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SENATE BILL 342

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO REAL PROPERTY; ENACTING THE NEW MEXICO MORTGAGE
LOAN ORIGINATOR LICENSING ACT; CREATING LICENSING REQUIREMENTS
FOR MORTGAGE LOAN ORIGINATORS; PROVIDING PENALTIES; AMENDING
THE MORTGAGE LOAN COMPANY AND LOAN BROKER ACT; AMENDING THE
HOME LOAN PROTECTION ACT; PROSCRIBING CERTAIN PRACTICES;
CREATING A FUND; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 24 of this act may be cited as the "New Mexico Mortgage
Loan Originator Licensing Act".

Section 2. [NEW MATERIAL] FINDINGS--PURPOSE.--

A. The activities of mortgage loan originators and
the origination or offering of financing for residential real
property have a direct, valuable and immediate impact upon New

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1 Mexico's consumers, New Mexico's economy, the neighborhoods and
2 communities of New Mexico and the housing and real estate
3 industry. The legislature finds that accessibility to mortgage
4 credit is vital to New Mexico's residents. The legislature
5 also finds that it is essential for the protection of the
6 residents of New Mexico and the stability of New Mexico's
7 economy that reasonable standards for licensing and regulation
8 of the business practices of mortgage loan originators be
9 imposed. The legislature further finds that the obligations of
10 mortgage loan originators to consumers in connection with
11 originating or making residential mortgage loans are such as to
12 warrant the regulation of the mortgage lending process.

13 B. The purpose of the New Mexico Mortgage Loan
14 Originator Licensing Act is to protect consumers seeking
15 mortgage loans.

16 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
17 New Mexico Mortgage Loan Originator Licensing Act:

18 A. "clerical or support duties" may include,
19 subsequent to the receipt of an application:

20 (1) the receipt, collection, distribution and
21 analysis of information common for the processing or
22 underwriting of a residential mortgage loan; and

23 (2) communicating with a consumer to obtain
24 the information necessary for the processing or underwriting of
25 a loan, to the extent that such communication does not include

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1 offering or negotiating loan rates or terms or counseling
2 consumers about residential mortgage loan rates or terms;

3 B. "depository institution" has the same meaning as
4 the definition of depository institution in Section 3 of the
5 Federal Deposit Insurance Act and includes any credit union;

6 C. "director" means the director of the financial
7 institutions division of the regulation and licensing
8 department;

9 D. "dwelling" means a residential structure that
10 contains one to four units whether or not that structure is
11 attached to real property. "Dwelling" includes an individual
12 condominium unit, an individual cooperative unit, a mobile home
13 and a trailer if used as a residence;

14 E. "federal banking agencies" means the board of
15 governors of the federal reserve system, the comptroller of the
16 currency, the director of the office of thrift supervision, the
17 national credit union administration and the federal deposit
18 insurance corporation;

19 F. "immediate family member" means a spouse, child,
20 sibling, parent, grandparent or grandchild, and "immediate
21 family member" includes a stepparent, a stepchild, a
22 stepsibling and an adoptive relationship;

23 G. "individual" means a natural person;

24 H. "license" means a license issued pursuant to
25 Section 6 of the New Mexico Mortgage Loan Originator Licensing

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1 Act;

2 I. "loan processor or underwriter" means an
3 individual who performs clerical or support duties as an
4 employee at the direction of and subject to the supervision and
5 instruction of a person licensed, or exempt from licensing,
6 pursuant to the Mortgage Loan Company Act;

7 J. "mortgage loan company" means any person defined
8 as such in the Mortgage Loan Company Act;

9 K. "mortgage loan originator" means an individual
10 who for compensation or gain or in the expectation of
11 compensation or gain takes a residential mortgage loan
12 application or offers or negotiates terms of a residential
13 mortgage loan. "Mortgage loan originator" does not include:

14 (1) an individual engaged solely as a loan
15 processor or underwriter except as otherwise provided in
16 Subsection I of this section;

17 (2) a person that only performs real estate
18 brokerage activities and is licensed or registered in
19 accordance with New Mexico law, unless the person is
20 compensated by a lender, a mortgage loan company or other
21 mortgage loan originator or by any agent of such lender,
22 mortgage loan company or other mortgage loan originator; and

23 (3) a person solely involved in extensions of
24 credit relating to timeshare plans, as that term is defined in
25 Section 101(53D) of Title 11 of the United States Code;

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1 L. "nationwide mortgage licensing system and
2 registry" means a mortgage licensing system developed and
3 maintained by the conference of state bank supervisors and the
4 American association of residential mortgage regulators for the
5 licensing and registration of licensed mortgage loan
6 originators;

7 M. "nontraditional mortgage product" means any
8 mortgage product other than a thirty-year fixed rate mortgage;

9 N. "person" means a natural person, corporation,
10 company, limited liability company, partnership or association;

11 O. "real estate brokerage activity" means any
12 activity that involves offering or providing real estate
13 brokerage services to the public, including:

14 (1) acting as a real estate agent or real
15 estate broker for a buyer, seller, lessor or lessee of real
16 property;

17 (2) bringing together parties interested in
18 the sale, purchase, lease, rental or exchange of real property;

19 (3) negotiating, on behalf of any party, any
20 portion of a contract relating to the sale, purchase, lease,
21 rental or exchange of real property, other than in connection
22 with providing financing with respect to any such transaction;

23 (4) engaging in any activity for which a
24 person engaged in the activity is required to be registered or
25 licensed as a real estate agent or real estate broker pursuant

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1 to any applicable law; and

2 (5) offering to engage in any activity or to
3 act in any capacity described in Paragraphs (1) through (4) of
4 this subsection;

5 P. "registered mortgage loan originator" means any
6 individual who:

7 (1) meets the definition of mortgage loan
8 originator and is an employee of:

9 (a) a depository institution;

10 (b) a subsidiary that is: 1) owned and
11 controlled by a depository institution; and 2) regulated by a
12 federal banking agency; or

13 (c) an institution regulated by the farm
14 credit administration; and

15 (2) is registered with, and maintains a unique
16 identifier through, the nationwide mortgage licensing system
17 and registry;

18 Q. "residential mortgage loan" means any loan
19 primarily for personal, family or household use that is secured
20 by a mortgage, deed of trust or other equivalent consensual
21 security interest on a dwelling or on residential real estate
22 upon which is constructed or is intended to be constructed a
23 dwelling as so defined;

24 R. "residential real estate" means any real
25 property located in New Mexico upon which is constructed or

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1 intended to be constructed a dwelling; and

2 S. "unique identifier" means a number or other
3 identifier assigned by protocols established by the nationwide
4 mortgage licensing system and registry.

5 Section 4. [NEW MATERIAL] LICENSE AND REGISTRATION
6 REQUIRED TO ORIGINATE MORTGAGE LOANS.--

7 A. Unless specifically exempted from the New Mexico
8 Mortgage Loan Originator Licensing Act pursuant to Subsection B
9 of this section, an individual shall not engage in the business
10 of a mortgage loan originator with respect to any dwelling
11 located in New Mexico without first obtaining and maintaining
12 annually a license pursuant to that act. Each licensed
13 mortgage loan originator must register with and maintain a
14 valid unique identifier issued by the nationwide mortgage
15 licensing system and registry. All new licenses and license
16 renewals shall expire on December 31 of each year. All license
17 renewal applications shall be submitted on or before November 1
18 of each year.

19 B. The following are exempt from the provisions of
20 the New Mexico Mortgage Loan Originator Licensing Act:

21 (1) registered mortgage loan originators when
22 acting for an entity defined in Subparagraphs (a) through (c)
23 of Paragraph (1) of Subsection P of Section 3 of the New Mexico
24 Mortgage Loan Originator Licensing Act;

25 (2) an individual who offers or negotiates

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1 terms of a residential mortgage loan with or on behalf of an
2 immediate family member of the individual;

3 (3) an individual who offers or negotiates
4 terms of a residential mortgage loan secured by a dwelling that
5 served as the individual's residence; or

6 (4) a licensed attorney who negotiates the
7 terms of a residential mortgage loan on behalf of a client as
8 an ancillary matter to the attorney's representation of the
9 client, unless the attorney is compensated by a lender, a
10 mortgage loan company or other mortgage loan originator or by
11 any agent of such lender, mortgage loan company or other
12 mortgage loan originator.

13 C. A loan processor or underwriter who is an
14 independent contractor shall not engage in the activities of a
15 loan processor or underwriter unless the independent contractor
16 loan processor or underwriter obtains and maintains a license
17 pursuant to Subsection A of this section. Each contractor loan
18 processor or underwriter licensed as a mortgage loan originator
19 shall have and maintain a valid unique identifier issued by the
20 nationwide mortgage licensing system and registry.

21 D. For the purposes of implementing an orderly and
22 efficient licensing process, the director may establish
23 licensing rules and interim procedures for licensing and
24 acceptance of applications. For individuals previously
25 registered or licensed pursuant to the Mortgage Loan Company

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1 Act, the director may establish expedited review and licensing
2 procedures.

3 Section 5. [NEW MATERIAL] STATE LICENSE AND REGISTRATION
4 APPLICATION AND ISSUANCE.--

5 A. Applicants for a license shall apply in a form
6 as prescribed by the director. Each form shall contain content
7 as set forth by rule, instruction or procedure of the director
8 and may be changed or updated as necessary by the director in
9 order to carry out the purposes of the New Mexico Mortgage Loan
10 Originator Licensing Act.

11 B. In order to fulfill the purposes of the New
12 Mexico Mortgage Loan Originator Licensing Act, the director may
13 establish relationships or contracts with the nationwide
14 mortgage licensing system and registry or other entities
15 designated by the nationwide mortgage licensing system and
16 registry to collect and maintain records and process
17 transaction fees or other fees related to licensed mortgage
18 loan originators or other individuals subject to that act.

19 C. In connection with an application for licensing
20 as a mortgage loan originator, the applicant shall, at a
21 minimum, furnish to the nationwide mortgage licensing system
22 and registry information concerning the applicant's identity,
23 including:

24 (1) fingerprints for submission to the federal
25 bureau of investigation and any governmental agency or entity

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1 authorized to receive such information for a state, national
2 and international criminal history background check; and

3 (2) personal history and experience in a form
4 prescribed by the nationwide mortgage licensing system and
5 registry, including the submission of authorization for the
6 nationwide mortgage licensing system and registry and the
7 director to obtain:

8 (a) an independent credit report
9 obtained from a consumer reporting agency described in Section
10 603(p) of the federal Fair Credit Reporting Act; and

11 (b) information related to any
12 administrative, civil or criminal findings by any governmental
13 jurisdiction.

14 D. For the purposes of this section and in order to
15 reduce the points of contact that the federal bureau of
16 investigation may have to maintain for purposes of Paragraph
17 (1) of Subsection C of this section and Subparagraph (b) of
18 Paragraph (2) of Subsection C of this section, the director may
19 use the nationwide mortgage licensing system and registry as a
20 channeling agent for requesting information from and
21 distributing information to the federal department of justice
22 or any governmental agency with mortgage industry oversight
23 authority.

24 E. For the purposes of this section and in order to
25 reduce the points of contact that the director may have to

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1 maintain for purposes of Subparagraphs (a) and (b) of Paragraph
2 (2) of Subsection C of this section, the director may use the
3 nationwide mortgage licensing system and registry as a
4 channeling agent for requesting and distributing information to
5 and from any source as directed by the director.

6 Section 6. [NEW MATERIAL] ISSUANCE OF LICENSE.--The
7 director shall not issue a mortgage loan originator license
8 unless the director makes at a minimum the following findings:

9 A. the applicant has never had a mortgage loan
10 originator license revoked in any governmental jurisdiction,
11 except that a formal vacation of such revocation shall not be
12 deemed a revocation;

13 B. the applicant has not been convicted of, or pled
14 guilty or nolo contendere to, a felony in a domestic, foreign
15 or military court:

16 (1) during the seven-year period preceding the
17 date of the application for licensing and registration; or

18 (2) at any time preceding the date of
19 application, if the felony involved an act of fraud or
20 dishonesty, a breach of trust or money laundering; and

21 (3) provided that any pardon of a conviction
22 shall not be a conviction for the purposes of this subsection;

23 C. the applicant has demonstrated financial
24 responsibility, good character and general fitness so as to
25 command the confidence of the community and to warrant a

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1 determination that the mortgage loan originator will operate
2 honestly, fairly and efficiently within the purposes of the New
3 Mexico Mortgage Loan Originator Licensing Act. For the
4 purposes of this subsection, an individual has shown that the
5 individual is not financially responsible when the individual
6 has shown a disregard in the management of the individual's own
7 financial condition. A determination that an individual has
8 not shown financial responsibility may include but is not
9 limited to:

- 10 (1) current outstanding judgments, except
11 judgments solely as a result of medical expenses;
12 (2) current outstanding tax liens or other
13 government liens and filings;
14 (3) foreclosures within the past three years;
15 or
16 (4) a pattern of seriously delinquent accounts
17 within the past three years;

18 D. the applicant has completed the pre-licensing
19 education requirement set forth in Section 7 of the New Mexico
20 Mortgage Loan Originator Licensing Act;

21 E. the applicant has passed a written test that
22 meets the test requirement set forth in Section 8 of the New
23 Mexico Mortgage Loan Originator Licensing Act; and

24 F. the applicant has met the surety bond
25 requirements set forth in Section 17 of the New Mexico Mortgage

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1 Loan Originator Licensing Act.

2 Section 7. [NEW MATERIAL] PRE-LICENSING EDUCATION OF
3 MORTGAGE LOAN ORIGINATORS.--

4 A. In order to meet the pre-licensing education
5 requirement referred to in Subsection D of Section 6 of the New
6 Mexico Mortgage Loan Originator Licensing Act, an individual
7 shall complete at least twenty hours of education approved in
8 accordance with Subsection B of this section, which shall
9 include at least:

10 (1) three hours of federal law and
11 regulations;

12 (2) three hours of ethics, including
13 instruction on fraud, consumer protection and fair lending
14 issues;

15 (3) two hours of training related to lending
16 standards for the nontraditional mortgage product marketplace;
17 and

18 (4) three hours of New Mexico law and
19 administrative rules.

20 B. For the purposes of Subsection A of this
21 section, pre-licensing education courses shall be reviewed and
22 approved by the nationwide mortgage licensing system and
23 registry based upon reasonable standards. Review and approval
24 of a pre-licensing education course shall include review and
25 approval of the course provider.

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1 C. Nothing in this section shall preclude any
2 pre-licensing education course, as approved by the nationwide
3 mortgage licensing system and registry, that is provided by the
4 employer of the applicant or by an entity that is affiliated
5 with the applicant by an agency contract, or by any subsidiary
6 or affiliate of the employer or entity.

7 D. Pre-licensing education may be offered in a
8 classroom, online or by any other means approved by the
9 nationwide mortgage licensing system and registry.

10 E. The pre-licensing education requirements
11 approved by the nationwide mortgage licensing system and
12 registry in Paragraphs (1) through (4) of Subsection A of this
13 section for any state shall be accepted as credit toward
14 completion of pre-licensing education requirements in New
15 Mexico.

16 F. An individual previously licensed pursuant to
17 the New Mexico Mortgage Loan Originator Licensing Act
18 subsequent to the effective date of that act applying to be
19 licensed again shall prove that the individual has completed
20 all of the continuing education requirements for the year in
21 which the license was last held.

22 Section 8. [NEW MATERIAL] TESTING OF MORTGAGE LOAN
23 ORIGINATORS.--

24 A. In order to meet the written test requirement
25 referred to in Subsection E of Section 6 of the New Mexico

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1 Mortgage Loan Originator Licensing Act, an individual shall
2 pass, in accordance with the standards established pursuant to
3 this section, a qualified written test developed by the
4 nationwide mortgage licensing system and registry and
5 administered by a test provider approved by the nationwide
6 mortgage licensing system and registry based upon reasonable
7 standards.

8 B. A written test shall not be treated as a
9 qualified written test for purposes of Subsection A of this
10 section unless the test adequately measures the applicant's
11 knowledge and comprehension in appropriate subject areas,
12 including:

13 (1) ethics;

14 (2) federal law and regulations pertaining to
15 mortgage origination;

16 (3) New Mexico law and rules pertaining to
17 mortgage origination; and

18 (4) federal and New Mexico law and regulations
19 and rules, including those concerning fraud, consumer
20 protection, the nontraditional mortgage product marketplace and
21 fair lending issues.

22 C. Nothing in this section shall prohibit a test
23 provider approved by the nationwide mortgage licensing system
24 and registry from providing a test at the location of the
25 employer of the applicant or the location of any subsidiary or

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1 affiliate of the employer of the applicant, or at the location
2 of any entity with which the applicant holds an exclusive
3 arrangement to conduct the business of a mortgage loan
4 originator.

5 D. An individual shall not be considered to have
6 passed a qualified written test unless the individual achieves
7 a test score of not less than seventy-five percent correct
8 answers to questions.

9 E. An individual may retake a test two consecutive
10 times, provided that each retake occurs at least thirty days
11 after the preceding test. After failing three consecutive
12 tests, an individual shall wait at least six months before
13 taking the test again.

14 F. A licensed mortgage loan originator who fails to
15 maintain a valid license for a period of five years or longer
16 shall retake the test, not taking into account any time during
17 which the individual is a registered mortgage loan originator.

18 Section 9. [NEW MATERIAL] STANDARDS FOR LICENSE
19 RENEWAL.--

20 A. The minimum standards for license renewal for
21 mortgage loan originators shall include the following:

22 (1) the mortgage loan originator continues to
23 meet the minimum standards for license issuance pursuant to
24 Section 6 of the New Mexico Mortgage Loan Originator Licensing
25 Act;

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1 (2) the mortgage loan originator has satisfied
2 the annual continuing education requirements set forth in
3 Section 10 of the New Mexico Mortgage Loan Originator Licensing
4 Act; and

5 (3) the mortgage loan originator has paid all
6 required fees for renewal of the license.

7 B. The license of a mortgage loan originator who
8 fails to satisfy the minimum standards for license renewal
9 shall expire. The director may adopt rules for the
10 reinstatement of expired licenses consistent with the standards
11 established by the nationwide mortgage licensing system and
12 registry.

13 Section 10. [NEW MATERIAL] CONTINUING EDUCATION FOR
14 MORTGAGE LOAN ORIGINATORS.--

15 A. In order to meet the annual continuing education
16 requirements set forth in Paragraph (2) of Subsection A of
17 Section 9 of the New Mexico Mortgage Loan Originator Licensing
18 Act, a licensed mortgage loan originator shall complete at
19 least eight hours of education approved in accordance with
20 Subsection B of this section, which shall include at least:

21 (1) three hours of federal law and
22 regulations;

23 (2) two hours of ethics, including instruction
24 on fraud, consumer protection and fair lending issues;

25 (3) two hours of training related to lending

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1 standards for the nontraditional mortgage product marketplace;
2 and

3 (4) one hour of New Mexico law and
4 administrative rules.

5 B. For the purposes of Subsection A of this
6 section, continuing education courses shall be reviewed and
7 approved by the nationwide mortgage licensing system and
8 registry based upon reasonable standards. Review and approval
9 of a continuing education course shall include review and
10 approval of the course provider.

11 C. Nothing in this section shall preclude any
12 education course, as approved by the nationwide mortgage
13 licensing system and registry, that is provided by the employer
14 of the mortgage loan originator or by an entity that is
15 affiliated with the mortgage loan originator by an agency
16 contract, or any subsidiary or affiliate of such employer or
17 entity.

18 D. Continuing education may be offered in a
19 classroom, online or by any other means approved by the
20 nationwide mortgage licensing system and registry.

21 E. A licensed mortgage loan originator:

22 (1) except for the provisions of Subsection B
23 of Section 9 of the New Mexico Mortgage Loan Originator
24 Licensing Act and Subsection I of this section, may only
25 receive credit for a continuing education course in the year in

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1 which the course is taken; and

2 (2) may not take the same approved course in
3 the same or successive years to meet the annual requirements
4 for continuing education.

5 F. A licensed mortgage loan originator who is an
6 approved instructor of an approved continuing education course
7 may receive credit for the licensed mortgage loan originator's
8 own annual continuing education requirement at the rate of two
9 hours' credit for every one hour taught.

10 G. An individual who has successfully completed the
11 education requirements approved by the nationwide mortgage
12 licensing system and registry and as set forth in Subsection A
13 of this section for any state shall be accepted as credit
14 toward completion of continuing education requirements in New
15 Mexico.

16 H. A licensed mortgage loan originator who
17 subsequently becomes unlicensed shall complete the continuing
18 education requirements for the last year in which the license
19 was held prior to issuance of a new or renewed license.

20 I. An individual who meets the requirements set
21 forth in Paragraphs (1) and (3) of Subsection A of Section 9 of
22 the New Mexico Mortgage Loan Originator Licensing Act may make
23 up any deficiency in continuing education as established by
24 rule promulgated by the director.

25 Section 11. [NEW MATERIAL] AUTHORITY TO REQUIRE LICENSE

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1 AND TO SET FEES.--

2 A. In addition to any other duties imposed upon the
3 director by law, the director shall require mortgage loan
4 originators to be licensed and registered through the
5 nationwide mortgage licensing system and registry. In order to
6 carry out this requirement, the director may participate in the
7 nationwide mortgage licensing system and registry. For this
8 purpose, the director may establish requirements as necessary,
9 including but not limited to:

10 (1) background checks for:

11 (a) criminal history through fingerprint
12 or other databases;

13 (b) civil or administrative records;

14 (c) credit history; or

15 (d) any other information deemed
16 necessary by the nationwide mortgage licensing system and
17 registry;

18 (2) payment of fees to apply for or renew
19 licenses through the nationwide mortgage licensing system and
20 registry;

21 (3) setting or resetting as necessary renewal
22 or reporting dates; and

23 (4) requirements for amending or surrendering
24 a license or any other activities the director deems necessary
25 for participation in the nationwide mortgage licensing system

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1 and registry.

2 B. The director shall establish by rule fees
3 sufficient to cover the costs of administering the New Mexico
4 Mortgage Loan Originator Licensing Act. These fees may
5 include:

6 (1) an original and renewal license fee paid
7 by each licensed mortgage loan originator;

8 (2) an application fee to cover the costs of
9 processing applications;

10 (3) an examination or investigation fee to
11 cover the costs of any examination or investigation of the
12 books and records of a licensed mortgage loan originator or
13 other person subject to the New Mexico Mortgage Loan Originator
14 Licensing Act; and

15 (4) late fees, license amendment fees and any
16 other fees associated with the costs of administering the New
17 Mexico Mortgage Loan Originator Licensing Act.

18 C. Mortgage loan originators shall not be charged
19 investigation fees for the processing of complaints when the
20 investigation determines that no violation of the New Mexico
21 Mortgage Loan Originator Licensing Act occurred or when the
22 mortgage loan originator provides a remedy satisfactory to the
23 complainant and the director and no order of the director is
24 issued. All money, fees and penalties collected pursuant to
25 the New Mexico Mortgage Loan Originator Licensing Act shall be

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1 deposited into the mortgage regulatory fund.

2 Section 12. [NEW MATERIAL] NATIONWIDE MORTGAGE LICENSING
3 SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS.--The
4 director shall establish rules whereby mortgage loan
5 originators may challenge information entered into the
6 nationwide mortgage licensing system and registry by the
7 director.

8 Section 13. [NEW MATERIAL] ENFORCEMENT--VIOLATIONS--
9 PENALTIES.--

10 A. In order to ensure the effective supervision and
11 enforcement of the New Mexico Mortgage Loan Originator
12 Licensing Act, the director may:

13 (1) deny, suspend, revoke or decline to renew
14 a license for a violation of the New Mexico Mortgage Loan
15 Originator Licensing Act or rules issued pursuant to that act
16 or an order or a directive entered pursuant to that act;

17 (2) deny, suspend, revoke or decline to renew
18 a license if an applicant or licensed mortgage loan originator:

19 (a) fails at any time to meet the
20 requirements of Section 6 or 9 of the New Mexico Mortgage Loan
21 Originator Licensing Act; or

22 (b) withholds information or makes a
23 material misstatement in an application for a license or
24 renewal of a license;

25 (3) order restitution against mortgage loan

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1 originators for violations of that act;

2 (4) impose fines on mortgage loan originators
3 pursuant to Subsections C through E of this section;

4 (5) order or direct such other affirmative
5 action as the director deems necessary;

6 (6) bar or suspend a mortgage loan originator
7 from licensure in New Mexico as a mortgage loan originator; and

8 (7) issue orders or directives pursuant to the
9 New Mexico Mortgage Loan Originator Licensing Act as follows:

10 (a) order or direct mortgage loan
11 originators to cease and desist from conducting business,
12 including issuing an immediate temporary order to cease and
13 desist;

14 (b) order or direct mortgage loan
15 originators to cease any harmful activities or violations of
16 that act, including issuing an immediate temporary order to
17 cease and desist; and

18 (c) enter immediate temporary orders to
19 cease business pursuant to a license issued pursuant to the
20 authority granted pursuant to Section 4 of the New Mexico
21 Mortgage Loan Originator Licensing Act if the director
22 determines that the license was erroneously granted or the
23 licensed mortgage loan originator is currently in violation of
24 that act.

25 B. The director may initiate one or more of the

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1 actions set forth in Section 15 of the New Mexico Mortgage Loan
2 Originator Licensing Act.

3 C. It is a violation of the New Mexico Mortgage
4 Loan Originator Licensing Act for a mortgage loan originator
5 to:

6 (1) directly or indirectly employ any scheme,
7 device or artifice to defraud or mislead borrowers or lenders
8 or to defraud any person;

9 (2) engage in any unfair or deceptive practice
10 toward any person;

11 (3) obtain property by fraud or
12 misrepresentation;

13 (4) solicit or enter into a contract with a
14 borrower that provides in substance that the mortgage loan
15 originator may earn a fee or commission through "best efforts"
16 to obtain a loan even though no loan is actually obtained for
17 the borrower;

18 (5) solicit, advertise or enter into a
19 contract for specific interest rates, points or other financing
20 terms unless the terms are actually available at the time of
21 soliciting, advertising or contracting;

22 (6) conduct any business covered by the New
23 Mexico Mortgage Loan Originator Licensing Act without holding a
24 valid license as required pursuant to that act, or assist or
25 aid and abet any person in the conduct of business pursuant to

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1 that act without a valid license as required pursuant to that
2 act;

3 (7) fail to make disclosures as required by
4 the New Mexico Mortgage Loan Originator Licensing Act and any
5 other applicable state or federal law, including rules and
6 regulations thereunder;

7 (8) fail to comply with the provisions of the
8 New Mexico Mortgage Loan Originator Licensing Act or rules or
9 regulations promulgated pursuant to that act, or fail to comply
10 with any other state or federal law, including rules and
11 regulations thereunder, applicable to any business authorized
12 or conducted pursuant to the New Mexico Mortgage Loan
13 Originator Licensing Act;

14 (9) make, in any manner, a false or deceptive
15 statement or representation, including, with regard to the
16 rates, points or other financing terms or conditions for a
17 residential mortgage loan, engaging in bait-and-switch
18 advertising;

19 (10) negligently make any false statement or
20 knowingly and willfully make any omission of material fact in
21 connection with any information or reports filed with a
22 governmental agency or the nationwide mortgage licensing system
23 and registry or in connection with any investigation conducted
24 by the director or another governmental agency;

25 (11) make any payment, threat or promise,

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1 directly or indirectly, to any person for the purposes of
2 influencing the independent judgment of the person in
3 connection with a residential mortgage loan or make any
4 payment, threat or promise, directly or indirectly, to any
5 appraiser of a property for the purposes of influencing the
6 independent judgment of the appraiser with respect to the value
7 of the property. Nothing in this paragraph shall be construed
8 to prohibit a mortgage loan originator from asking the
9 appraiser to consider additional appropriate property
10 information or provide further detail, substantiation or
11 explanation for the appraiser's value conclusion;

12 (12) collect, charge, attempt to collect or
13 charge, or to use or propose any agreement purporting to
14 collect or charge, any fee prohibited by the New Mexico
15 Mortgage Loan Originator Licensing Act;

16 (13) cause or require a borrower to obtain
17 property insurance coverage in an amount that exceeds the
18 replacement cost of the improvements as established by the
19 director and the property insurer;

20 (14) fail to account truthfully for money
21 belonging to a party to a residential mortgage loan
22 transaction;

23 (15) engage in mortgage loan origination on
24 behalf of more than one mortgage loan company;

25 (16) pay, receive or collect in whole or in

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1 part any commission, fee or other compensation for originating
2 a mortgage loan in violation of the New Mexico Mortgage Loan
3 Originator Licensing Act, including a mortgage loan originated
4 by any unlicensed person other than an exempt person;

5 (17) charge or collect any fee, commission or
6 rate of interest or make or originate any mortgage loan with
7 terms or conditions or in a manner contrary to other applicable
8 federal and state laws;

9 (18) advertise mortgage loans, including
10 rates, margins, discounts, points, fees, commission or other
11 material information, including material limitations on the
12 loans, unless the person is able to make the mortgage loans
13 available to a reasonable number of qualified applicants;

14 (19) coerce, extort, induce, bribe or
15 intimidate or attempt to coerce, extort, induce, bribe or
16 intimidate an appraiser to value property in excess of its fair
17 market value;

18 (20) originate a mortgage loan that contains a
19 pre-payment penalty;

20 (21) misrepresent a borrower's credit rating;

21 (22) misrepresent, inflate or fabricate, or
22 encourage a borrower to misrepresent, inflate or fabricate, the
23 source or amount of a borrower's actual income or assets, other
24 than allowable grossed-up income not to exceed twenty-five
25 percent per current agency guidelines as set by the director,

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1 in the application or underwriting process for a residential
2 mortgage loan;

3 (23) originate a residential mortgage loan
4 when the terms of that loan are in violation of the Home Loan
5 Protection Act;

6 (24) originate a residential mortgage loan
7 that does not require documentation and consideration of the
8 borrower's reasonable ability to repay that loan pursuant to
9 its terms. The borrower's ability to repay shall be
10 demonstrated through reasonably reliable documentation that may
11 include payroll receipts, tax returns, bank records, asset and
12 credit evaluations, mortgage payment history or other similar
13 reliable documentation. The provisions of this paragraph shall
14 not apply to a residential mortgage loan originated pursuant to
15 a government streamline program, to a reverse mortgage insured
16 as part of a government program or to loss mitigation
17 activities of a mortgage loan servicer or lender with which the
18 borrower has a current relationship, so long as each of these
19 exceptions, as applicable, provides the borrower with a
20 reasonable, tangible net benefit; or

21 (25) originate a residential mortgage loan
22 that does not require a determination of the borrower's
23 reasonable ability to pay the costs set forth in this
24 paragraph. In the case of an adjustable rate residential
25 mortgage loan, the reasonable ability to pay shall be

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1 determined based on a fully indexed rate and repayment schedule
2 that achieves full amortization over the life of the mortgage
3 loan. The costs, as applicable, to be used in determining the
4 borrower's reasonable ability to pay include principal,
5 interest, real estate taxes, property insurance, property
6 assessments, mortgage insurance premiums and other scheduled
7 long-term monthly debt payments.

8 D. The director may impose a civil penalty on a
9 mortgage loan originator if the director finds, on the record
10 after notice and opportunity for hearing, that the mortgage
11 loan originator has violated or failed to comply with any
12 requirement of the Mortgage Loan Originator Licensing Act or
13 any rule promulgated by the director pursuant to that act or
14 any order issued pursuant to authority of that act.

15 E. The maximum amount of penalty for each act or
16 omission described in Subsection C of this section shall be
17 twenty-five thousand dollars (\$25,000).

18 F. Each violation or failure to comply with any
19 directive or order of the director is a separate and distinct
20 violation or failure.

21 Section 14. [NEW MATERIAL] NOTICE OF CONTEMPLATED ACTION--
22 HEARINGS.--

23 A. When the director contemplates taking any action
24 specified in Paragraphs (1) through (6) of Subsection A or in
25 Subsection D of Section 13 of the New Mexico Mortgage Loan

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1 Originator Licensing Act, the director shall serve upon the
2 licensed mortgage loan originator a written notice containing a
3 statement:

4 (1) that the director has sufficient evidence
5 that, if not rebutted or explained, will justify the director
6 in taking the contemplated action;

7 (2) indicating the general nature of the
8 evidence; and

9 (3) that unless the licensed mortgage loan
10 originator within twenty days after service of the notice
11 deposits in the mail a certified return receipt requested
12 letter addressed to the director containing a request for a
13 hearing, the director will take the contemplated action.

14 B. If the licensed mortgage loan originator does
15 not mail a request for a hearing within the time and in the
16 manner required by this section, the director may take the
17 action contemplated in the notice, and such action shall be
18 final and not subject to judicial review.

19 C. If the licensed mortgage loan originator mails a
20 request for a hearing as required by this section, the director
21 shall, within thirty days of receipt of the request, notify the
22 licensed mortgage loan originator of the time and place of the
23 hearing, the name of the person who shall conduct the hearing
24 for the director and the statutes and regulations authorizing
25 the director to take the contemplated action.

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1 Section 15. ~~[NEW MATERIAL]~~ POWER OF THE COURT TO GRANT
2 RELIEF.--

3 A. Upon a showing by the director that a person has
4 or is about to violate the New Mexico Mortgage Loan Originator
5 Licensing Act or any rule or order of the director pursuant to
6 that act, the district court of the first judicial district or
7 other appropriate district court in the state may grant or
8 impose one or more of the following appropriate legal or
9 equitable remedies:

10 (1) a temporary restraining order, permanent
11 or temporary prohibitory or mandatory injunction or a writ of
12 prohibition or mandamus;

13 (2) a civil penalty up to a maximum of twenty-
14 five thousand dollars (\$25,000) for each violation;

15 (3) disgorgement;

16 (4) declaratory judgment;

17 (5) restitution to consumers;

18 (6) the appointment of a receiver or
19 conservator for the defendant or the defendant's assets;

20 (7) recovery by the director of all costs and
21 expenses for conducting an investigation or the bringing of any
22 enforcement action under that act; or

23 (8) other relief as the court deems just.

24 B. In determining the appropriate relief to grant,
25 the court shall consider enforcement actions taken and

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1 sanctions imposed by the director pursuant to Section 13 of the
2 New Mexico Mortgage Loan Originator Licensing Act in connection
3 with the transactions constituting violations of that act.

4 C. The court shall not require the director to post
5 bond in an action pursuant to this section.

6 Section 16. [NEW MATERIAL] UNLICENSED ACTIVITY.--

7 A. An individual who acts as a mortgage loan
8 originator without being properly licensed pursuant to the New
9 Mexico Mortgage Loan Originator Licensing Act is guilty of a
10 misdemeanor for the first offense and upon conviction shall be
11 sentenced in accordance with the provisions of Subsection A of
12 Section 31-19-1 NMSA 1978.

13 B. In the case of a conviction pursuant to
14 Subsection A of this section, the court may impose a deferred
15 sentence in accordance with Section 31-20-6 NMSA 1978.

16 C. An individual who violates Subsection A of this
17 section a second or subsequent time is guilty of a fourth
18 degree felony and upon conviction shall be sentenced in
19 accordance with Section 31-18-15 NMSA 1978.

20 Section 17. [NEW MATERIAL] SURETY BOND REQUIRED.--

21 A. Each mortgage loan originator shall be covered
22 by a surety bond in accordance with this section. In the event
23 the mortgage loan originator is an employee or exclusive agent
24 of a mortgage loan company subject to the Mortgage Loan Company
25 Act, the surety bond of the mortgage loan company subject to

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1 that act may be used in lieu of the mortgage loan originator's
2 surety bond requirement.

3 B. The surety bond shall provide coverage for each
4 mortgage loan originator in an amount as prescribed in
5 Subsection E of this section.

6 C. The surety bond shall be in a form as prescribed
7 by the director.

8 D. The director may promulgate rules with respect
9 to the requirements for such surety bonds as are necessary to
10 accomplish the purposes of the New Mexico Mortgage Loan
11 Originator Licensing Act.

12 E. The penal sum of the surety bond shall be in an
13 initial amount of fifty thousand dollars (\$50,000). Upon
14 renewal of the license, the penal sum of the surety bond shall
15 be in an amount that reflects the total dollar amount of
16 mortgage loans originated annually in New Mexico by the
17 licensed mortgage loan originator, as follows:

18 (1) zero dollars (\$0.00) to three million
19 dollars (\$3,000,000), a surety bond of fifty thousand dollars
20 (\$50,000);

21 (2) more than three million dollars
22 (\$3,000,000) and less than ten million dollars (\$10,000,000), a
23 surety bond of one hundred thousand dollars (\$100,000); and

24 (3) ten million dollars (\$10,000,000) or more,
25 a surety bond of one hundred fifty thousand dollars (\$150,000).

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1 F. Every bond shall provide for suit thereon by any
2 person who has a cause of action pursuant to the New Mexico
3 Mortgage Loan Originator Licensing Act. In no event shall the
4 total liability of the surety to all persons, cumulative or
5 otherwise, exceed the amount specified in the bond. Every bond
6 shall provide that no suit shall be maintained to enforce any
7 liability on the bond unless brought within three years after
8 the act upon which the suit is based.

9 G. When an action is commenced on a licensed
10 mortgage loan originator's bond, the director may require the
11 filing of a new bond.

12 H. Immediately upon recovery on any action on a
13 bond, the licensed mortgage loan originator shall file a new
14 bond.

15 Section 18. [NEW MATERIAL] CONFIDENTIALITY.--In order to
16 promote more effective regulation and reduce regulatory burden
17 through supervisory information-sharing, the following
18 provisions shall apply:

19 A. except as otherwise provided in Public Law
20 110-289, Section 1512, the requirements pursuant to any federal
21 law or pursuant to the Inspection of Public Records Act
22 regarding the privacy or confidentiality of any information or
23 material provided to the nationwide mortgage licensing system
24 and registry, and any privilege arising pursuant to federal or
25 state law, including the rules of any federal or state court,

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1 with respect to such information or material, shall continue to
2 apply to such information or material after the information or
3 material has been disclosed to the nationwide mortgage
4 licensing system and registry. Such information and material
5 may be shared with all state and federal regulatory officials
6 with mortgage industry oversight authority without the loss of
7 privilege or the loss of confidentiality protections provided
8 by federal law or the Inspection of Public Records Act;

9 B. for the purposes set forth in Subsection A of
10 this section, the director may enter into agreements or sharing
11 arrangements with other governmental agencies, the conference
12 of state bank supervisors, the American association of
13 residential mortgage regulators or other associations
14 representing governmental agencies as established by rule or
15 order of the director;

16 C. information or material that is subject to a
17 privilege or confidentiality pursuant to Subsection A of this
18 section shall not be subject to:

19 (1) disclosure pursuant to any federal or
20 state law governing the disclosure to the public of information
21 held by an officer or an agency of the federal government or
22 the respective state; or

23 (2) subpoena or discovery, or admission into
24 evidence, in any private civil action or administrative
25 process, unless, with respect to any privilege held by the

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1 nationwide mortgage licensing system and registry with respect
2 to such information or material, the person to whom such
3 information or material pertains waives, in whole or in part,
4 in the discretion of such person, that privilege;

5 D. provisions of the Inspection of Public Records
6 Act relating to the disclosure of confidential supervisory
7 information or of any information or material set forth in
8 Subsection A of this section that are inconsistent with that
9 subsection shall be superseded by the requirements of this
10 section; and

11 E. this section shall not apply to information or
12 material relating to the employment history of, and publicly
13 adjudicated disciplinary and enforcement actions against,
14 mortgage loan originators that is included in the nationwide
15 mortgage licensing system and registry for access by the
16 public.

17 Section 19. [NEW MATERIAL] INVESTIGATION AND EXAMINATION
18 AUTHORITY.--In addition to any authority allowed pursuant to
19 the New Mexico Mortgage Loan Originator Licensing Act, the
20 director may conduct investigations and examinations as
21 follows:

22 A. for the purposes of initial licensing, license
23 renewal, license suspension, license revocation or termination
24 or general or specific inquiry or investigation to determine
25 compliance with the New Mexico Mortgage Loan Originator

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1 Licensing Act, the director shall have access to and may
2 receive and use any books, accounts, records, files, documents,
3 information or evidence, including:

4 (1) criminal, civil and administrative history
5 information, including nonconviction data as specified in the
6 Arrest Record Information Act;

7 (2) personal history and experience
8 information, including independent credit reports obtained from
9 a consumer reporting agency described in Section 603(p) of the
10 federal Fair Credit Reporting Act; and

11 (3) any other documents, information or
12 evidence the director deems relevant to the inquiry or
13 investigation regardless of the location, possession, control
14 or custody of such documents, information or evidence;

15 B. for the purposes of investigating violations or
16 complaints arising pursuant to the New Mexico Mortgage Loan
17 Originator Licensing Act, or for the purposes of examination,
18 the director may review, investigate or examine any individual
19 subject to that act as often as necessary in order to carry out
20 the purposes of that act. The director may direct, subpoena or
21 order the attendance of and examine under oath all persons
22 whose testimony may be required about the loans or the business
23 or subject matter of any such examination or investigation and
24 may direct, subpoena or order such persons to produce books,
25 accounts, records, files and any other documents the director

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1 deems relevant to the inquiry;

2 C. each mortgage loan originator shall make
3 available to the director upon request the books and records
4 relating to the operations of the mortgage loan originator.
5 The director shall have access to the books and records and
6 interview the officers, principals, mortgage loan originators,
7 employees, independent contractors, agents and customers of the
8 mortgage loan originator concerning their business;

9 D. each mortgage loan originator shall make or
10 compile reports or prepare other information as directed by the
11 director in order to carry out the purposes of this section,
12 including:

- 13 (1) accounting compilations;
14 (2) information lists and data concerning loan
15 transactions in a format prescribed by the director; and
16 (3) such other information deemed by the
17 director to be necessary to carry out the purposes of this
18 section;

19 E. in making any examination or investigation
20 authorized by the New Mexico Mortgage Loan Originator Licensing
21 Act, the director may control access to any documents and
22 records of the individual under examination or investigation.
23 The director may take possession of the documents and records
24 or place a person in exclusive charge of the documents and
25 records in the place where they are usually kept. During the

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1 period of control, no individual or person shall remove or
2 attempt to remove any of the documents and records except
3 pursuant to a court order or with the consent of the director.
4 Unless the director has reasonable grounds to believe the
5 documents or records of the licensed mortgage loan originator
6 have been, or are at risk of being, altered or destroyed for
7 purposes of concealing a violation of the New Mexico Mortgage
8 Loan Originator Licensing Act, the licensed mortgage loan
9 originator or owner of the documents and records shall have
10 access to the documents or records as necessary to conduct its
11 ordinary business affairs;

12 F. in order to carry out the purposes of this
13 section, the director may:

14 (1) retain attorneys, accountants or other
15 professionals and specialists as examiners, auditors or
16 investigators to conduct or assist in the conduct of
17 examinations or investigations;

18 (2) enter into agreements or relationships
19 with other government officials or regulatory associations in
20 order to improve efficiencies and reduce regulatory burden by
21 sharing resources, standardized or uniform methods or
22 procedures and documents, records, information or evidence
23 obtained pursuant to this section;

24 (3) use, hire, contract or employ public or
25 privately available analytical systems, methods or software to

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1 examine or investigate the mortgage loan originator;

2 (4) accept and rely on examination or
3 investigation reports made by other government officials,
4 within or without this state; and

5 (5) accept audit reports made by an
6 independent certified public accountant for the mortgage loan
7 originator in the course of that part of the examination
8 covering the same general subject matter as the audit and may
9 incorporate the audit report in the report of the examination,
10 report of investigation or other writing of the director;

11 G. the authority of this section shall remain in
12 effect whether such a licensed mortgage loan originator or
13 individual subject to the New Mexico Mortgage Loan Originator
14 Licensing Act acts or claims to act pursuant to any licensing
15 or registration law of New Mexico or claims to act without such
16 authority;

17 H. no licensed mortgage loan originator or
18 individual subject to investigation or examination pursuant to
19 this section shall knowingly withhold, abstract, remove,
20 mutilate, destroy or secrete any books, records, computer
21 records or other information; and

22 I. applications for a license or a license renewal,
23 and all papers, documents, reports and other written
24 instruments filed with the director pursuant to the New Mexico
25 Mortgage Loan Originator Licensing Act, are public documents

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1 and open to public inspection, except for files of ongoing
2 examinations and investigations relating to violations of that
3 act, which investigations do not culminate, or have not yet
4 culminated, in administrative, civil or criminal action.

5 Section 20. [NEW MATERIAL] MORTGAGE LOAN ORIGINATOR
6 DUTIES.--

7 A. A mortgage loan originator shall, in addition to
8 other duties imposed by other statutes or by common law, enter
9 into a fiduciary relationship with the borrower. For the
10 purposes of this subsection, "fiduciary relationship" is a
11 relationship in which a mortgage loan originator shall:

12 (1) safeguard and account for any money
13 handled for the borrower;

14 (2) follow reasonable and lawful instructions
15 from the borrower;

16 (3) act with reasonable skill, care and
17 diligence;

18 (4) act in good faith and engage in fair
19 dealing in any transaction, practice or course of business
20 regarding mortgage loans;

21 (5) direct, recommend and make reasonable
22 efforts to secure a residential mortgage loan that is
23 reasonably advantageous to the borrower, considering all of the
24 circumstances, and has a net tangible benefit to the borrower;

25 (6) make a full and fair disclosure of all

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1 facts within the knowledge of the mortgage loan originator that
2 are or may be material to the borrower's decision, rights or
3 interests;

4 (7) disclose to the borrower the existence of
5 all loans available to the mortgage loan originator, for which
6 the borrower qualifies, that have terms that are as favorable
7 or more favorable than those loans offered to the borrower by
8 the mortgage loan originator;

9 (8) not steer the borrower to a loan or loans
10 with terms that are clearly less favorable than those loans
11 offered to the borrower by the mortgage loan originator; and

12 (9) maintain all information provided by the
13 borrower or obtained regarding the borrower in strict
14 confidence. However, the mortgage loan originator may disclose
15 confidential information if required by law or rule or if the
16 borrower authorizes the disclosure in writing in advance of the
17 disclosure. Any such authorization shall specifically identify
18 the nature of the information to be disclosed.

19 B. If not provided by the mortgage loan company, a
20 mortgage loan originator shall, in addition to all other
21 disclosures required by statute or common law:

22 (1) disclose at least two days prior to
23 closing of the loan the total amount of any compensation the
24 mortgage loan company expects to receive specific to the loan
25 being offered, including origination fees, broker fees, yield

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1 spread premiums and other fees payable to the mortgage loan
2 company by the lender or other third party at the time the loan
3 is funded to the borrower; and

4 (2) clearly and conspicuously disclose in
5 writing a mortgage loan summary, as specified by the director
6 by rule.

7 Section 21. [NEW MATERIAL] UNFAIR TRADE PRACTICE.--A
8 violation of the provisions of the New Mexico Mortgage Loan
9 Originator Licensing Act constitutes an unfair or deceptive
10 trade practice pursuant to the Unfair Practices Act.

11 Section 22. [NEW MATERIAL] MORTGAGE CALL REPORTS.--A
12 mortgage loan originator shall submit to the nationwide
13 mortgage licensing system and registry reports of condition,
14 which shall be in such form and shall contain such information
15 as the nationwide mortgage licensing system and registry may
16 require.

17 Section 23. [NEW MATERIAL] REPORT TO NATIONWIDE MORTGAGE
18 LICENSING SYSTEM AND REGISTRY.--Subject to state privacy laws,
19 the director shall report regularly violations of the New
20 Mexico Mortgage Loan Originator Licensing Act, as well as
21 enforcement actions and other relevant information, to the
22 nationwide mortgage licensing system and registry subject to
23 the provisions set forth in Section 18 of the New Mexico
24 Mortgage Loan Originator Licensing Act.

25 Section 24. [NEW MATERIAL] UNIQUE IDENTIFIER SHOWN.--The

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1 unique identifier of any person originating a residential
2 mortgage loan shall be clearly shown on all residential
3 mortgage loan application forms, solicitations or
4 advertisements, including business cards or web sites, and on
5 any other documents as established by rule or order of the
6 director.

7 Section 25. Section 58-21-1 NMSA 1978 (being Laws 1983,
8 Chapter 86, Section 1, as amended) is amended to read:

9 "58-21-1. SHORT TITLE.--Chapter 58, Article 21 NMSA 1978
10 may be cited as the "Mortgage Loan Company [~~and Loan Broker~~]
11 Act"."

12 Section 26. Section 58-21-2 NMSA 1978 (being Laws 1983,
13 Chapter 86, Section 2, as amended) is amended to read:

14 "58-21-2. DEFINITIONS.--As used in the Mortgage Loan
15 Company [~~and Loan Broker~~] Act:

16 A. "affiliate" means a person who, directly or
17 indirectly, through one or more intermediaries, controls or is
18 controlled by or is under common control with another person;

19 B. "branch office" means any location, including a
20 divisional office, separate from the principal place of
21 business of the mortgage loan company that is identified by any
22 means to the public or customers as a location at which the
23 licensee holds itself out as a mortgage loan company;

24 [~~B.~~] C. "closing agent" means a person, including a
25 title insurance agent or title insurance company, that acts in

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1 the normal course of business in a fiduciary capacity as a
2 disinterested third party for the seller and buyer of real
3 property for the purpose of consummating a sale of real
4 property, including the performance of the following functions:

5 (1) preparation of deeds, mortgages,
6 promissory notes, deeds of trust, real estate contracts,
7 assignments or other documents incidental to the sale as
8 permitted by law;

9 (2) calculations and disbursements of prorated
10 taxes, insurance premiums, utility bills and other charges
11 incidental to the sale;

12 (3) preparation of sellers' and buyers'
13 closing statements;

14 (4) supervision of signing of documents;

15 (5) collection and disbursement of down
16 payments, commissions of real estate licensees, fees and other
17 charges pursuant to a sales agreement; and

18 (6) recordation of documents;

19 [~~E.~~] D. "division" means the financial institutions
20 division of the regulation and licensing department;

21 [~~D.~~] E. "director" means the director of the
22 financial institutions division of the regulation and licensing
23 department;

24 [~~E.~~] ~~"dwelling" means a residential structure,~~
25 ~~including a home, individual condominium unit, manufactured~~

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1 ~~home or modular home, that contains one to four units and is~~
2 ~~permanently attached to real property;]~~

3 F. "dwelling" means a residential structure that
4 contains one to four units whether or not that structure is
5 attached to real property. "Dwelling" includes an individual
6 condominium unit, an individual cooperative unit, a mobile home
7 and a trailer if used as a residence;

8 G. "individual" means a natural person;

9 ~~[F.]~~ H. "lender" means a person or government
10 agency making a mortgage loan;

11 ~~[G. "loan broker"]~~ I. "mortgage loan company"
12 means any person who, ~~[acts as a finder or agent of a lender or~~
13 ~~borrower of money for the purpose of procuring a mortgage loan,~~
14 ~~or both]~~ for compensation or gain, or in the expectation of
15 compensation or gain, either directly or indirectly:

16 (1) accepts an application for a mortgage
17 loan; negotiates terms for a mortgage loan; or solicits,
18 processes, originates, brokers or makes mortgage loans for
19 others;

20 (2) offers to:

21 (a) accept an application for a mortgage
22 loan;

23 (b) negotiate terms for a mortgage loan;
24 or

25 (c) solicit, process, originate, broker

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1 or make mortgage loans for others; or

2 (3) closes mortgage loans that may be in the
3 mortgage loan company's own name with funds provided by others
4 and that are assigned to the mortgage lenders providing the
5 funding of such loans;

6 [H.] J. "mortgage loan" means [a loan secured by a
7 dwelling permanently affixed to real property] any loan
8 primarily for personal, family or household use that is secured
9 by a mortgage, deed of trust or other equivalent consensual
10 security interest on a dwelling or residential real estate upon
11 which is constructed or intended to be constructed a dwelling
12 as so defined;

13 [~~I. "mortgage loan company" means a person who,~~
14 ~~directly or indirectly:~~

15 ~~(1) holds himself out as being able to serve~~
16 ~~as an agent for any person in an attempt to obtain a mortgage~~
17 ~~loan;~~

18 ~~(2) holds himself out as being able to serve~~
19 ~~as an agent for a person who makes mortgage loans; or~~

20 ~~(3) holds himself out as being able to make~~
21 ~~mortgage loans; and~~

22 J.] K. "net loan funds" means the mortgage loan
23 amounts specified in the note and mortgage less lender-retained
24 fees, as specified in the lender's instruction to the closing
25 agent;

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1 L. "person" means a natural person, corporation,
2 company, limited liability company, partnership or association;
3 and

4 M. "qualified manager" means an individual,
5 designated by a mortgage loan company, responsible for the
6 activities of the licensed mortgage loan company's office,
7 divisional office or branch office in conducting the business
8 of that mortgage loan company's office, divisional office or
9 branch office and who meets requirements as specified by the
10 director."

11 Section 27. Section 58-21-3 NMSA 1978 (being Laws 1983,
12 Chapter 86, Section 3, as amended by Laws 2001, Chapter 251,
13 Section 2 and by Laws 2001, Chapter 264, Section 2) is amended
14 to read:

15 "58-21-3. [~~REGISTRATION CERTIFICATE~~] LICENSE REQUIRED--
16 QUALIFIED MANAGER.--

17 A. It is unlawful for any person to transact
18 business in the state of New Mexico, either directly or
19 indirectly, as a mortgage loan company [~~or loan broker~~] without
20 first filing an application with the director, meeting
21 requirements established by the director and obtaining a
22 [~~registration certificate~~] license under the Mortgage Loan
23 Company [~~and Loan Broker~~] Act.

24 B. A mortgage loan company shall designate at least
25 one qualified manager who shall:

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1 (1) obtain and maintain a mortgage loan
2 originator license and unique identifier number pursuant to the
3 New Mexico Mortgage Loan Originator Licensing Act; and

4 (2) have not less than two years verifiable
5 experience as a principal, partner, officer, director, manager,
6 processor or underwriter of a mortgage loan company or a
7 mortgage loan originator or have equivalent lending experience
8 in a related business during the four years immediately
9 preceding the time of application.

10 C. A qualified manager shall serve as a qualified
11 manager for only one mortgage loan company."

12 Section 28. Section 58-21-4 NMSA 1978 (being Laws 1983,
13 Chapter 86, Section 4, as amended by Laws 2001, Chapter 251,
14 Section 3 and by Laws 2001, Chapter 264, Section 3) is amended
15 to read:

16 "58-21-4. APPLICATION FOR ~~[REGISTRATION]~~ LICENSE OR
17 RENEWAL.--Each application for ~~[registration]~~ a license or
18 license renewal as a mortgage loan company ~~[or loan broker]~~
19 shall be filed in writing with the director, shall ~~[be~~
20 ~~verified]~~ meet requirements established by the director and
21 shall contain the following:

22 A. the applicant's name, the name of designated
23 qualified managers, the New Mexico mortgage loan originator
24 license number and national mortgage licensing system unique
25 identifier number of each designated qualified manager and the

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1 name and location of every mortgage loan company office,
2 divisional office or branch office that will be supervised by
3 that qualified manager;

4 [A.] B. the name of the applicant and of each of
5 the applicant's affiliates, engaged in the business of [~~a loan~~
6 ~~broker or~~] a mortgage loan company, and the name under which
7 the applicant will conduct business in New Mexico, together
8 with the articles of incorporation or articles of partnership;

9 [B.] C. the location of the applicant's principal
10 office and of each branch office doing business in New Mexico;

11 [C.] D. the name, residence and business address of
12 each person having an interest in the business as principal,
13 partner, officer, trustee, director, [~~or~~] manager or affiliate,
14 specifying the capacity and title of each;

15 [D.] E. a financial statement of the applicant
16 verified by a principal of the applicant;

17 [E.] F. the length of time the applicant has been
18 engaged in the mortgage business in New Mexico and other
19 jurisdictions;

20 [F.] G. disclosure of any action or proceeding,
21 civil or criminal, judicial or administrative, completed or in
22 progress, against the applicant or a principal, partner,
23 director, officer, trustee, manager, employee or affiliate of
24 the applicant;

25 [G.] H. the [~~registration~~] license fee; and

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1 ~~[H.]~~ I. such other information and documentation as
2 the director may require."

3 Section 29. Section 58-21-5 NMSA 1978 (being Laws 1983,
4 Chapter 86, Section 5, as amended by Laws 2001, Chapter 251,
5 Section 4 and by Laws 2001, Chapter 264, Section 4) is amended
6 to read:

7 "58-21-5. ~~[REGISTRATION]~~ LICENSE FEES--DURATION OF
8 [REGISTRATION] LICENSE.--

9 ~~[A. Applicants shall, at the time of application,10 pay to the division four hundred dollars (\$400) for initial
11 registration and three hundred dollars (\$300) for each renewal
12 registration. Additionally, the director shall charge and
13 collect from an applicant a fee of ten dollars (\$10.00) per day
14 for late filings of a renewal registration or three hundred
15 dollars (\$300), whichever is less.~~

16 ~~B.]~~ A. A ~~[registration]~~ license shall ~~[continue for~~
17 ~~a period of twelve months from the date of registration]~~ expire
18 on December 31 each year. Each ~~[registrant]~~ licensee shall
19 submit a renewal application ~~[at least thirty days before the~~
20 ~~expiration of his existing registration.~~

21 ~~C.~~ A registrant shall pay a replacement license fee
22 ~~of fifty dollars (\$50.00)]~~ on or before November 1 each year.

23 B. The director shall establish by rule fees that
24 shall be sufficient to cover the costs of administering the
25 Mortgage Loan Company Act. These fees may include:

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1 (1) an original and renewal license fee paid
2 by each licensee;

3 (2) an application fee to cover the costs of
4 processing applications;

5 (3) an examination and investigation fee for
6 all licensees; and

7 (4) late fees, license amendment fees,
8 supervisory fees, divisional office fees, branch office fees
9 and any other fees associated with the costs of administering
10 the Mortgage Loan Company Act.

11 C. A mortgage loan company shall not be charged
12 investigation fees for the processing of complaints when the
13 investigation determines that no violation of the Mortgage Loan
14 Company Act occurred or when the mortgage loan company provides
15 a remedy satisfactory to the complainant and the director and
16 no order of the director is issued.

17 D. The following fees shall be deposited into the
18 general fund:

19 (1) original license fees;

20 (2) license renewal fees;

21 (3) examination fees;

22 (4) investigation fees;

23 (5) late fees; and

24 (6) license amendment fees.

25 E. The following fees shall be deposited into the

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1 mortgage regulatory fund:

2 (1) application fees;

3 (2) divisional office fees;

4 (3) branch office fees; and

5 (4) supervisory fees."

6 Section 30. Section 58-21-6 NMSA 1978 (being Laws 1983,
7 Chapter 86, Section 6, as amended) is amended to read:

8 "58-21-6. PERSONS EXEMPT FROM ~~[REGISTRATION]~~ LICENSING.--

9 The following persons shall be exempt from all provisions of
10 the Mortgage Loan Company ~~[and Loan Broker]~~ Act:

11 A. banks, trust companies, savings and loan
12 associations, credit unions, insurance companies or real estate
13 investment trusts as defined in 26 U.S.C.A. 856;

14 B. an attorney licensed to practice law in New
15 Mexico who is not principally engaged in the business of
16 negotiating loans secured by real or personal property, when
17 ~~[the]~~ that person renders services in the course of ~~[his]~~ the
18 person's practice as an attorney;

19 C. a New Mexico-licensed real estate broker
20 rendering service in the performance of ~~[his]~~ that person's
21 duties as a real estate broker who obtains financing for a real
22 estate transaction involving an actual bona fide sale of real
23 estate or real estate contract handled by the broker and who
24 receives only the customary real estate broker's commission in
25 connection with the transaction;

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1 D. a person doing an act under order of a court;

2 E. ~~[a person]~~ an individual making ~~[or acquiring]~~ a
3 single mortgage loan in a calendar year with ~~[his]~~ the
4 individual's own funds for ~~[his]~~ the individual's own
5 investment without the intent to resell the mortgage loan;

6 F. the United States of America, state of New
7 Mexico or any of their branches, agencies, departments, boards,
8 instrumentalities or institutions and all political
9 subdivisions of the state and their agencies, instrumentalities
10 and institutions; and

11 G. a company licensed as a small business
12 investment company under the federal Small Business Investment
13 Act of 1958."

14 Section 31. Section 58-21-7 NMSA 1978 (being Laws 1983,
15 Chapter 86, Section 7) is amended to read:

16 "58-21-7. SURETY BOND.--

17 A. Each mortgage loan company ~~[or loan broker]~~
18 shall post and maintain with the director a corporate surety
19 bond ~~[in the amount of twenty-five thousand dollars (\$25,000)]~~.

20 B. The penal sum of the surety bond shall be in an
21 initial amount of fifty thousand dollars (\$50,000). Upon
22 renewal of the license, the penal sum of the surety bond shall
23 be in an amount that reflects the total dollar amount of
24 mortgage loans originated annually in New Mexico by the
25 licensee, as follows:

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1 (1) zero dollars (\$0.00) to three million
2 dollars (\$3,000,000), a surety bond of fifty thousand dollars
3 (\$50,000);

4 (2) more than three million dollars
5 (\$3,000,000) and less than ten million dollars (\$10,000,000), a
6 surety bond of one hundred thousand dollars (\$100,000); and

7 (3) ten million dollars (\$10,000,000) or more,
8 a surety bond of one hundred fifty thousand dollars (\$150,000).

9 C. Every bond shall provide for suit thereon by any
10 person who has a cause of action under the Mortgage Loan
11 Company [~~and Loan Broker~~] Act. In no event shall the total
12 liability of the surety to all persons, cumulative or
13 otherwise, exceed the amount specified in the bond. Every bond
14 shall provide that no suit shall be maintained to enforce any
15 liability on the bond unless brought within three years after
16 the act upon which it is based.

17 [~~B-~~] D. The bond shall be in substantially the form
18 as the director prescribes.

19 E. When an action is commenced on a licensee's
20 bond, the director may require the filing of a new bond.

21 F. Immediately upon recovery upon any action on a
22 bond, the licensee shall file a new bond."

23 Section 32. Section 58-21-8 NMSA 1978 (being Laws 1983,
24 Chapter 86, Section 8, as amended by Laws 2001, Chapter 251,
25 Section 6 and by Laws 2001, Chapter 264, Section 6) is amended

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1 to read:

2 "58-21-8. [~~DENIAL, SUSPENSION OR REVOCATION OF~~
3 ~~REGISTRATION]~~ VIOLATIONS.--The director may deny, suspend or
4 revoke any [~~registration]~~ license or impose other penalties
5 when the applicant or [~~registrant]~~ licensee, or a principal,
6 partner, director, officer, trustee, manager, employee or
7 affiliate of the applicant or [~~registrant]~~ licensee:

8 A. lacks a good business reputation;

9 B. has violated a provision of the Mortgage Loan
10 Company [~~and Loan Broker]~~ Act;

11 C. charges, collects or receives fees for
12 procuring, negotiating or securing a loan in excess of the
13 amounts allowed by the Mortgage Loan Company [~~and Loan Broker]~~
14 Act or by rules promulgated pursuant to that act;

15 D. has committed fraud in connection with a
16 transaction subject to the Mortgage Loan Company [~~and Loan~~
17 ~~Broker]~~ Act;

18 E. has made a misrepresentation or false statement
19 to or concealed an essential or material fact from a person in
20 the course of the [~~loan broker or]~~ mortgage loan company
21 business;

22 F. has knowingly made or caused to be made a false
23 representation of material fact or has suppressed or withheld
24 from the director information that the applicant or
25 [~~registrant]~~ licensee possesses and [~~which]~~ that, if submitted

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1 by ~~[him]~~ that person, would have rendered the applicant or
2 ~~[registrant]~~ licensee ineligible to be ~~[registered under]~~
3 licensed pursuant to the Mortgage Loan Company ~~[and Loan~~
4 ~~Broker]~~ Act;

5 G. has violated any provisions of any New Mexico
6 statute relating to escrow agents or escrow companies;

7 H. has refused to permit an examination or
8 investigation by the director of ~~[his]~~ that person's books and
9 records or has refused or failed, within a reasonable time, to
10 furnish information or make a report that may be required by
11 the director under the provisions of the Mortgage Loan Company
12 ~~[and Loan Broker]~~ Act;

13 I. has been convicted of a felony or any
14 misdemeanor involving moral turpitude; subject, however, to the
15 provisions of the Criminal Offender Employment Act; ~~[or]~~

16 J. appears to be conducting business in a manner
17 that is injurious to persons;

18 K. conducts any business covered by the Mortgage
19 Loan Company Act without holding a valid license as required by
20 that act;

21 L. assists or aids and abets any person in the
22 conduct of business covered by the Mortgage Loan Company Act
23 without a valid license as required pursuant to that act;

24 M. hires or engages the services of a mortgage loan
25 originator who is not licensed pursuant to the New Mexico

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1 Mortgage Loan Originator Licensing Act;

2 N. makes a mortgage loan without documenting and
3 considering the borrower's reasonable ability to repay that
4 loan pursuant to its terms. The borrower's ability to repay
5 shall be demonstrated through reasonably reliable documentation
6 that may include payroll receipts, tax returns, bank records,
7 asset and credit evaluations, mortgage payment history or other
8 similar reliable documentation. The provisions of this
9 subsection shall not apply to a mortgage loan originated
10 pursuant to a government streamline program, to a reverse
11 mortgage insured as part of a government program or to loss
12 mitigation activities of a mortgage loan servicer or lender
13 with which the borrower has a current relationship, so long as
14 each of these exceptions, as applicable, provides the borrower
15 with a reasonable, tangible net benefit; or

16 O. makes a mortgage loan without determining the
17 borrower's reasonable ability to pay the costs set forth in
18 this subsection. In the case of an adjustable rate mortgage
19 loan, the reasonable ability to pay shall be determined based
20 on a fully indexed rate and repayment schedule that achieves
21 full amortization over the life of the mortgage loan. The
22 costs, as applicable, to be used in determining the borrower's
23 reasonable ability to pay include principal, interest, real
24 estate taxes, property insurance, property assessments,
25 mortgage insurance premiums and other scheduled long-term

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1 monthly debt payments."

2 Section 33. Section 58-21-9 NMSA 1978 (being Laws 1983,
3 Chapter 86, Section 9, as amended by Laws 2001, Chapter 251,
4 Section 7 and by Laws 2001, Chapter 264, Section 7) is amended
5 to read:

6 "58-21-9. POWERS AND DUTIES OF DIRECTOR.--

7 A. The director shall exercise general supervision
8 and control over mortgage loan companies [~~and loan brokers~~]
9 doing business in New Mexico. In addition to the other duties
10 imposed on [~~him~~] the director by law, the director shall:

11 (1) make reasonable rules necessary for the
12 implementation of the Mortgage Loan Company [~~and Loan Broker~~]
13 Act; provided that promulgated rules shall be subject to
14 judicial review in the manner set forth in Section 12-8-8 NMSA
15 1978;

16 (2) conduct investigations necessary to
17 determine whether a person has engaged in or is about to engage
18 in an act or practice constituting a violation of a provision
19 of the Mortgage Loan Company [~~and Loan Broker~~] Act; and

20 (3) conduct examinations, investigations and
21 hearings in addition to those specifically provided for by law
22 necessary and proper to the efficient administration of the
23 Mortgage Loan Company [~~and Loan Broker~~] Act.

24 B. The director may conduct an investigation upon
25 complaint when it appears that a mortgage loan company [~~or loan~~

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1 ~~broker~~] is conducting business in a manner injurious to persons
2 or when it appears that a person has improperly claimed an
3 exemption pursuant to Section 58-21-6 NMSA 1978."

4 Section 34. Section 58-21-10 NMSA 1978 (being Laws 1983,
5 Chapter 86, Section 10) is amended to read:

6 "58-21-10. SUBPOENAS, OATHS AND EXAMINATION OF
7 WITNESSES--PENALTIES.--

8 A. In the conduct of any examination, investigation
9 or hearing, the director may:

10 (1) compel the attendance of any person or
11 obtain any documents by subpoena;

12 (2) administer oaths; and

13 (3) examine any person under oath concerning
14 the business of any person subject to the provisions of the
15 Mortgage Loan Company [~~and Loan Broker~~] Act and in connection
16 therewith require the production of any books, records or
17 papers relevant to the inquiry.

18 B. In case of refusal to obey a subpoena issued to
19 any person, the district court of the first judicial district
20 of Santa Fe county, upon application by the director, may issue
21 to the person an order requiring [~~him~~] the person to appear
22 before the director or the staff member designated by the
23 director, there to produce documentary evidence if so ordered
24 or to give evidence relating to the matter under investigation
25 or in question. Failure to obey the order of the court may be

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1 punished by the court as a contempt of court."

2 Section 35. Section 58-21-12 NMSA 1978 (being Laws 1983,
3 Chapter 86, Section 12, as amended by Laws 2001, Chapter 251,
4 Section 9 and by Laws 2001, Chapter 264, Section 9) is amended
5 to read:

6 "58-21-12. EXAMINATION OF RECORDS.--All the records
7 required to be maintained by the Mortgage Loan Company [~~and~~
8 ~~Loan Broker~~] Act are subject to examinations or investigations
9 by representatives of the director within or without New Mexico
10 as the director deems necessary or appropriate in the public
11 interest or for the protection of investors. [~~The mortgage~~
12 ~~loan company or loan broker so examined shall pay a fee for~~
13 ~~each such examination at the rate of three hundred dollars~~
14 ~~(\$300) per day, or fraction thereof, for each authorized~~
15 ~~representative engaged in the examination.~~] If the examination
16 or investigation is conducted outside the state, the actual
17 cost of travel for the examiners shall also be reimbursed to
18 the state by the mortgage loan company [~~or loan broker~~] so
19 examined or investigated."

20 Section 36. Section 58-21-13 NMSA 1978 (being Laws 1983,
21 Chapter 86, Section 13) is amended to read:

22 "58-21-13. PUBLIC INSPECTION OF APPLICATIONS.--
23 Applications for [~~registration~~] licensing or a license renewal
24 and all papers, documents, reports and other written
25 instruments filed with the director under the Mortgage Loan

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1 Company [~~and Loan Broker~~] Act are public documents and open to
2 public inspection except for files [~~on~~] of ongoing examinations
3 and investigations relating to violations of that act, which
4 investigations do not culminate, or have not yet culminated, in
5 administrative, civil or criminal action."

6 Section 37. Section 58-21-14 NMSA 1978 (being Laws 1983,
7 Chapter 86, Section 14) is amended to read:

8 "58-21-14. NOTICE OF [~~PROPOSED ORDER OF SUSPENSION,~~
9 ~~REVOCAION OR DENIAL OF REGISTRATION--HEARING~~] CONTEMPLATED
10 ACTION--HEARINGS.--

11 [~~A. Notice of any proposed order of suspension,~~
12 ~~revocation or denial of registration of any mortgage loan~~
13 ~~company or loan broker, together with the grounds therefor,~~
14 ~~shall be given in writing, served personally or sent by~~
15 ~~certified mail to the person affected.~~

16 B. ~~The mortgage loan company or loan broker, upon~~
17 ~~application, is entitled to a hearing; but if no such~~
18 ~~application is made within ten days after the receipt of or~~
19 ~~refusal to accept such notice, the director shall enter a final~~
20 ~~order.]~~

21 A. When the director contemplates taking any action
22 specified in Section 58-21-8 NMSA 1978 and Paragraphs (1)
23 through (7) of Subsection A of Section 58-21-28 NMSA 1978, the
24 director shall serve upon the licensee a written notice
25 containing a statement:

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1 (1) that the director has sufficient evidence
2 that, if not rebutted or explained, will justify the director
3 in taking the contemplated action;

4 (2) indicating the general nature of the
5 evidence; and

6 (3) that unless the licensee within twenty
7 days after service of the notice deposits in the mail a
8 certified return receipt requested letter addressed to the
9 director and containing a request for a hearing, the director
10 will take the contemplated action.

11 B. If the licensee does not mail a request for a
12 hearing within the time and in the manner required by this
13 section, the director may take the action contemplated in the
14 notice, and such action shall be final and not subject to
15 judicial review.

16 C. If the licensee mails a request for a hearing as
17 required by this section, the director shall, within thirty
18 days of receipt of the request, notify the licensee of the time
19 and place of the hearing, the name of the person who shall
20 conduct the hearing for the director and the statutes and
21 regulations authorizing the director to take the contemplated
22 action."

23 Section 38. Section 58-21-15 NMSA 1978 (being Laws 1983,
24 Chapter 86, Section 15, as amended by Laws 2001, Chapter 251,
25 Section 10 and by Laws 2001, Chapter 264, Section 10) is

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1 amended to read:

2 "58-21-15. INVESTIGATIONS BY DIRECTOR.--

3 A. The director may make any public or private
4 investigation, within or outside of this state, as [~~he~~] the
5 director finds necessary to determine whether a person has
6 violated or is about to violate the Mortgage Loan Company [~~and~~
7 ~~Loan Broker~~] Act or any rule or order of the director under
8 that act or to aid in enforcement of that act or in the rules
9 under that act.

10 B. The director may publish information concerning
11 a violation of the Mortgage Loan Company [~~and Loan Broker~~] Act
12 or a rule or order of the director under that act or concerning
13 mortgage loan activities of persons that may operate as a fraud
14 or deceit."

15 Section 39. Section 58-21-17 NMSA 1978 (being Laws 1983,
16 Chapter 86, Section 17) is amended to read:

17 "58-21-17. ESCROW SERVICES.--Any [~~registrant~~] licensee
18 under the Mortgage Loan Company [~~and Loan Broker~~] Act who also
19 performs any acts that are within the scope of activities
20 regulated by any statutes of the state relating to escrow
21 agents shall also comply with all provisions of those statutes,
22 and [~~registration~~] the issuance of a license under the Mortgage
23 Loan Company [~~and Loan Broker~~] Act shall not serve to relieve
24 the [~~registrant~~] licensee from compliance with the provisions
25 of such other statutes."

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1 Section 40. Section 58-21-18 NMSA 1978 (being Laws 1983,
2 Chapter 86, Section 18, as amended by Laws 2001, Chapter 251,
3 Section 11 and by Laws 2001, Chapter 264, Section 11) is
4 amended to read:

5 "58-21-18. PERMISSIBLE CHARGES.--In connection with any
6 loan originated, brokered, negotiated or made by a [~~registrant~~]
7 licensee pursuant to the Mortgage Loan Company [~~and Loan~~
8 ~~Broker~~] Act, a [~~broker may~~] mortgage loan company shall not
9 collect, charge or receive broker fees in excess of six percent
10 of the principal."

11 Section 41. Section 58-21-19 NMSA 1978 (being Laws 1983,
12 Chapter 86, Section 19, as amended) is amended to read:

13 "58-21-19. COMPLIANCE WITH FEDERAL AND STATE LAW.--In
14 connection with any loan originated, brokered, negotiated or
15 made by a [~~registrant~~] licensee pursuant to the Mortgage Loan
16 Company [~~and Loan Broker~~] Act, [~~registrants~~] a licensee shall
17 comply with:

- 18 A. applicable federal [~~consumer lending~~] or state
19 laws; [~~and~~]
20 B. the provisions of the Home Loan Protection Act;
21 and
22 C. the provisions of the New Mexico Mortgage Loan
23 Originator Licensing Act."

24 Section 42. Section 58-21-20 NMSA 1978 (being Laws 1983,
25 Chapter 86, Section 20) is amended to read:

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1 "58-21-20. FALSE STATEMENT UNLAWFUL.--It is unlawful for
2 any person to make or cause to be made in any document filed
3 with the director in any proceedings under the Mortgage Loan
4 Company [~~and Loan Broker~~] Act any statement [~~which~~] that is at
5 the time and in the light of the circumstances under which it
6 is made false or misleading in any [~~material~~] respect."

7 Section 43. Section 58-21-21 NMSA 1978 (being Laws 1983,
8 Chapter 86, Section 21) is amended to read:

9 "58-21-21. FRAUD UNLAWFUL.--It is unlawful for any
10 mortgage loan company [~~or loan broker~~] in connection with the
11 origination, brokering, negotiating or making of any mortgage
12 loan, directly or indirectly, to:

13 A. employ any device, scheme or artifice to
14 defraud; or

15 B. engage in any act, practice or course of
16 business [~~which~~] that operates or would operate as a fraud or
17 deceit upon any person."

18 Section 44. Section 58-21-22 NMSA 1978 (being Laws 1983,
19 Chapter 86, Section 22, as amended by Laws 2001, Chapter 251,
20 Section 13 and Laws 2001, Chapter 264, Section 13) is amended
21 to read:

22 "58-21-22. PENALTIES.--A person who violates Section
23 [~~58-21-3~~] 58-21-18, 58-21-19, 58-21-20 or 58-21-21 NMSA 1978
24 [~~or who violates Section 58-21-20 NMSA 1978~~], knowing the
25 statement to be false or misleading in any [~~material~~] respect,

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1 is guilty of a fourth degree felony and upon conviction shall
2 be sentenced as provided for in Section 31-18-15 NMSA 1978.
3 Civil and criminal penalties are in addition to any remedies
4 available at common law."

5 Section 45. Section 58-21-23 NMSA 1978 (being Laws 1983,
6 Chapter 86, Section 23, as amended by Laws 2001, Chapter 251,
7 Section 14 and by Laws 2001, Chapter 264, Section 14) is
8 amended to read:

9 "58-21-23. FILING AND DESTRUCTION OF DOCUMENTS.--A
10 document is filed when it is received by the director. The
11 director may permit the destruction of any document filed under
12 the Mortgage Loan Company [~~and Loan Broker~~] Act with the
13 division or the director after six years from the date of
14 filing documents."

15 Section 46. Section 58-21-23.2 NMSA 1978 (being Laws
16 2005, Chapter 191, Section 3, as amended) is amended to read:

17 "58-21-23.2. FUNDING OF REAL ESTATE TRANSACTIONS--
18 ENFORCEMENT.--

19 A. Unless the net loan funds necessary to complete
20 a purchase of real property have been previously delivered to
21 the seller or to the closing agent, a lender shall deliver the
22 required net loan funds within two business days of the time
23 that the lender deems the closing agent has fulfilled the
24 requirements of the closing agent's duties, except for the
25 recordation of documents, and shall:

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1 (1) authorize the closing agent to record with
2 the county clerk all documents necessary to complete the real
3 estate transaction and release the proceeds of the real estate
4 transaction in accordance with agreed upon escrow instructions;

5 (2) advise the closing agent of any funding
6 conditions, as set forth in the lender's escrow instructions,
7 that have not been satisfied and instruct the closing agent in
8 writing what is to be done with any of the lender's funds held
9 in escrow; or

10 (3) advise the closing agent that the
11 documentation for the real estate transaction does not satisfy
12 the lender's escrow instructions, specify the manner in which
13 that documentation does not satisfy those instructions and
14 instruct the closing agent in writing what is to be done with
15 any of the lender's funds held in escrow.

16 B. In the event a lender does not comply with the
17 requirements of Subsection A of this section, unreasonably
18 refuses to approve the documentation necessary to complete a
19 real estate action or unreasonably delays authorization of the
20 recordation of closing documents and release of proceeds of a
21 real estate transaction, the director of the division may, upon
22 receipt of a complaint and in accordance with the procedures
23 set forth in the Mortgage Loan Company [~~and Loan Broker~~] Act,
24 suspend or revoke any state registration or license issued to
25 the lender for a period not to exceed one year."

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1 Section 47. Section 58-21-25 NMSA 1978 (being Laws 1983,
2 Chapter 86, Section 25) is amended to read:

3 "58-21-25. NO IMPAIRMENT OF OTHER REMEDIES.--The Mortgage
4 Loan Company [~~and Loan Broker~~] Act is not intended to impair
5 any remedies available to injured parties under other statutes
6 or under common law."

7 Section 48. Section 58-21-26 NMSA 1978 (being Laws 1983,
8 Chapter 86, Section 26) is amended to read:

9 "58-21-26. EXEMPTION FROM AUTHORITY OF [~~SECRETARY OF~~
10 ~~COMMERCE AND INDUSTRY~~] SUPERINTENDENT OF REGULATION AND
11 LICENSING.--The responsibilities and authority of the director
12 under the Mortgage Loan Company [~~and Loan Broker~~] Act are
13 explicitly exempted from the authority of the [~~secretary of~~
14 ~~commerce and industry~~] superintendent of regulation and
15 licensing as set forth in Subsection B of Section [~~9-2-5~~]
16 9-16-6 NMSA 1978."

17 Section 49. Section 58-21-28 NMSA 1978 (being Laws 2001,
18 Chapter 251, Section 15 and Laws 2001, Chapter 264, Section 15)
19 is amended to read:

20 "58-21-28. ENFORCEMENT.--

21 [~~A. If the director reasonably believes, whether or~~
22 ~~not based upon an investigation conducted under Section~~
23 ~~58-21-15 NMSA 1978, that a person has engaged, is engaging or~~
24 ~~is about to engage in an act or practice constituting a~~
25 ~~violation of any provision of the Mortgage Loan Company and~~

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1 ~~Loan Broker Act or any rule promulgated pursuant to that act,~~
2 ~~the director may, subject to the right of that person to obtain~~
3 ~~a subsequent hearing, pursuant to Subsection B of Section~~
4 ~~58-21-14 NMSA 1978, issue a cease and desist order without a~~
5 ~~prior hearing against the person engaged in the prohibited~~
6 ~~activities directing him to desist and refrain from further~~
7 ~~illegal activity.~~

8 ~~B. When it appears to the director, whether or not~~
9 ~~based upon an investigation conducted under Section 58-21-15~~
10 ~~NMSA 1978, that a person has violated the Mortgage Loan Company~~
11 ~~and Loan Broker Act or a rule or order of the director under~~
12 ~~that act, the director, in addition to any specific power~~
13 ~~granted under that act, may, after notice and hearing in an~~
14 ~~administrative proceeding unless the right to notice and~~
15 ~~hearing is waived by the person against whom the sanction is~~
16 ~~imposed:~~

17 ~~(1) issue a cease and desist order against the~~
18 ~~person;~~

19 ~~(2) censure the person if that person is a~~
20 ~~registered mortgage loan company or loan broker;~~

21 ~~(3) bar or suspend that person from~~
22 ~~registration in this state as a mortgage loan company or loan~~
23 ~~broker;~~

24 ~~(4) issue an order against an applicant,~~
25 ~~registered person or other person who violates that act,~~

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1 ~~imposing a civil penalty up to a maximum of five thousand~~
2 ~~dollars (\$5,000) for each violation; or~~

3 ~~(5) initiate one or more of the actions~~
4 ~~specified in Section 58-21-29 NMSA 1978, as applicable.]~~

5 A. In order to ensure the effective supervision and
6 enforcement of the Mortgage Loan Company Act, the director may:

7 (1) deny, suspend, revoke or decline to renew
8 a license for a violation of that act, rules issued pursuant to
9 that act or order or directive entered pursuant to that act;

10 (2) deny, suspend, revoke or decline to renew
11 a license if an applicant or licensee fails at any time to meet
12 the requirements of licensing pursuant to that act or rules
13 issued pursuant to that act;

14 (3) order restitution against persons subject
15 to that act for violations of that act;

16 (4) impose fines on persons subject to that
17 act pursuant to Subsections B through D of this section;

18 (5) order or direct such other affirmative
19 action as the director deems necessary;

20 (6) deny the person's license application or
21 suspend or revoke the person's license in New Mexico as a
22 mortgage loan company;

23 (7) award damages to the injured party in
24 double the amount of fees charged by the mortgage loan company
25 for originating, brokering, negotiating or making a loan within

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1 the jurisdiction of that act;

2 (8) issue orders or directives pursuant to
3 that act as follows:

4 (a) order or direct persons subject to
5 that act to cease and desist from conducting business,
6 including immediate temporary orders to cease and desist;

7 (b) order or direct persons subject to
8 that act to cease any harmful activities or violations of that
9 act, including immediate temporary orders to cease and desist;
10 and

11 (c) enter immediate temporary orders to
12 cease business under a license issued pursuant to the authority
13 granted pursuant to that act if the director determines that
14 such license was erroneously granted or the licensee is
15 currently in violation of that act; and

16 (9) initiate one or more of the actions
17 specified in Section 58-21-29 NMSA 1978, as applicable.

18 B. The director may impose a civil penalty on a
19 mortgage loan company or person subject to the Mortgage Loan
20 Company Act if the director finds, on the record after notice
21 and opportunity for hearing, that the mortgage loan company or
22 person subject to that act has violated or failed to comply
23 with any requirement of that act or any rule adopted by the
24 director pursuant to that act or order issued pursuant to that
25 act.

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1 C. The maximum amount of penalty for each act or
2 omission described in Section 58-21-8 NMSA 1978 shall be
3 twenty-five thousand dollars (\$25,000).

4 D. Each violation or failure to comply with any
5 directive or order of the director is a separate and distinct
6 violation or failure."

7 Section 50. Section 58-21-29 NMSA 1978 (being Laws 2001,
8 Chapter 251, Section 16 and Laws 2001, Chapter 264, Section 16)
9 is amended to read:

10 "58-21-29. POWER OF COURT TO GRANT RELIEF.--

11 A. Upon a showing by the director that a person has
12 or is about to violate the Mortgage Loan Company [~~and Loan~~
13 ~~Broker~~] Act or any rule or order of the director under that
14 act, the district court of the first judicial district for
15 Santa Fe county or other appropriate district court in the
16 state may grant or impose one or more of the following
17 appropriate legal or equitable remedies:

18 (1) a temporary restraining order, permanent
19 or temporary prohibitory or mandatory injunction or a writ of
20 prohibition or mandamus;

21 (2) a civil penalty up to a maximum of [~~five~~
22 ~~thousand dollars (\$5,000)] twenty-five thousand dollars~~

23 (\$25,000) for each violation;

24 (3) disgorgement;

25 (4) declaratory judgment;

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- 1 (5) restitution to consumers;
- 2 (6) the appointment of a receiver or
- 3 conservator for the defendant or the defendant's assets;
- 4 (7) recovery by the director of all costs and
- 5 expenses for conducting an investigation or the bringing of any
- 6 enforcement action under that act; or
- 7 (8) other relief as the court deems just.

8 B. In determining the appropriate relief to grant,
9 the court shall consider enforcement actions taken and
10 sanctions imposed by the director under Section 58-21-28 NMSA
11 1978 in connection with the transactions constituting
12 violations of the Mortgage Loan Company [~~and Loan Broker~~] Act.

13 C. The court shall not require the director to post
14 bond in an action under this section."

15 Section 51. A new section of the Mortgage Loan Company
16 Act is enacted to read:

17 "[NEW MATERIAL] UNLICENSED ACTIVITY.--

18 A. A person that violates Subsection A of Section
19 58-21-3 NMSA 1978 for the first offense is guilty of a
20 misdemeanor and upon conviction shall be sentenced pursuant to
21 the provisions of Section 31-19-1 NMSA 1978.

22 B. In the case of a first conviction pursuant to
23 Subsection A of this section, the court may impose a deferred
24 sentence pursuant to the provisions of Section 31-20-6 NMSA
25 1978.

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1 C. A person that violates Subsection A of Section
2 58-21-3 NMSA 1978 for a second or subsequent offense is guilty
3 of a fourth degree felony and upon conviction shall be
4 sentenced pursuant to the provisions of Section 31-18-15 NMSA
5 1978."

6 Section 52. A new section of the Mortgage Loan Company
7 Act is enacted to read:

8 "[NEW MATERIAL] LICENSEE REQUIRED DISCLOSURES.--A mortgage
9 loan company shall, in addition to other disclosures required
10 pursuant to other statutes or common law:

11 A. make all disclosures required by applicable
12 federal and state laws;

13 B. provide a revised "good faith estimate" and a
14 copy of the borrower's lock-in agreement to the borrower within
15 three days of locking in the loan rate, pricing and terms;

16 C. make a full and fair disclosure of all facts
17 within the knowledge of the mortgage loan company that are or
18 may be material to the borrower's decision, rights or
19 interests;

20 D. disclose at least two days prior to closing of
21 the loan the total amount of any compensation the mortgage loan
22 company expects to receive specific to the loan being offered,
23 including origination fees, broker fees, yield spread premiums
24 and other fees payable to the mortgage loan company by the
25 lender or other third party at the time the loan is funded to

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1 the borrower;

2 E. clearly and conspicuously disclose in writing a
3 mortgage loan summary, as specified by the director by rule;
4 and

5 F. enter into a signed contract with the borrower,
6 as specified by the director by rule, that provides for
7 mortgage loan rate float or rate lock-in. The borrower may
8 choose to:

9 (1) rate float, which means that a loan rate
10 has not been locked in and the borrower is responsible for
11 instructing the mortgage loan company when to lock in the loan
12 rate; or

13 (2) lock in a rate, which means the mortgage
14 loan originator shall lock in a loan rate. The rate lock-in
15 shall include the loan interest rate, pricing, terms, lock-in
16 period and any fees required for an extension of the lock-in
17 period."

18 Section 53. A new section of the Mortgage Loan Company
19 Act is enacted to read:

20 "[NEW MATERIAL] MORTGAGE CALL REPORTS.--Each licensee
21 shall submit to the nationwide mortgage licensing system and
22 registry reports of condition, which shall be in such form and
23 shall contain such information as the nationwide mortgage
24 licensing system and registry may require."

25 Section 54. Section 58-21A-1 NMSA 1978 (being Laws 2003,
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1 Chapter 436, Section 1) is amended to read:

2 "58-21A-1. SHORT TITLE.--~~[Sections 1 through 14 of this~~
3 ~~act]~~ Chapter 58, Article 21A NMSA 1978 may be cited as the
4 "Home Loan Protection Act"."

5 Section 55. Section 58-21A-3 NMSA 1978 (being Laws 2003,
6 Chapter 436, Section 3) is amended to read:

7 "58-21A-3. DEFINITIONS.--As used in the Home Loan
8 Protection Act:

9 A. "adjustable rate home loan" means a home loan
10 that has an initial interest rate that adjusts to a variable
11 interest rate at the end of a specified initial period or
12 subsequent periods of time during the remaining term of the
13 home loan;

14 ~~[A.]~~ B. "affiliate" means a person that controls,
15 is controlled by or is under common control with another
16 person;

17 ~~[B.]~~ C. "bona fide discount points" means loan
18 discount points that are knowingly paid by the borrower for the
19 express purpose of reducing, and which in fact do result in a
20 bona fide reduction of, the annual percentage rate otherwise
21 applicable to the home loan; provided, however, that discount
22 points are not "bona fide discount points" if the annual
23 percentage rate otherwise applicable to the home loan exceeds
24 the conventional mortgage rate by more than:

25 (1) one and one-half percentage points for a
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1 home loan secured by a first lien; or

2 (2) three percentage points for a home loan
3 secured by a junior lien;

4 [~~E.~~] D. "borrower" means a natural person obligated
5 to repay a home loan, including a co-borrower, cosigner or
6 guarantor;

7 [~~D.~~] E. "bridge loan" means a loan for the initial
8 construction of a borrower's principal dwelling on land owned
9 by the borrower with a maturity of less than eighteen months
10 that only requires the payment of interest until the entire
11 unpaid balance is due and payable;

12 [~~E.~~] F. "conventional mortgage rate" means the most
13 recently published annual yield on conventional mortgages
14 published by the board of governors of the federal reserve
15 system as of the fifteenth day of the month immediately
16 preceding the month in which the application for the extension
17 of credit is received by the creditor;

18 [~~F.~~] G. "conventional prepayment penalty" means a
19 prepayment penalty or fee that may be collected in a home loan
20 and that is authorized by federal law; provided that a
21 prepayment penalty is not a "conventional prepayment penalty"
22 if the home loan:

23 (1) has an annual percentage rate that exceeds
24 the conventional mortgage rate by more than two percent; or

25 (2) permits prepayment fees or penalties that

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1 exceed two percent of the amount prepaid;

2 [G-] H. "creditor" means a person who regularly
3 offers or makes a home loan [~~and includes a loan broker~~];

4 [H-] I. "high-cost home loan" means a home loan in
5 which:

6 (1) the contract rate exceeds the rates
7 threshold; or

8 (2) the total points and fees exceed the total
9 points and fees threshold;

10 [I-] J. "home loan" means a loan, including an
11 open-end credit plan, other than a reverse mortgage transaction
12 or a bridge loan, where the principal amount does not exceed
13 the conforming loan size limit for a single-family dwelling as
14 established by the federal national mortgage association and
15 where the loan is secured by:

16 (1) a mortgage or deed of trust on real estate
17 in this state upon which there is located or there is to be
18 located a structure:

19 (a) designed principally for occupancy
20 by one to four families; and

21 (b) that is or will be occupied by a
22 borrower as the borrower's principal residence; or

23 (2) a security interest on a manufactured home
24 that is or will be occupied by a borrower as the borrower's
25 principal residence;

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1 [~~J.~~] K. "manufactured home" means a structure,
2 transportable in one or more sections, which in the traveling
3 mode is eight body feet or more in width or forty body feet or
4 more in length or, when erected on site is three hundred twenty
5 or more square feet and which is built on a permanent chassis
6 and designed to be used as a dwelling with a permanent
7 foundation when erected on land secured in conjunction with the
8 real property on which the manufactured home is located and
9 connected to the required utilities and includes the plumbing,
10 heating, air conditioning and electrical systems contained
11 therein. "Manufactured home" includes any structure that meets
12 all the requirements of this subsection except the size
13 requirements and with respect to which the manufacturer
14 voluntarily files a certification required by the secretary of
15 the United States department of housing and urban development
16 and complies with the standards established under the federal
17 National Manufactured Housing Construction and Safety Standards
18 Act of 1974. "Manufactured home" does not include rental
19 property or second homes or manufactured homes when not secured
20 in conjunction with the real property on which the manufactured
21 home is located;

22 L. "open-end loan" means a revolving debt that is
23 secured by the equity in the borrower's home, including a home
24 equity line of credit;

25 [~~K.~~] M. "points and fees" means:

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1 (1) all amounts payable by a borrower at or
2 before the closing of a home loan, exclusive of any time-price
3 differential due at closing on the loan proceeds, including:
4 (a) loan discount points or other
5 discounts;
6 (b) loan fees, [~~finder's~~] broker fees or
7 similar charges; and
8 (c) fees for preparation of loan-related
9 documents; but
10 (d) does not include fees for the
11 following purposes, if the amounts are bona fide and reasonable
12 and paid to a person other than the creditor or an affiliate of
13 the creditor: 1) service or carrying charges; 2) credit
14 reports; 3) title exam, title insurance, title closing or
15 similar purposes; 4) escrow charges for future payments of
16 taxes and insurance; 5) fees for notarizing deeds and other
17 documents; 6) appraisals, including fees related to any pest
18 infestation or flood hazard inspections conducted prior to
19 closing; 7) inspection performed prior to closing; 8) attorney
20 fees, if the borrower has the right to select the attorney from
21 an approved list or otherwise; 9) fire and hazard insurance and
22 flood insurance premiums if the conditions in 12 C.F.R.
23 s.226.4(d)(2) are met; 10) tax payment services; 11) surveys;
24 12) flood certification; [~~and~~] 13) pest infestation and flood
25 determination; and 14) federal housing administration upfront

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1 mortgage insurance, veterans administration funding, guaranteed
2 rural housing loan guarantee or upfront premium private
3 mortgage insurance at a percentage rate, as set by the director
4 biannually, equal to the highest up-front government mortgage
5 insurance percentage rate or United States department of
6 veterans affairs funding fee percentage rate;

7 (2) all compensation, including yield spread
8 premiums, paid directly or indirectly to a mortgage broker,
9 including a broker that originates a loan in its own name in a
10 table-funded transaction;

11 [~~(3)~~] ~~the maximum prepayment fees and penalties~~
12 ~~that may be charged or collected under the terms of the loan~~
13 ~~documents;~~

14 [~~(4)~~] ~~all prepayment fees or penalties that are~~
15 ~~incurred by the borrower if the loan refinances a previous loan~~
16 ~~made or currently held by the same creditor or an affiliate of~~
17 ~~the creditor;~~

18 ~~(5)]~~ (3) the cost of all premiums financed by
19 the creditor, directly or indirectly, for any credit life,
20 credit disability, credit unemployment or credit property
21 insurance, or any other life or health insurance, or any
22 payments financed by the creditor, directly or indirectly, for
23 any debt cancellation or suspension agreement or contract,
24 except that insurance premiums calculated and paid on a monthly
25 basis shall not be considered financed by the creditor; and

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1 [~~(6)~~] (4) for open-end loans, the points and
2 fees included in Paragraphs (1) through [~~(5)~~] (3) of this
3 subsection that are known at or before closing plus the minimum
4 additional fees the borrower would be required to pay to draw
5 down an amount equal to the total credit line;

6 [~~(L.)~~] N. "rate threshold" means:

7 (1) for a first lien mortgage home loan, an
8 interest rate equal to seven percentage points over the [~~weekly~~
9 ~~average~~] yield on [~~comparable United States~~] treasury
10 securities [~~(on)~~] having comparable periods of maturity to the
11 loan maturity as of the fifteenth day of the month immediately
12 preceding the month in which the loan is made; and

13 (2) for a subordinate mortgage lien, an
14 interest rate equal to nine percentage points over the [~~weekly~~
15 ~~average~~] yield on [~~comparable United States~~] treasury
16 securities [~~(on)~~] having comparable periods of maturity to the
17 loan maturity as of the fifteenth day of the month immediately
18 preceding the month in which the loan is made;

19 [~~(M.)~~] O. "total points and fees" means the result
20 obtained by subtracting the sum of the conventional prepayment
21 penalties and the bona fide discount points paid from the sum
22 of the points and fees, except that if the sum of the
23 conventional prepayment penalties and the bona fide discount
24 points paid exceeds two points, then only the amount that
25 represents two points shall be subtracted; and

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1 ~~[N-]~~ P. "total points and fees threshold" means:

2 (1) for a home loan in which the total
3 principal loan amount is twenty thousand dollars (\$20,000) or
4 more, an amount equal to five percent of the total principal
5 loan amount; and

6 (2) for a home loan in which the total
7 principal loan amount is less than twenty thousand dollars
8 (\$20,000), an amount equal to the lesser of one thousand
9 dollars (\$1,000) or eight percent of the total principal loan
10 amount."

11 Section 56. Section 58-21A-4 NMSA 1978 (being Laws 2003,
12 Chapter 436, Section 4) is amended to read:

13 "58-21A-4. PROHIBITED PRACTICES AND PROVISIONS REGARDING
14 HOME LOANS.--

15 A. No creditor shall finance, directly or
16 indirectly, credit life, credit disability, credit unemployment
17 or credit property insurance, or any other life or health
18 insurance, or any payments directly or indirectly for any debt
19 cancellation or suspension agreement or contract, provided that
20 nothing in this subsection prohibits the payment or receipt of
21 insurance premiums or debt cancellation or suspension fees
22 calculated on the unpaid balance of a home loan and paid on a
23 monthly basis [~~or prohibits bona fide credit property insurance~~
24 ~~required by the federal housing administration or the United~~
25 ~~States department of agriculture to be paid in a single premium~~

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1 ~~to the respective federal agency. As used in this subsection,~~
2 ~~"credit property insurance" means property insurance written in~~
3 ~~connection with credit transactions under which the creditor is~~
4 ~~the primary beneficiary].~~

5 B. No creditor shall knowingly and intentionally
6 engage in the unfair act or practice of flipping a home loan.
7 As used in this subsection, "flipping a home loan" means the
8 making of a home loan to a borrower that refinances an existing
9 home loan when the new loan does not have reasonable, tangible
10 net benefit to the borrower considering all of the
11 circumstances, including the terms of both the new and
12 refinanced loans, the cost of the new loan and the borrower's
13 circumstances.

14 C. No creditor shall make a home loan without
15 documenting and considering the borrower's reasonable ability
16 to repay that loan pursuant to its terms. The borrower's
17 ability to repay shall be demonstrated through reasonably
18 reliable documentation that may include payroll receipts, tax
19 returns, bank records, asset and credit evaluations, mortgage
20 payment history or other similar reliable documentation. The
21 provisions of this subsection shall not apply to a home loan
22 originated pursuant to a government streamline program, to a
23 reverse mortgage insured as part of a government program or to
24 loss mitigation activities of a home loan servicer or lender
25 with which the borrower has a current relationship, so long as

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1 each of these exceptions, as applicable, provides the borrower
2 with a reasonable, tangible net benefit.

3 D. No creditor shall make a home loan without
4 determining the borrower's reasonable ability to pay the costs
5 set forth in this subsection. In the case of an adjustable
6 rate home loan, the reasonable ability to pay shall be
7 determined based on a fully indexed rate and repayment schedule
8 that achieves full amortization over the life of the home loan.
9 The costs, as applicable, to be used in determining the
10 borrower's reasonable ability to pay include principal,
11 interest, real estate taxes, property insurance, property
12 assessments, mortgage insurance premiums and other scheduled
13 long-term monthly debt payments.

14 E. No creditor shall make or originate an
15 adjustable rate home loan in which caps on payment increases
16 may be less than that necessary to reduce principal and
17 amortize the loan over the entire term of the loan regardless
18 of interest rate adjustments resulting in negative
19 amortization.

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

24 G. No creditor shall pay a contractor under a
25 home-improvement contract from the proceeds of a home loan

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1 unless:

2 (1) the creditor is presented with a signed
3 and dated completion certificate showing that the home
4 improvements have been completed; or

5 (2) the instrument is payable jointly to the
6 borrower and the contractor, or at the election of the
7 borrower, through a third-party escrow agent in accordance with
8 terms established in a written agreement signed by the
9 borrower, the creditor and the contractor prior to the
10 disbursement.

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

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

17 J. No creditor shall recommend or encourage default
18 on an existing loan or other debt prior to and in connection
19 with the closing or planned closing of a home loan that
20 refinances all or any portion of the existing loan or debt.

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

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

25 (2) the late payment fee shall only be

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1 assessed for a payment past due for fifteen days or more;

2 (3) the late payment fee shall not be imposed
3 more than once with respect to a single late payment, and no
4 late payment fee shall be charged with respect to a subsequent
5 payment that would have been a full payment but for the
6 previous default or the imposition of the previous late payment
7 fee;

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

15 (5) a creditor shall treat each payment as
16 posted on the same business day as it was received by the
17 creditor, servicer, creditor's agent for making payments or at
18 the address provided to the borrower by the creditor, servicer
19 or creditor's agent for making payments.

20 L. No creditor shall make a home loan that contains
21 a provision that permits the creditor, in its sole discretion,
22 to accelerate the indebtedness, provided that this provision
23 does not prohibit acceleration of a loan in good faith due to a
24 borrower's failure to abide by the material terms of the loan.

25 M. No creditor shall make or originate a home loan

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1 that contains a provision that requires a penalty or premium
2 for prepayment of the balance or any portion of the principal
3 of the indebtedness.

4 N. No creditor shall make or originate a home loan
5 that includes or uses one or more of the following lending
6 practices:

7 (1) making a home loan primarily based upon
8 the foreclosure or liquidation value of the borrower's
9 collateral home;

10 (2) making or originating an adjustable rate
11 home loan, except a home equity line of credit, where the
12 interest rate and payment may change more frequently than
13 annually during the term of the loan;

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

16 (a) the initial interest rate may be
17 increased by more than two percent for loans with initial
18 periods less than five years and six percent for loans with
19 initial periods greater than or equal to five years;

20 (b) a periodic interest rate may be
21 increased by more than two percent; and

22 (c) a lifetime interest rate cap is more
23 than six percent;

24 (4) advertising terms of home loans, including
25 interest rates, margins, discount points, fees, commissions or

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1 other material facts, including limitations on the home loans,
2 unless the creditor is able to make the advertised home loans
3 available to a reasonable number of qualified applicants;

4 (5) misrepresenting a borrower's credit
5 rating;

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

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

17 Section 57. Section 58-21A-5 NMSA 1978 (being Laws 2003,
18 Chapter 436, Section 5) is amended to read:

19 "58-21A-5. LIMITATIONS AND PROHIBITED PRACTICES FOR HIGH-
20 COST HOME LOANS.--

21 A. No creditor or mortgage loan originator making a
22 high-cost home loan shall directly or indirectly finance any
23 points or fees in excess of two percent of the principal loan
24 amount.

25 [~~B. No creditor shall make a high-cost home loan~~

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1 ~~that contains a scheduled payment that is more than twice as~~
2 ~~large as the average of earlier scheduled payments, provided~~
3 ~~that this provision does not apply when the payment schedule is~~
4 ~~adjusted to the seasonal or irregular income of a borrower.~~

5 ~~C. No creditor shall make a high-cost home loan~~
6 ~~that includes payment terms under which the outstanding~~
7 ~~principal balance will increase at any time over the course of~~
8 ~~the loan because the regular periodic payments do not cover the~~
9 ~~full amount of interest due.~~

10 ~~D.]~~ B. No creditor shall make a high-cost home loan
11 that contains a provision that increases the interest rate
12 after default, provided that this provision does not apply to
13 interest rate changes in a variable rate loan otherwise
14 consistent with the provisions of the loan documents if the
15 change in the interest rate is not triggered by the event of
16 default or the acceleration of the indebtedness.

17 ~~[E. No creditor shall make a high-cost home loan~~
18 ~~that includes terms under which more than two periodic payments~~
19 ~~required under the loan are consolidated and paid in advance~~
20 ~~from the loan proceeds provided to the borrower.~~

21 ~~F.]~~ C. Without regard to whether a borrower is
22 acting individually or on behalf of others similarly situated,
23 a provision of a high-cost home loan agreement that allows a
24 party to require a borrower to assert any claim or defense in a
25 forum that is less convenient, more costly or more dilatory for

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1 the resolution of a dispute than a judicial forum where the
2 borrower may otherwise properly bring a claim or defense or
3 limits in any way any claim or defense the borrower may have is
4 unconscionable and void.

5 ~~[G.]~~ D. After April 1, 2004, no creditor or
6 mortgage loan originator shall make a high-cost home loan
7 without first receiving certification from a third-party,
8 nonprofit counselor approved by the United States department of
9 housing and urban development, the New Mexico mortgage finance
10 authority or the director of the financial institutions
11 division of the regulation and licensing department that the
12 borrower has received counseling on the advisability of the
13 loan transaction.

14 ~~[H. No creditor shall make a high-cost home loan~~
15 ~~without due regard to repayment ability. A creditor who~~
16 ~~follows debt-to-income ratios and the residual income~~
17 ~~guidelines established by rule of the financial institution~~
18 ~~division of the regulation and licensing department shall~~
19 ~~benefit from a rebuttable presumption that the creditor made~~
20 ~~the loan with due regard to repayment ability.~~

21 ~~I. No creditor shall pay a contractor under a home-~~
22 ~~improvement contract from the proceeds of a high-cost home loan~~
23 ~~unless:~~

24 ~~(1) the creditor is presented with a signed~~
25 ~~and dated completion certificate showing that the home~~

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1 ~~improvements have been completed; and~~

2 ~~(2) the instrument is payable jointly to the~~
3 ~~borrower and the contractor, or, at the election of the~~
4 ~~borrower, through a third-party escrow agent in accordance with~~
5 ~~terms established in a written agreement signed by the~~
6 ~~borrower, the creditor and the contractor prior to the~~
7 ~~disbursement.~~

8 ~~J. No creditor shall charge a borrower any fees or~~
9 ~~other charges, other than those that are bona fide, reasonable~~
10 ~~and actual, to modify, renew, extend or amend a high-cost home~~
11 ~~loan.~~

12 ~~K. No creditor shall charge a borrower more than~~
13 ~~seventy-five dollars (\$75.00) to defer any payment due under~~
14 ~~the terms of a high-cost home loan.~~

15 ~~L. No creditor shall recommend or encourage default~~
16 ~~on an existing loan or other debt prior to and in connection~~
17 ~~with the closing or planned closing of a high-cost home loan~~
18 ~~that refinances all or any portion of the existing loan or~~
19 ~~debt.~~

20 ~~M. No creditor shall make a high-cost home loan~~
21 ~~that provides for a late payment fee except as follows:~~

22 ~~(1) the late payment fee shall not be in~~
23 ~~excess of five percent of the amount of the payment past due;~~

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

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1 ~~(3) the late payment fee shall not be imposed~~
2 ~~more than once with respect to a single late payment and no~~
3 ~~late payment fee shall be charged with respect to a subsequent~~
4 ~~payment that would have been a full payment but for the~~
5 ~~previous default or the imposition of the previous late payment~~
6 ~~fee;~~

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

14 ~~(5) a creditor shall treat each payment as~~
15 ~~posted on the same business day as it was received by the~~
16 ~~creditor, service, creditor's agent or at the address provided~~
17 ~~to the borrower by the creditor, service or the creditor's~~
18 ~~agent for making payments.~~

19 ~~N. No creditor shall make a high-cost home loan~~
20 ~~that contains a provision that permits the creditor, in its~~
21 ~~sole discretion, to accelerate the indebtedness, provided that~~
22 ~~this provision does not prohibit acceleration of a loan in good~~
23 ~~faith due to a borrower's failure to abide by the material~~
24 ~~terms of the loan.~~

25 ~~O. No creditor shall make a high-cost home loan~~

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1 ~~that contains a provision that requires a penalty or premium~~
2 ~~for prepayment of the balance of the indebtedness.~~

3 P.] E. A creditor or mortgage loan originator shall
4 not make a high-cost home loan unless the creditor has given
5 the following notice, or a substantially similar notice, in
6 writing, to the borrower, acknowledged in writing and signed by
7 the borrower not later than the time the notice is required
8 under the notice provision contained in 12 C.F.R. s.226.31(c):

9 NOTICE TO BORROWER

10 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO
11 OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP
12 AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE
13 LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON
14 MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND
15 FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY,
16 THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY
17 THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES
18 COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER
19 YOU SELECT.

20 IF YOU ACCEPT THE TERMS OF THIS LOAN, THE
21 CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME.
22 YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO
23 IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER
24 THE LOAN.

25 YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND A

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1 QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER
2 EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE,
3 FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU
4 PROCEED. A LIST OF QUALIFIED COUNSELORS IS
5 AVAILABLE BY CONTACTING THE NEW MEXICO REGULATION
6 AND LICENSING DEPARTMENT.

7 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN
8 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS
9 DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION.
10 REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE
11 ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE
12 ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK
13 YOUR CREDITOR ABOUT THESE SERVICES.

14 ALSO, YOUR PAYMENTS ON EXISTING DEBTS
15 CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT
16 ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO
17 YOUR EXISTING CREDITORS."

18 Section 58. Section 58-21A-6 NMSA 1978 (being Laws 2003,
19 Chapter 436, Section 6) is amended to read:

20 "58-21A-6. DEFAULT--NOTICE--RIGHT TO CURE.--

21 A. Before an action is filed to foreclose or
22 collect money due pursuant to a home loan or before other
23 action is taken to seize or transfer ownership of property
24 subject to a home loan, the creditor or creditor's assignee of
25 the loan shall deliver to the borrower a notice of the right to

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1 cure the default informing the borrower of:

2 (1) the nature of the default;

3 (2) the borrower's right to cure the default
4 by paying the sum of money required, provided that a creditor
5 or assignee shall accept any partial payment made or tendered
6 in response to the notice. If the amount necessary to cure the
7 default will change within thirty days of the notice, due to
8 the application of a daily interest rate or the addition of
9 late fees, as allowed by the Home Loan Protection Act, the
10 notice shall give sufficient information to enable the borrower
11 to calculate the amount at any point within the thirty-day
12 period;

13 (3) the date by which the borrower may cure
14 the default to avoid a court action, acceleration and
15 initiation of foreclosure or other action to seize the
16 property, which date shall not be less than thirty days after
17 the date the notice is delivered, and the name and address and
18 telephone number of a person to whom the payment or tender
19 shall be made;

20 (4) that if the borrower does not cure the
21 default by the date specified, the creditor or assignee may
22 file an action for money due or take steps to terminate the
23 borrower's ownership in the property by requiring payment in
24 full of the home loan and commencing a foreclosure proceeding
25 or other action to seize the property; and

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1 (5) the name and address and the telephone
2 number of a person whom the borrower may contact if the
3 borrower disagrees with the assertion that a default has
4 occurred or the correctness of the calculation of the amount
5 required to cure the default.

6 B. If a creditor or assignee asserts that grounds
7 for acceleration exist and requires the payment in full of all
8 sums secured by the home loan, the borrower, or anyone
9 authorized to act on the borrower's behalf, may, at any time
10 prior to the time title is transferred by means of foreclosure,
11 by judicial proceeding and sale or otherwise, cure the default,
12 and reinstate the home loan. Cure of the default shall
13 reinstate the borrower to the same position as if the default
14 had not occurred and shall nullify, as of the date of the cure,
15 an acceleration of any obligation under the home loan arising
16 from the default.

17 C. To cure a default under this section, a borrower
18 shall not be required to pay any charge, fee or penalty
19 attributable to the exercise of the right to cure a default,
20 other than the fees specifically allowed by this subsection.
21 The borrower shall not be liable for any attorney fees relating
22 to the default that are incurred by the creditor or assignee
23 prior to or during the thirty-day period set forth in
24 Subsection A of this section, nor for any such fees in excess
25 of one hundred dollars (\$100) that are incurred by the creditor

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1 or assignee after the expiration of the thirty-day period but
2 prior to the time the creditor or assignee files a foreclosure
3 or other judicial action or takes other action to seize or
4 transfer ownership of the real estate. After the creditor or
5 assignee files a foreclosure or other judicial action or takes
6 other action to seize or transfer ownership of the real estate,
7 the borrower shall only be liable for attorney fees that are
8 reasonable and actually incurred by the creditor or assignee,
9 based on a reasonable hourly rate and a reasonable number of
10 hours.

11 D. If a default is cured prior to the initiation of
12 any action to foreclose or to seize the residence, the creditor
13 or assignee shall not institute a proceeding or other action
14 for that default. If a default is cured after the initiation
15 of any action, the creditor or assignee shall take such steps
16 as are necessary to terminate the action.

17 E. A creditor or a creditor's assignee of a home
18 loan that has the legal right to foreclose shall, in a
19 foreclosure, use the judicial foreclosure procedures provided
20 by law. In such a proceeding, the borrower may assert the
21 nonexistence of a default and any other claim or defense to
22 acceleration and foreclosure, including any based on a
23 violation of the Home Loan Protection Act, though no such claim
24 or defense shall be deemed a compulsory counterclaim.

25 ~~[F. The provisions of this section apply only to~~

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1 ~~home loans that were high-cost home loans at the time of~~
2 ~~origination.]"~~

3 Section 59. [NEW MATERIAL] MORTGAGE REGULATORY FUND--
4 CREATED--PURPOSE--APPROPRIATION.--

5 A. The "mortgage regulatory fund" is created as a
6 nonreverting fund in the state treasury and shall be
7 administered by the financial institutions division of the
8 regulation and licensing department. The fund shall consist of
9 application, licensing, renewal, examination, investigation and
10 any other fees received that are associated with the costs of
11 administering the New Mexico Mortgage Loan Originator Licensing
12 Act, fees specified in Subsection E of Section 58-21-5 NMSA
13 1978 and any money that is appropriated or donated or that
14 otherwise accrues to the fund. Money in the fund shall be
15 invested by the state investment officer in the manner that
16 land grant permanent funds are invested pursuant to Chapter 6,
17 Article 8 NMSA 1978. Income from investment of the fund shall
18 be credited to the fund.

19 B. Money in the mortgage regulatory fund is
20 appropriated to the financial institutions division of the
21 regulation and licensing department to carry out the provisions
22 of the New Mexico Mortgage Loan Originator Licensing Act and
23 the Mortgage Loan Company Act.

24 C. Money shall be disbursed from the mortgage
25 regulatory fund only on warrant of the secretary of finance and
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1 administration upon vouchers signed by the director of the
2 financial institutions division or the director's authorized
3 representative. Any unexpended or unencumbered balance
4 remaining at the end of a fiscal year shall not revert to the
5 general fund.

6 Section 60. APPROPRIATION.--Five hundred thousand dollars
7 (\$500,000) is appropriated from the general fund to the
8 mortgage regulatory fund for expenditure in fiscal year 2009
9 and subsequent fiscal years. Any unexpended or unencumbered
10 balance remaining at the end of a fiscal year shall not revert
11 to the general fund.

12 Section 61. SEVERABILITY.--If any part or application of
13 this act is held invalid, the remainder or its application to
14 other situations or persons shall not be affected.

15 Section 62. EFFECTIVE DATE.--The effective date of the
16 provisions of Sections 1 through 58 and 61 of this act is July
17 31, 2009.