's Acceptance of the Fruits of the Fraud

89. Ms. Borrower realleges paragraphs 1 – 29 and 66 – 72.

90. As detailed above, Loaner and Financial committed fraud against Ms. Borrower.

91. Mortgage Company knew of the fraud, but nonetheless funded the home mortgage loan for Ms. Borrower.

92. In originating the loan, Mortgage Company made a substantial profit.

93. When a lender accepts the fruits of the fraud and knew of the means by which they were obtained, it is liable even though it did not personally participate in the fraud. *Moore v. Pinkert,* 28 Ill.App.2d 320, 171 N.E.2d 73, 78 (1st Dist. 1960).

Wherefore, Barbara Borrower prays that this Honorable Court

A. award Ms. Borrower actual damages in an amount to be determined at trial;
B. award her punitive damages;
C. award Ms. Borrower costs and expenses; and
D. award other, further, and different relief as the Court deems equitable, just, and proper.

EIGHTH CLAIM
Mortgage Company's Violation of the Truth in Lending Act

94. Ms. Borrower realleges paragraphs 34 – 43.

95. As described above, the transaction between Mortgage Company and Ms. Borrower was a high rate mortgage. 15 U.S.C. §1602(aa)(1)(B).

96. The transaction of March 26, 1999, between Mortgage Company and Ms. Borrower was, therefore, one in which the provisions of 15 U.S.C. §1639 and 12 C.F.R. §226.32 were applicable.

97. Mortgage Company violated the Truth in Lending, *inter alia,*

a. by failing to provide the disclosures to the consumer required by 15 U.S.C. §§1639(a)(1) and 1639(a)(2)(A) and 12 C.F.R. §§226.32(c)(1) – 226.32(c)(3);

b. by failing to provide the above disclosures to the consumer required at least three business days prior to the consummation of the transaction, in violation of 15 U.S.C. §1639(b)(1) and 12 C.F.R. §226.31(c).

98. The failure to comply with any provision of 15 U.S.C. §1639 is deemed a failure to deliver material disclosures for the purpose of 15 U.S.C. §1635. See 15 U.S.C. §1639(j).

99. Pursuant to the Truth in Lending Act, Ms. Borrower had an absolute right to cancel the transaction for three business days after the transaction, or within three days of receiving proper disclosures from the plaintiff, after which she would not be responsible for any charge or penalty.

100. Mortgage Company's violations of 15 U.S.C. §1639 and 12 C.F.R. §§226.31 and 226.32, which are considered to be a failure to give all material disclosures, give rise to a continuing right of rescission on the part of Ms. Borrower.

101. Ms. Borrower has elected to rescind the transaction between herself and Mortgage Company pursuant to her continuing right of rescission. A copy of her cancellation is attached hereto as Exhibit "C" and incorporated by reference.

102. When a consumer elects to rescind pursuant to the Truth in Lending Act, any security interest taken in connection with the transaction becomes void. 15 U.S.C. §1635(b).

103. When a consumer elects to rescind pursuant to the Truth in Lending Act, the consumer is not liable for any finance or other charge. 15 U.S.C. §1635(b).

104. The mortgage that is the subject of this foreclosure action was taken in connection with the transaction that Ms. Borrower has elected to rescind.

105. Mortgage Company's violation of Truth in Lending Act is a violation that subjects it to a civil penalty of actual damages and statutory damages of $2,000. 15 U.S.C. §1640(a).

106. Mortgage Company's violation of Truth in Lending Act is a violation that subjects it to an amount equal to the sum of all finance charges and fees paid by Ms. Borrower. 15 U.S.C. §1640(a).

Wherefore, Barbara Borrower prays that this Honorable Court

A. award Ms. Borrower an amount equal to the sum of all finance charges and fees paid by her;
B. award Ms. Borrower $2,000 in statutory damages for Mortgage Company's disclosure violations;
C. award Ms. Borrower actual damages in an amount to be determined at trial;
D. award Ms. Borrower costs and expenses; and
E. award other, further, and different relief as the Court deems equitable, just, and proper.

NINTH CLAIM
Mortgage Company's Violation of the Illinois Interest Act

107. This defense is asserted pursuant to the Illinois Interest Act, 815 ILCS 205/0.01, *et seq.*

108. The loan entered by Mortgage Company and Ms. Borrower on March 26, 1999, was for the stated sum of $90,100.

109. The stated interest rate on the loan entered by Mortgage Company and Ms. Borrower was 12.97 percent.

110. In addition to the stated interest, Mortgage Company charged Ms. Borrower at least $9,760 in points and fees.

111. The points and fees paid by Ms. Borrower are 10.8 percent of the principal amount of $90,100.

112. The points and fees charged to Ms. Borrower are therefore in excess of 3 percent of the principal amount of the loan.

113. The loan made by Mortgage Company to Ms. Borrower is secured by her home, which is residential real estate in the state of Illinois.

114. The loan requires the payment of interest at an interest rate in excess of 8 percent per annum. Section 4.la of the Illinois Interest Act, 815 ILCS 205/4.la(f), limits the amount of certain charges, including "points," "service charges," "discounts," "commissions," or otherwise, in the case of loans with an interest rate in excess of 8 percent per annum that are secured by residential real estate, to not more than 3 percent of the principal amount.

115. Mortgage Company's actions as described in paragraphs 78 – 82 above were done "knowingly" as that term is used in §6 of the Interest Act. 815 ILCS 205/6. A knowing violation of the Interest Act subjects the offender to a penalty of twice the total of all interest, discounts, and charges determined by the loan contract or paid by the obligor, whichever is greater. 815 ILCS 205/6.

116. The total of all interest, discounts, and charges determined by the loan contract in connection with the transaction far exceeds the payoff balance owed by Ms. Borrower.

117. Pursuant to §6 of the Interest Act, Mortgage Company's statutory liability is not less than twice the total of all interest, discounts, or charges determined by the loan contract. 815 ILCS 205/6.

Wherefore, Barbara Borrower prays that this Honorable Court

A. award Ms. Borrower twice the amount of all the interest, discounts, or charges paid by her;
B. award Ms. Borrower actual damages in an amount to be determined at trial;
C. award Ms. Borrower costs and expenses; and
D. award other, further, and different relief as the Court deems equitable, just and proper.

B. [5.47] "Quick" Foreclosure Analysis

"QUICK" FORECLOSURE ANALYSIS

I. Status of case

When was case filed?

Has your client appeared/filed answer?

Has judgement been entered?

Has sale occurred?

Has sale been confirmed?

Who is the judge?

II. Document Review

*NOTE: All of the questions listed below can usually be answered using four documents — the Truth in Lending Disclosure form (1 page), the settlement sheets (usually 2 pages that list fees charged and disbursement of proceeds), the mortgage note, and the Notice of Right to Cancel under Rule 226.32 — I page (otherwise known as the "Rule 32" or "HOEPA" notice).

How much is the total principal of the loan?

Can be obtained from mortgage note or settlement sheets.

What is the interest rate?

Can be obtained from mortgage note.

What is the APR?

Can be obtained from the Truth in Lending statement. If it is over 15.5% may meet HOEPA interest rate trigger — check the T-Bill rate.

What are the Finance Charges?

Can be obtained from settlement statement. Usually the second page will list out the fees. If more than 8% of loan amount, federal HOEPA protections kick in.

Finance charges are all prepaid interest, points, origination fees, service charges, and any other compensation to lender or broker.

They include broker fees, processing fees, underwriting fees, prepaid interest, application review fees, yield spread premiums, non-bonafide fees.

Was client supposed to get money out of the transaction? Did client get money out of the transaction?

Contained on first page of settlement statement toward bottom of page.

Was HOEPA notice provided timely (3 days prior to closing) and is language clear and conspicuous?

Contained in Notice of Right to Cancel/Rule 226.32 notice.

Was broker involved in transaction?

Usually contained on second page of settlement statement. Or ask client.

III. Other issues to cover in client interview

Was this a loan for home repairs — if so, were they done satisfactorily?

How did client obtain the loan/contact the lender?

C. [5.48] Truth in Lending Form

**FEDERAL TRUTH-IN-LENDING DISCLOSURES
REQUIRED UNDER SECTION 226.32 OF REGULATION Z**

You are not required to complete this agreement merely because you have received these disclosures or have signed a loan agreement. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

The ANNUAL PRECENTAGE RATE on your loan will be

Your regular monthly payment will be

Your interest rate may increase. Increases in the interest rate could increase your payment. The highest amount your payment could increase is to

The undersigned hereby acknowledge receipt of a completed copy of this disclosure at least three (3) business days (a business day is any calendar day excluding Sundays and federal legal public holidays) prior to consummation of this loan. "Consummation" means the time that each

of the undersigned signs the loan documents required by the Lender in connection with this loan. If you have not received a completed copy of this disclosure at least three (3) business days prior to consummation, do not sign any of the loan documents required by the Lender in connection with this loan and contact the Lender and your mortgage broker immediately. This disclosure is neither a contract nor a commitment to lend.

Applicant	**Date**	**Applicant**	**Date**
Applicant	**Date**	**Applicant**	**Date**
Applicant	**Date**	**Applicant**	**Date**

D. [5.49] Truth in Lending Disclosure

TRUTH-IN-LENDING DISCLOSURE
FOR REAL ESTATE
MORTGAGE LOANS

Words, numbers or phrases preceded by a ☐ are applicable only if the ☐ is marked.

FIRST GOVERNMENT MORTGAGE
AND INVESTORS CORPORATION
8201 CORPORATE DRIVE, SUITE 190
LANDOVER, MD 20785

☐ Preliminary [XX] Final

Borrower(s) Name(s):

Transaction Date: March 15, 1999

Loan Number: 25100

Property Address: 25 19TH STREET SE, WASHINGTON, DC 20003

Present Address: 25 19TH STREET SE, WASHINGTON, DC 20003

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
10.436%	$75,375.74	$50,282.50	$125,658.24

YOUR PAYMENT SCHEDULE WILL BE:

Number of Payments	Amount of Payments	When Payments Are Due
179	$450.58	monthly beginning on 04/19/1999
[illegible]	$451,006.[illegible]	Due on 03/19/2014

VARIABLE RATE: ☐ This loan contains a variable rate feature. Disclosures about the variable rate feature have been provided earlier.

PAYABLE ON DEMAND: ☐ This obligation is payable on demand. ☐ The disclosures are based on an assumed maturity of one year.

FILING/RECORDING FEE: $

SECURITY: You are giving a security interest in real property and any of the following items which are checked:
☐ Goods being purchased.
☒ Other (Specify) PROPERTY LOCATED AT: 25 19TH STREET SE WASHINGTON, DC 20003
☐ Funds or other assets on deposit with the lender from time to time.
☐ Collateral securing other loans with us may also secure this loan.

LATE CHARGE: If you are more than 15 days late in making any payment, in addition to your payment, you will pay a late charge of: [XX] the lesser of ☐ the greater of ☐ an amount equal to [XX] $ 22.53 or [XX] 5.000 % of your overdue payment of principal and interest.

PREPAYMENT:
If you pay off this loan early, you [XX] may ☐ will not have to pay a penalty.
☐ may [XX] will not be entitled to a refund of part of the finance charge.

ASSUMPTION: If this loan is to purchase and is secured by your principal dwelling, and if checked here, ☒ someone buying your dwelling cannot assume the remainder of this purchase money mortgage loan on the original terms.
If this loan is to purchase and is secured by your principal dwelling, and if checked here, ☐ someone buying your dwelling may, subject to conditions, be allowed to assume the remainder of this purchase money mortgage loan.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds and penalties and creditor's policy regarding assumption of the obligation.

"e" means an estimate.

OTHER DISCLOSURES:

☐ Please refer to the Itemization of Amount Financed Statement.

INSURANCE:
Credit Life and Disability Insurance are not required to obtain credit and will not be provided unless you agree to pay the additional cost.

TYPE	PREMIUM	OTHER INSURANCE
Credit Life	$. e	PROPERTY INSURANCE: You may obtain the property insurance required by this agreement from anyone reasonably acceptable to us. If we provide it, a term of will cost $, which you will pay us.
Joint Credit Life	e	FLOOD INSURANCE: Flood insurance ☐ is [XX] is not required. If required, you may obtain the flood insurance from anyone reasonably acceptable to us. If we provide it, a term of will cost $, which you will pay us.
Credit Disability	e	

You hereby acknowledge receipt of a complete copy of this disclosure.

Date ____ Date ____ X ____

Date ____ Date ____ X ____

DISTRIBUTION: System

E. [5.50] NORMAL Pilot Program

NORMAL Pilot Program

These are suggested guidelines for a pilot program that would demonstrate the range of needs and develop some track record for how a larger program could operate. The longer-term goal would be to create a $10 Million program with participation from the City of Chicago, lenders, GSE's and others.

** $2 Million investment pool (Units @ $100,000 each, with a maximum of 4 units to any individual lender)

** Pass-through rate to investors: Fannie Mae 60-day rate

** Note rate to borrowers: Fannie Mae 60-day rate + 50 BPS (Fannie Mae 60-day rate + 75 BPS if CLTV exceeds 100%)

** 15-, 20- and 30-year fixed rate loans, secured by first mortgages. NHS will service for a period of 6 to 18 months with a goal to sell performing loans to participating lenders. Participating lenders may acquire whole loans, servicing released.

** Borrowers pay 1% loan origination fee. Other closing costs, such as typical third-party fees (title insurance, recording fees, etc.) may be included in the financing.

** Eligibility will require that the borrower be an owner-occupant of a 1-4 unit building located in an NHS targeted neighborhood; that the borrower has refinanced in the past three years, and that one of the following situations pertain:

1) Borrower's equity prior to refinance was in excess of 50%; LTV is now greater than 90%; and either fees exceed 3% of amount refinanced or interest rate not justified by credit history (*i.e.* APR on the loan was more than 2% than the APR on a comparable conventional loan at the time the loan was originated);
2) Borrower is more than 62 or has owned property 20+ years; and either fees exceed 3% of refinanced amount or interest rate not justified by credit history (as above);
3) The refinance included "home improvements" that were not completed, were overpriced, or were completed in an unacceptable manner;
4) The borrower has had more than one refinance in the past three years and the refinances were initiated or originated through a mortgage broker.
5) Borrower's existing loan exhibits abusive and/or predatory characteristics, as identified by the NHS staff

** As part of its "pre-loan" counseling, NHS will work toward negotiated payoff amounts with existing lenders (perhaps with assistance from LAF). Such negotiated payoff amounts may be net of predatory fees originally charged. NHS counseling both prior to and after the loan will be required. Other resources for long-term budget counseling (*e.g.* CCCS or Metropolitan Family Services) may also be used.

** Fee structure for participating lenders will be same as for Chicago Family Housing Fund first mortgage pool ($500 quarterly administration fee per participating lender; $100 per unit per loan originated).

** City of Chicago, through an investment of $1.2 Million (re-use of ELF program funds), would provide recourse in the form of a loan loss reserve, up to a maximum of 6% of outstanding loan balance, for period up to two years from date of origination. Loan loss reserve would protect against losses resulting from foreclosure within the two year period, whether such losses are incurred by the lender that acquires the loan or by NHS/NLS (if the loan is held in servicing by NHS/NLS). In those situations in which the Legal Assistance Foundation becomes involved in the loan negotiation/loan workout, the 7% fee for loan origination and counseling will be shared between NHS and LAF.

** City of Chicago funds would be used in every transaction as the interim funding prior to capital calls to the participating investors. Upon funding of the capital call, city funds would be allocated at the 6% for the loan loss reserve, and to pay operating costs to NHS (7% of loan amount). Balance of city funds would be available as interim capital for ongoing originations. City of Chicago investment would leverage $10 Million of investment funds in this loan pool over a period of 3-4 years.

** As previously stated, the costs of providing services under a larger program would include hiring additional staff. It is the intent of NHS to provide the services in this $2 M. pilot program using existing staff.

F. [5.51] Guidelines for Chicago Anti-Predatory Ordinance

Guidelines for Determining Predatory Practices
Chicago Partnership Office
Fannie Mae
September 2000

Borrower's Ability to Make Mortgage Payments

The lender's underwriting of the mortgage confirms that, at the time of loan origination, the borrower can afford to make mortgage payments. This determination of the borrower's ability to repay is reached by relating the borrower's income, assets, and liabilities to the proposed mortgage payment.

Our willingness to purchase mortgages made to borrowers who have blemished credit histories, notwithstanding their high credit risk, is still predicated on the use of underwriting standards (either Fannie Mae's or the lender's) that confirm that the borrower has a reasonable ability to make the mortgage payments and is likely to do so in a manner that will enable him or her to successfully maintain homeownership.

Allowable Points and Fees

Mortgages are not eligible for purchase by Fannie Mae if the total points and fees charged to the borrower are greater than 5% of the mortgage amount, except when this limitation would result in an unprofitable origination for the lender (for example, because of the small size of the mortgage). Under this guideline, points and fees include origination fees, underwriting fees, broker fees, finder's fees, and charges that the lender imposes as a condition of making the loan — whether they are paid to the lender or a third party.

Points and fees that do not have to be counted against this limitation include bona fide discount points, as well as fees paid for actual services rendered in connection with the origination of the mortgage, such as: attorneys' fees, notary's fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections; the cost of mortgage insurance or credit-risk price adjustments; the costs of title, hazard, and flood insurance policies; state and local transfer taxes or fees; escrow deposits for the future payment of taxes and insurance premiums; and other miscellaneous fees and charges that, in total, do not exceed 0.25% of the loan amount.

In addition, a mortgage is not eligible for purchase by Fannie Mae if it is subject to the requirements in the Home Ownership and Equity Protection Act of 1994 that apply to "high-cost" mortgages.

Please note: A mortgage is not eligible for purchase by Fannie Mae if the borrower obtained a prepaid single-premium credit life insurance policy in connection with the origination of the mortgage, regardless of whether the premium is financed in the mortgage amount or paid from the borrower's funds. This prohibition does not apply to credit life insurance policies that require separately identified premium payments on a monthly or annual basis or to prepaid hazard, flood, or mortgage insurance policies.

Sometimes, a borrower who wants a lower monthly payment or lower closing costs may agree to accept a mortgage that includes a prepayment premium in connection with an early payoff of the mortgage. Fannie Mae announced in 1994 that we would purchase mortgages that called for prepayment premiums only under the terms of negotiated contracts. We expect a lender to take the following Fannie Mae requirements into consideration when requesting a commitment to cover the delivery of mortgages that provide for the charging of prepayment premiums:

- A mortgage that has a prepayment premium should provide some benefit to the borrower. The borrower should also be offered the choice of another mortgage product that does not require payment of such a premium.

- The terms of the mortgage provision that requires a prepayment premium should be adequately disclosed to the borrower.

- The prepayment premium should not be charged when the mortgage debt is accelerated as the result of the borrower's default in making his or her mortgage payments.

Lenders that offer higher cost products that are designed for less creditworthy borrowers should not steer applicants to these products if they can qualify for a lower-cost standard mortgage product. Similarly, a consumer that seeks financing through a lender's higher priced subprime lending channel should be offered (or directed toward) the lender's standard mortgage product line if he or she is able to qualify for one of the standard products.

G. [5.52] Fannie Mae Description of Anti-Predatory Loans Available

City of Chicago Anti-Predatory Refinance Initiative

There has been a significant increase in the percentage of subprime loans being made in lower income and minority neighborhoods according to a report published by HUD "Unequal Burden in Chicago." While not all subprime loans employ predatory practices, many do and as a result, there has also been an increase in the number of mortgage foreclosures filed by subprime lenders.

COMMITMENT VOLUME: **LENDERS:**	$5,000,000 Bank One, Countrywide, Irwin, Marquette National Bank, MidAmerica Bank
EXPECTED NUMBER OF LOANS TO BE DELIVERED:	50
ELIGIBLE LOANS:	Fixed rate, fully amortizing (level payment) rate/term refinance mortgage.
ELIGIBLE PROPERTY TYPES	One- and two-unit, owner-occupied principal residences
ELIGIBLE BORROWERS:	Must own and occupy subject property for the most recent five-year period proceeding application date.
GEOGRAPHIC LIMITATIONS:	Property must be located within the City of Chicago

SECOND MORTGAGE LOAN AMOUNT:	All secondary financing must meet Fannie Mae's standard Community Seconds Program guidelines.
FIRST MORTGAGE MAXIMUM LTV:	95% LTV for one-unit properties 75% LTV for two-unit properties
MAXIMUM CLTV:	105% (for CLTVs greater than 100%, a hardship provision in accordance with Announcement 99-14 is required) The subsidy can only be obtained to pay down the existing mortgage and the subsidy must be provided by a non-profit or housing agency to lower the first mortgage balance.
MAXIMUM ALLOWABLE DEBT-TO-INCOME RATIOS:	33/38% Higher Ratios with compensating factors (For two-unit properties, up to 75% of net rents may be added to monthly gross income in accordance with standard guidelines. However, it must be supported by copies of leases.)
REQUIRED PITI RESERVES:	One Month

H. [5.53] FHA Letter on Foreclosure Moratorium

U.S. Department of Housing and Urban Development
Oklahoma State Office
National Servicing and Loss Mitigation Center, HUFM
500 W. Main Street, Suite 400
Oklahoma City, OK 73102-2233

http:www.hud.gov/local/okl/slm/mitihome.html

August 15, 2000

TO: Lenders servicing FHA mortgages in parts of the Metropolitan Areas of New York, NY; Atlanta, GA; Chicago, IL; Los Angeles, CA

SUBJECT: **Moratorium on foreclosure on FHA Mortgages in parts of the Metropolitan Areas of New York, NY; Atlanta, GA; Chicago, IL; Los Angeles, CA**

As a part of the Secretary's effort to review predatory lending practices as they relate to loan originations, effective today, August 15, 2000, HUD is placing a 90-day moratorium on the foreclosure of FHA insured mortgages in the zip codes shown on the enclosed list for the subject metropolitan areas. This moratorium is similar to moratoriums declared due to Federal National Disasters (See HUD Handbook 4330.1 Rev. 5, Chapter 14) on properties insured by FHA that are located within these metropolitan areas.

- This moratorium applies to both the initiation of foreclosure and suspension of foreclosure for cases already in process.
- This moratorium does not affect routine inspections, preservation, and protection, as required by 24 C.F.R. 203.377.
- This does not apply to properties in the affected zip codes that your records indicate are vacant or abandoned as of August 15, 2000, or properties found to be vacant or abandoned through subsequent inspections.
- If the foreclosure sale has already occurred do not suspend the ratification or eviction process. This notification will be in effect for ninety (90) days from August 15, 2000. It will expire on the close of business November 13, 2000.

HUD has established a moratorium page accessible from HUD's Servicing and Loss Mitigation page (http://www.hud.gov/local/okl/slm/mitihome.html) to provide copies of all moratorium notifications.

In those cases where the moratorium causes the initiation of foreclosure to occur past the normal deadline of six months after the date of default, the Department will grant an extension of up to ninety (90) days for the mortgagee to initiate foreclosure. This letter is your confirmation for a ninety (90) days extension for those properties affected by this moratorium.

Please maintain a copy of this letter in the individual claim review files to confirm the approved extension.

During the moratorium, loan servicers should review each of the affected accounts to ensure that the mortgagors were made aware of their loss mitigation options and that the loss mitigation evaluation required by 24 C.F.R. 203.605 has been completed.

The loss mitigation initiatives to be considered are special forbearance, mortgage modifications, refinancing and partial claims. Other alternatives such as deed-in-lieu and pre-foreclosure sales should be encouraged if the homeowner is not in a position to cure the mortgage delinquency. This letter also authorizes an extension of an additional sixty (60) days to the maximum pre-foreclosure sales period for cases affected by this moratorium to allow sufficient time to market the property. If you have any questions regarding the moratorium our phone. number is 888-297-8685.

Sincerely,

Michael B. O'Donnell
Director, Servicing and
Loss Mitigation Center

Enclosure