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AN ACT

RELATING TO MORTGAGE LOAN ORIGINATION; CHANGING THE
PROHIBITIONS AND REQUIREMENTS RELATING TO CERTAIN ADJUSTABLE
RATE HOME LOANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 58-21A-4 NMSA 1978 (being Laws 2003,
Chapter 436, Section 4, as amended) is amended to read:

"58-21A-4. PROHIBITED PRACTICES AND PROVISIONS
REGARDING HOME LOANS.--

A. No creditor shall finance, directly or
indirectly, credit life, credit disability, credit
unemployment or credit property insurance, or any other life
or health insurance, or any payments directly or indirectly
for any debt cancellation or suspension agreement or
contract, provided that nothing in this subsection prohibits
the payment or receipt of insurance premiums or debt
cancellation or suspension fees calculated on the unpaid
balance of a home loan and paid on a monthly basis.

B. No creditor shall knowingly and intentionally
engage in the unfair act or practice of flipping a home loan.
As used in this subsection, "flipping a home loan" means the
making of a home loan to a borrower that refinances an
existing home loan when the new loan does not have
reasonable, tangible net benefit to the borrower considering

1 all of the circumstances, including the terms of both the new
2 and refinanced loans, the cost of the new loan and the
3 borrower's circumstances.

4 C. No creditor shall make a home loan without
5 documenting and considering the borrower's reasonable ability
6 to repay that loan pursuant to its terms. The borrower's
7 ability to repay shall be demonstrated through reasonably
8 reliable documentation that may include payroll receipts, tax
9 returns, bank records, asset and credit evaluations, mortgage
10 payment history or other similar reliable documentation. The
11 provisions of this subsection shall not apply to a home loan
12 originated pursuant to a government streamline program or a
13 streamline program administered by a government-sponsored
14 enterprise, to a reverse mortgage insured as part of a
15 government program or to loss mitigation activities of a home
16 loan servicer or lender with which the borrower has a current
17 relationship, so long as each of these exceptions, as
18 applicable, provides the borrower with a reasonable, tangible
19 net benefit.

20 D. No creditor shall make a home loan without
21 determining the borrower's reasonable ability to pay the
22 costs set forth in this subsection. In the case of an
23 adjustable rate home loan, the reasonable ability to pay
24 shall be determined based on a fully indexed rate and
25 repayment schedule that achieves full amortization over the

1 life of the home loan. The costs, as applicable, to be used
2 in determining the borrower's reasonable ability to pay
3 include principal, interest, real estate taxes, property
4 insurance, property assessments, mortgage insurance premiums
5 and other scheduled long-term monthly debt payments.

6 E. No creditor shall make or originate an
7 adjustable rate home loan in which caps on payment increases
8 may be less than that necessary to reduce principal and
9 amortize the loan over the entire term of the loan regardless
10 of interest rate adjustments resulting in negative
11 amortization.

12 F. No creditor shall make or originate a home loan
13 that includes terms under which more than two periodic
14 payments required under the loan are consolidated and paid in
15 advance from the loan proceeds provided to the borrower.

16 G. No creditor shall pay a contractor under a
17 home-improvement contract from the proceeds of a home loan
18 unless:

19 (1) the creditor is presented with a signed
20 and dated completion certificate showing that the home
21 improvements have been completed; or

22 (2) the instrument is payable jointly to the
23 borrower and the contractor, or at the election of the
24 borrower, through a third-party escrow agent in accordance
25 with terms established in a written agreement signed by the

1 borrower, the creditor and the contractor prior to the
2 disbursement.

3 H. No creditor shall charge a borrower any fees or
4 other charges, other than those that are bona fide,
5 reasonable and actual, to modify, renew, extend or amend a
6 home loan.

7 I. No creditor shall charge a borrower more than
8 seventy-five dollars (\$75.00) to defer any payment due under
9 the terms of a home loan.

10 J. No creditor shall recommend or encourage
11 default on an existing loan or other debt prior to and in
12 connection with the closing or planned closing of a home loan
13 that refinances all or any portion of the existing loan or
14 debt.

15 K. No creditor shall make a home loan that
16 provides for a late payment fee except as follows:

17 (1) the late payment fee shall not be in
18 excess of five percent of the amount of the payment past due;

19 (2) the late payment fee shall only be
20 assessed for a payment past due for fifteen days or more;

21 (3) the late payment fee shall not be
22 imposed more than once with respect to a single late payment,
23 and no late payment fee shall be charged with respect to a
24 subsequent payment that would have been a full payment but
25 for the previous default or the imposition of the previous

1 late payment fee;

2 (4) no late payment fee shall be charged
3 unless the creditor notifies the borrower within forty-five
4 days following the date the payment was due that a late
5 payment fee has been imposed for a particular late payment.
6 A late payment fee that the creditor has collected shall be
7 reimbursed if the borrower presents proof of having made a
8 timely payment; and

9 (5) a creditor shall treat each payment as
10 posted on the same business day as it was received by the
11 creditor, servicer, creditor's agent for making payments or
12 at the address provided to the borrower by the creditor,
13 servicer or creditor's agent for making payments.

14 L. No creditor shall make a home loan that
15 contains a provision that permits the creditor, in its sole
16 discretion, to accelerate the indebtedness, provided that
17 this provision does not prohibit acceleration of a loan in
18 good faith due to a borrower's failure to abide by the
19 material terms of the loan.

20 M. No creditor shall make or originate a home loan
21 that contains a provision that requires a penalty or premium
22 for prepayment of the balance or any portion of the principal
23 of the indebtedness.

24 N. No creditor shall make or originate a home loan
25 that includes or uses one or more of the following lending

1 practices:

2 (1) making a home loan primarily based upon
3 the foreclosure or liquidation value of the borrower's
4 collateral rather than on the borrower's ability to repay the
5 home loan according to its terms;

6 (2) making or originating an adjustable rate
7 home loan, except a home equity line of credit, where the
8 interest rate and payment may change more frequently than
9 once every six months during the term of the loan;

10 (3) making an adjustable rate home loan,
11 except a home equity line of credit, where:

12 (a) the initial interest rate may be
13 increased by more than two percent for loans with initial
14 periods less than five years and six percent for loans with
15 initial periods greater than or equal to five years;

16 (b) a periodic interest rate may be
17 increased by more than one percent every six months; and

18 (c) a lifetime interest rate cap is
19 more than six percent over the initial rate;

20 (4) advertising terms of home loans,
21 including interest rates, margins, discount points, fees,
22 commissions or other material facts, including limitations on
23 the home loans, unless the creditor is able to make the
24 advertised home loans available to a reasonable number of
25 qualified applicants;

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(5) misrepresenting a borrower's credit rating;

(6) misrepresenting, inflating or fabricating, or encouraging a borrower to misrepresent, inflate or fabricate, the source or amount of a borrower's actual income or assets, other than allowable grossed-up income not to exceed the twenty-five percent per agency guidelines established by rule by the director, in the application or underwriting process of a home loan; and

(7) making a home loan with an eighty percent or higher loan-to-value ratio for an owner-occupied residence if the creditor has failed to establish an escrow account for the payment of real estate taxes and property insurance."
