

REFERENCE TITLE: **qualified mortgage standards**

State of Arizona
Senate
Fifty-first Legislature
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2014

SB 1273

Introduced by
Senators Farley, Murphy; Barto, Burges, Crandell, Farnsworth D, Griffin,
Melvin, Pierce, Ward, Yee; Representatives Forese, Gray, Mesnard, Orr,
Pierce J

AN ACT

AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 18; RELATING TO MORTGAGES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 6, Arizona Revised Statutes, is amended by adding
3 chapter 18, to read:

4 CHAPTER 18

5 MORTGAGES

6 ARTICLE 1. GENERAL PROVISIONS

7 6-1801. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "COVERED TRANSACTION" MEANS A CONSUMER CREDIT TRANSACTION THAT IS
10 SECURED BY A DWELLING, AS DEFINED IN 12 CODE OF FEDERAL REGULATIONS SECTION
11 1026.2(a)(19), INCLUDING ANY REAL PROPERTY ATTACHED TO A DWELLING, OTHER THAN
12 A TRANSACTION THAT IS EXEMPT FROM COVERAGE UNDER SECTION 6-1802.

13 2. "FULLY AMORTIZING PAYMENT" MEANS A PERIODIC PAYMENT OF PRINCIPAL
14 AND INTEREST THAT WILL FULLY REPAY THE LOAN AMOUNT OVER THE LOAN TERM.

15 3. "FULLY INDEXED RATE" MEANS THE INTEREST RATE CALCULATED USING THE
16 INDEX OR FORMULA THAT WILL APPLY AFTER RECAST, AS DETERMINED AT THE TIME OF
17 CONSUMMATION AND THE MAXIMUM MARGIN THAT CAN APPLY AT ANY TIME DURING THE
18 LOAN TERM.

19 4. "HIGHER-PRICED COVERED TRANSACTION" MEANS A COVERED TRANSACTION
20 WITH AN ANNUAL PERCENTAGE RATE THAT EXCEEDS THE AVERAGE PRIME OFFER RATE FOR
21 A COMPARABLE TRANSACTION AS OF THE DATE THAT THE INTEREST RATE IS SET BY 1.5
22 OR MORE PERCENTAGE POINTS FOR A FIRST-LIEN COVERED TRANSACTION, OR BY 3.5 OR
23 MORE PERCENTAGE POINTS FOR A SUBORDINATE-LIEN COVERED TRANSACTION.

24 5. "LOAN AMOUNT" MEANS THE PRINCIPAL AMOUNT THAT THE CONSUMER WILL
25 BORROW AS REFLECTED IN THE PROMISSORY NOTE OR LOAN CONTRACT.

26 6. "LOAN TERM" MEANS THE PERIOD OF TIME TO REPAY THE OBLIGATION IN
27 FULL.

28 7. "MAXIMUM LOAN AMOUNT" MEANS THE LOAN AMOUNT PLUS ANY INCREASE IN
29 PRINCIPAL BALANCE THAT RESULTS FROM NEGATIVE AMORTIZATION, AS DEFINED IN 12
30 CODE OF FEDERAL REGULATIONS SECTION 1026.18(s)(7)(v), BASED ON THE TERMS OF
31 THE LEGAL OBLIGATION, ASSUMING THAT:

32 (a) THE CONSUMER MAKES ONLY THE MINIMUM PERIODIC PAYMENTS FOR THE
33 MAXIMUM POSSIBLE TIME, UNTIL THE CONSUMER MUST BEGIN MAKING FULLY AMORTIZING
34 PAYMENTS.

35 (b) THE MAXIMUM INTEREST RATE IS REACHED AT THE EARLIEST POSSIBLE
36 TIME.

37 8. "MORTGAGE-RELATED OBLIGATIONS" MEAN PROPERTY TAXES, PREMIUMS AND
38 SIMILAR CHARGES IDENTIFIED IN 12 CODE OF FEDERAL REGULATIONS SECTIONS
39 1026.4(b)(5), (7), (8) AND (10) THAT ARE REQUIRED BY THE CREDITOR, FEES AND
40 SPECIAL ASSESSMENTS IMPOSED BY A CONDOMINIUM, COOPERATIVE OR HOMEOWNERS'
41 ASSOCIATION, GROUND RENT AND LEASEHOLD PAYMENTS.

42 9. "POINTS AND FEES" HAS THE SAME MEANING PRESCRIBED IN 12 CODE OF
43 FEDERAL REGULATIONS SECTION 1026.32(b)(1).

44 10. "PREPAYMENT PENALTY" HAS THE SAME MEANING PRESCRIBED IN 12 CODE OF
45 FEDERAL REGULATIONS SECTION 1026.32(b)(6).

1 11. "RECAST" MEANS:

2 (a) FOR AN ADJUSTABLE-RATE MORTGAGE, AS DEFINED IN 12 CODE OF FEDERAL
3 REGULATIONS SECTION 1026.18(s)(7)(i), THE EXPIRATION OF THE PERIOD DURING
4 WHICH PAYMENTS BASED ON THE INTRODUCTORY FIXED INTEREST RATE ARE PERMITTED
5 UNDER THE TERMS OF THE LEGAL OBLIGATION.

6 (b) FOR AN INTEREST-ONLY LOAN, AS DEFINED IN 12 CODE OF FEDERAL
7 REGULATIONS SECTION 1026.18(s)(7)(iv), THE EXPIRATION OF THE PERIOD DURING
8 WHICH INTEREST-ONLY PAYMENTS ARE PERMITTED UNDER THE TERMS OF THE LEGAL
9 OBLIGATION.

10 (c) FOR A NEGATIVE AMORTIZATION LOAN, AS DEFINED IN 12 CODE OF FEDERAL
11 REGULATIONS SECTION 1026.18(s)(7)(v), THE EXPIRATION OF THE PERIOD DURING
12 WHICH NEGATIVELY AMORTIZING PAYMENTS ARE PERMITTED UNDER THE TERMS OF THE
13 LEGAL OBLIGATION.

14 12. "SIMULTANEOUS LOAN" MEANS ANOTHER COVERED TRANSACTION OR HOME
15 EQUITY LINE OF CREDIT THAT IS SUBJECT TO 12 CODE OF FEDERAL REGULATIONS
16 SECTION 1026.40 AND THAT WILL BE SECURED BY THE SAME DWELLING AND MADE TO THE
17 SAME CONSUMER AT OR BEFORE CONSUMMATION OF THE COVERED TRANSACTION OR, IF TO
18 BE MADE AFTER CONSUMMATION, WILL COVER CLOSING COSTS OF THE FIRST COVERED
19 TRANSACTION.

20 13. "THIRD-PARTY RECORD" MEANS ANY OF THE FOLLOWING:

21 (a) A DOCUMENT OR OTHER RECORD THAT IS PREPARED OR REVIEWED BY AN
22 APPROPRIATE PERSON OTHER THAN THE CONSUMER, THE CREDITOR OR THE MORTGAGE
23 BROKER, AS DEFINED IN 12 CODE OF FEDERAL REGULATIONS SECTION 1026.36(a)(2),
24 OR AN AGENT OF THE CREDITOR OR MORTGAGE BROKER.

25 (b) A COPY OF A TAX RETURN FILED WITH THE INTERNAL REVENUE SERVICE OR
26 A STATE TAXING AUTHORITY.

27 (c) A RECORD THAT THE CREDITOR MAINTAINS FOR AN ACCOUNT OF THE
28 CONSUMER HELD BY THE CREDITOR.

29 (d) IF THE CONSUMER IS AN EMPLOYEE OF THE CREDITOR OR THE MORTGAGE
30 BROKER, A DOCUMENT OR OTHER RECORD MAINTAINED BY THE CREDITOR OR MORTGAGE
31 BROKER REGARDING THE CONSUMER'S EMPLOYMENT STATUS OR EMPLOYMENT INCOME.

32 6-1802. Applicability

33 THIS CHAPTER APPLIES TO ANY CONSUMER CREDIT TRANSACTION THAT IS SECURED
34 BY A DWELLING, AS DEFINED IN 12 CODE OF FEDERAL REGULATIONS SECTION
35 1026.2(a)(19), INCLUDING ANY REAL PROPERTY ATTACHED TO A DWELLING, OTHER
36 THAN:

37 1. A HOME EQUITY LINE OF CREDIT SUBJECT TO 12 CODE OF FEDERAL
38 REGULATIONS SECTION 1026.40.

39 2. A MORTGAGE TRANSACTION SECURED BY A CONSUMER'S INTEREST IN A
40 TIMESHARE PLAN, AS DEFINED IN 11 UNITED STATES CODE SECTION 101(53D).

41 3. FOR THE PURPOSES OF THIS CHAPTER:

42 (a) A REVERSE MORTGAGE SUBJECT TO 12 CODE OF FEDERAL REGULATIONS
43 SECTION 1026.33.

44 (b) A TEMPORARY OR BRIDGE LOAN WITH A TERM OF TWELVE MONTHS OR LESS,
45 SUCH AS A LOAN TO FINANCE THE PURCHASE OF A NEW DWELLING IN WHICH THE

1 CONSUMER PLANS TO SELL A CURRENT DWELLING WITHIN TWELVE MONTHS OR A LOAN TO
2 FINANCE THE INITIAL CONSTRUCTION OF A DWELLING.

3 (c) A CONSTRUCTION PHASE OF TWELVE MONTHS OR LESS OF A
4 CONSTRUCTION-TO-PERMANENT LOAN.

5 6-1803. Repayment ability determination

6 A CREDITOR SHALL NOT MAKE A LOAN THAT IS A COVERED TRANSACTION UNLESS
7 THE CREDITOR MAKES A REASONABLE AND GOOD FAITH DETERMINATION AT OR BEFORE
8 CONSUMMATION THAT THE CONSUMER WILL HAVE A REASONABLE ABILITY TO REPAY THE
9 LOAN ACCORDING TO ITS TERMS.

10 6-1804. Basis for repayment ability determination

11 EXCEPT AS OTHERWISE PROVIDED IN SECTION 6-1810 OR ARTICLE 2 OF THIS
12 CHAPTER, IN MAKING THE REPAYMENT ABILITY DETERMINATION REQUIRED UNDER SECTION
13 6-1803, A CREDITOR MUST CONSIDER ALL OF THE FOLLOWING:

14 1. THE CONSUMER'S CURRENT OR REASONABLY EXPECTED INCOME OR ASSETS,
15 OTHER THAN THE VALUE OF THE DWELLING, INCLUDING ANY REAL PROPERTY ATTACHED TO
16 THE DWELLING, THAT SECURES THE LOAN.

17 2. IF THE CREDITOR RELIES ON INCOME FROM THE CONSUMER'S EMPLOYMENT IN
18 DETERMINING REPAYMENT ABILITY, THE CONSUMER'S CURRENT EMPLOYMENT STATUS.

19 3. THE CONSUMER'S MONTHLY PAYMENT ON THE COVERED TRANSACTION,
20 CALCULATED IN ACCORDANCE WITH SECTION 6-1807.

21 4. THE CONSUMER'S MONTHLY PAYMENT ON ANY SIMULTANEOUS LOAN THAT THE
22 CREDITOR KNOWS OR HAS REASON TO KNOW WILL BE MADE, CALCULATED IN ACCORDANCE
23 WITH SECTION 6-1808.

24 5. THE CONSUMER'S MONTHLY PAYMENT FOR MORTGAGE-RELATED OBLIGATIONS.

25 6. THE CONSUMER'S CURRENT DEBT OBLIGATIONS, ALIMONY AND CHILD SUPPORT.

26 7. THE CONSUMER'S MONTHLY DEBT-TO-INCOME RATIO OR RESIDUAL INCOME IN
27 ACCORDANCE WITH SECTION 6-1809.

28 8. THE CONSUMER'S CREDIT HISTORY, INCLUDING WHETHER THE CONSUMER HAS
29 HAD AT LEAST FIVE YEARS WITHOUT A LATE OR MISSED PAYMENT ON A MORTGAGE THAT
30 HAS A PAYMENT AT LEAST AS HIGH AS THE MORTGAGE PAYMENT FOR WHICH THE CONSUMER
31 IS APPLYING.

32 9. WHETHER THE CONSUMER HAS A CREDIT RATING OF AT LEAST SEVEN HUNDRED
33 FIFTY.

34 10. WHETHER THE CONSUMER HAS LIQUID ASSETS THAT ARE GREATER THAN THE
35 AMOUNT OF THE MORTGAGE.

36 6-1805. Verification using third-party records

37 A CREDITOR MUST VERIFY THE INFORMATION THAT THE CREDITOR RELIES ON IN
38 DETERMINING A CONSUMER'S REPAYMENT ABILITY UNDER 12 CODE OF FEDERAL
39 REGULATIONS SECTION 1026.43(c)(2) USING REASONABLY RELIABLE THIRD-PARTY
40 RECORDS, EXCEPT THAT:

41 1. FOR PURPOSES OF SECTION 6-1804, PARAGRAPH 1, A CREDITOR MUST VERIFY
42 A CONSUMER'S INCOME OR ASSETS THAT THE CREDITOR RELIES ON IN ACCORDANCE WITH
43 12 CODE OF FEDERAL REGULATIONS SECTION 1026.43(c)(4).

1 2. FOR PURPOSES OF SECTION 6-1804, PARAGRAPH 2, A CREDITOR MAY VERIFY
2 A CONSUMER'S EMPLOYMENT STATUS VERBALLY IF THE CREDITOR PREPARES A RECORD OF
3 THE INFORMATION OBTAINED VERBALLY.

4 3. FOR PURPOSES OF SECTION 6-1804, PARAGRAPH 6, IF A CREDITOR RELIES
5 ON A CONSUMER'S CREDIT REPORT TO VERIFY A CONSUMER'S CURRENT DEBT OBLIGATIONS
6 AND A CONSUMER'S APPLICATION STATES A CURRENT DEBT OBLIGATION NOT SHOWN IN
7 THE CONSUMER'S CREDIT REPORT, THE CREDITOR NEED NOT INDEPENDENTLY VERIFY SUCH
8 AN OBLIGATION.

9 6-1806. Verification of income or assets

10 A CREDITOR MUST VERIFY THE AMOUNTS OF INCOME OR ASSETS THAT THE
11 CREDITOR RELIES ON UNDER 12 CODE OF FEDERAL REGULATIONS SECTION
12 1026.43(c)(2)(i) TO DETERMINE A CONSUMER'S ABILITY TO REPAY A COVERED
13 TRANSACTION USING THIRD-PARTY RECORDS THAT PROVIDE REASONABLY RELIABLE
14 EVIDENCE OF THE CONSUMER'S INCOME OR ASSETS. A CREDITOR MAY VERIFY THE
15 CONSUMER'S INCOME USING A TAX RETURN TRANSCRIPT ISSUED BY THE INTERNAL
16 REVENUE SERVICE. OTHER RECORDS THE CREDITOR MAY USE TO VERIFY THE CONSUMER'S
17 INCOME OR ASSETS INCLUDE:

18 1. COPIES OF TAX RETURNS THE CONSUMER FILED WITH THE INTERNAL REVENUE
19 SERVICE OR A STATE TAXING AUTHORITY.

20 2. INTERNAL REVENUE SERVICE FORM W-2S OR SIMILAR INTERNAL REVENUE
21 SERVICE FORMS USED FOR REPORTING WAGES OR TAX WITHHOLDING.

22 3. PAYROLL STATEMENTS, INCLUDING MILITARY LEAVE AND EARNINGS
23 STATEMENTS.

24 4. FINANCIAL INSTITUTION RECORDS.

25 5. RECORDS FROM THE CONSUMER'S EMPLOYER OR A THIRD PARTY THAT OBTAINED
26 INFORMATION FROM THE EMPLOYER.

27 6. RECORDS FROM A FEDERAL, STATE OR LOCAL GOVERNMENT AGENCY STATING
28 THE CONSUMER'S INCOME FROM BENEFITS OR ENTITLEMENTS.

29 7. RECEIPTS FROM THE CONSUMER'S USE OF CHECK-CASHING SERVICES.

30 8. RECEIPTS FROM THE CONSUMER'S USE OF A FUNDS-TRANSFER SERVICE.

31 6-1807. Payment calculation

32 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A CREDITOR MUST
33 MAKE THE CONSIDERATION REQUIRED UNDER SECTION 6-1804, PARAGRAPH 3 USING BOTH:

34 1. THE FULLY INDEXED RATE OR ANY INTRODUCTORY INTEREST RATE, WHICHEVER
35 IS GREATER.

36 2. MONTHLY, FULLY AMORTIZING PAYMENTS THAT ARE SUBSTANTIALLY EQUAL.

37 B. A CREDITOR MUST MAKE THE CONSIDERATION REQUIRED UNDER SECTION
38 6-1804, PARAGRAPH 3 FOR:

39 1. A LOAN WITH A BALLOON PAYMENT, AS DEFINED IN 12 CODE OF FEDERAL
40 REGULATIONS SECTION 1026.18(s)(5)(i), USING EITHER:

41 (a) THE MAXIMUM PAYMENT SCHEDULED DURING THE FIRST FIVE YEARS AFTER
42 THE DATE ON WHICH THE FIRST REGULAR PERIODIC PAYMENT WILL BE DUE FOR A LOAN
43 THAT IS NOT A HIGHER-PRICED COVERED TRANSACTION.

44 (b) THE MAXIMUM PAYMENT IN THE PAYMENT SCHEDULE, INCLUDING ANY BALLOON
45 PAYMENT, FOR A HIGHER-PRICED COVERED TRANSACTION.

1 2. AN INTEREST-ONLY LOAN, AS DEFINED IN 12 CODE OF FEDERAL REGULATIONS
2 SECTION 1026.18(s)(7)(iv), USING BOTH:

3 (a) THE FULLY INDEXED RATE OR ANY INTRODUCTORY INTEREST RATE,
4 WHICHEVER IS GREATER.

5 (b) SUBSTANTIALLY EQUAL MONTHLY PAYMENTS OF PRINCIPAL AND INTEREST
6 THAT WILL REPAY THE LOAN AMOUNT OVER THE TERM OF THE LOAN REMAINING AS OF THE
7 DATE THAT THE LOAN IS RECAST.

8 3. A NEGATIVE AMORTIZATION LOAN, AS DEFINED IN 12 CODE OF FEDERAL
9 REGULATIONS SECTION 1026.18(s)(7)(v), USING BOTH:

10 (a) THE FULLY INDEXED RATE OR ANY INTRODUCTORY INTEREST RATE,
11 WHICHEVER IS GREATER.

12 (b) SUBSTANTIALLY EQUAL MONTHLY PAYMENTS OF PRINCIPAL AND INTEREST
13 THAT WILL REPAY THE MAXIMUM LOAN AMOUNT OVER THE TERM OF THE LOAN REMAINING
14 AS OF THE DATE THAT THE LOAN IS RECAST.

15 6-1808. Simultaneous loans

16 FOR THE PURPOSES OF MAKING THE EVALUATION REQUIRED UNDER SECTION
17 6-1804, PARAGRAPH 4, A CREDITOR MUST CONSIDER, TAKING INTO ACCOUNT ANY
18 MORTGAGE-RELATED OBLIGATIONS, A CONSUMER'S PAYMENT ON A SIMULTANEOUS LOAN
19 THAT IS:

20 1. A COVERED TRANSACTION, BY FOLLOWING SECTION 6-1807.

21 2. A HOME EQUITY LINE OF CREDIT SUBJECT TO 12 CODE OF FEDERAL
22 REGULATIONS SECTION 1026.40, BY USING THE PERIODIC PAYMENT REQUIRED UNDER THE
23 TERMS OF THE PLAN AND THE AMOUNT OF CREDIT TO BE DRAWN AT OR BEFORE
24 CONSUMMATION OF THE COVERED TRANSACTION.

25 6-1809. Monthly debt-to-income ratio; residual income;
26 definitions

27 A. IF A CREDITOR CONSIDERS THE CONSUMER'S MONTHLY RESIDUAL INCOME
28 UNDER SECTION 6-1804, PARAGRAPH 7, THE CREDITOR MUST CONSIDER THE CONSUMER'S
29 REMAINING INCOME AFTER SUBTRACTING THE CONSUMER'S TOTAL MONTHLY DEBT
30 OBLIGATIONS FROM THE CONSUMER'S TOTAL MONTHLY INCOME.

31 B. IF A CREDITOR CONSIDERS THE CONSUMER'S MONTHLY DEBT-TO-INCOME RATIO
32 UNDER SECTION 6-1804, PARAGRAPH 7, THE CREDITOR MUST CONSIDER THE RATIO OF
33 THE CONSUMER'S TOTAL MONTHLY DEBT OBLIGATIONS TO THE CONSUMER'S TOTAL MONTHLY
34 INCOME.

35 C. FOR THE PURPOSES OF THIS SECTION:

36 1. "TOTAL MONTHLY DEBT OBLIGATIONS" MEANS THE SUM OF ALL OF THE
37 FOLLOWING:

38 (a) THE PAYMENT ON THE COVERED TRANSACTION, AS CALCULATED PURSUANT TO
39 SECTION 6-1804, PARAGRAPH 3 AND SECTION 6-1807.

40 (b) SIMULTANEOUS LOANS, AS CALCULATED PURSUANT TO SECTION 6-1804,
41 PARAGRAPH 4 AND SECTION 6-1808.

42 (c) MORTGAGE-RELATED OBLIGATIONS, AS CALCULATED PURSUANT TO SECTION
43 6-1804, PARAGRAPH 5.

44 (d) CURRENT DEBT OBLIGATIONS, ALIMONY AND CHILD SUPPORT, AS CALCULATED
45 PURSUANT TO SECTION 6-1804, PARAGRAPH 6.

1 2. "TOTAL MONTHLY INCOME" MEANS THE SUM OF THE CONSUMER'S CURRENT OR
2 REASONABLY EXPECTED INCOME, INCLUDING ANY INCOME FROM ASSETS, AS CALCULATED
3 PURSUANT TO SECTION 6-1804, PARAGRAPH 1 AND SECTION 6-1806.

4 6-1810. Applicability; definitions

5 A. THIS SECTION APPLIES TO THE REFINANCING OF A NONSTANDARD MORTGAGE
6 INTO A STANDARD MORTGAGE IF THE FOLLOWING CONDITIONS ARE MET:

7 1. THE CREDITOR FOR THE STANDARD MORTGAGE IS THE CURRENT HOLDER OF THE
8 EXISTING NONSTANDARD MORTGAGE OR THE SERVICER ACTING ON BEHALF OF THE CURRENT
9 HOLDER.

10 2. THE MONTHLY PAYMENT FOR THE STANDARD MORTGAGE IS MATERIALLY LOWER
11 THAN THE MONTHLY PAYMENT FOR THE NONSTANDARD MORTGAGE, AS CALCULATED UNDER
12 SUBSECTION D OF THIS SECTION.

13 3. THE CREDITOR RECEIVES THE CONSUMER'S WRITTEN APPLICATION FOR THE
14 STANDARD MORTGAGE NOT LATER THAN TWO MONTHS AFTER THE NONSTANDARD MORTGAGE
15 HAS RECAST.

16 4. THE CONSUMER HAS MADE NOT MORE THAN ONE PAYMENT MORE THAN THIRTY
17 DAYS LATE ON THE NONSTANDARD MORTGAGE DURING THE TWELVE MONTHS IMMEDIATELY
18 PRECEDING THE CREDITOR'S RECEIPT OF THE CONSUMER'S WRITTEN APPLICATION FOR
19 THE STANDARD MORTGAGE.

20 5. THE CONSUMER HAS MADE NO PAYMENTS MORE THAN THIRTY DAYS LATE DURING
21 THE SIX MONTHS IMMEDIATELY PRECEDING THE CREDITOR'S RECEIPT OF THE CONSUMER'S
22 WRITTEN APPLICATION FOR THE STANDARD MORTGAGE.

23 6. IF THE NONSTANDARD MORTGAGE WAS CONSUMMATED ON OR AFTER THE
24 EFFECTIVE DATE OF THIS SECTION, THE NONSTANDARD MORTGAGE WAS MADE IN
25 ACCORDANCE WITH SECTIONS 6-1803, 6-1804, 6-1805, 6-1806, 6-1807, 6-1808 AND
26 6-1809 OR ARTICLE 2 OF THIS CHAPTER, AS APPLICABLE.

27 B. A CREDITOR IS NOT REQUIRED TO COMPLY WITH THE REQUIREMENTS OF
28 SECTIONS 6-1803, 6-1804, 6-1805, 6-1806, 6-1807, 6-1808 AND 6-1809 IF BOTH:

29 1. THE CONDITIONS IN SUBSECTION A OF THIS SECTION ARE MET.

30 2. THE CREDITOR HAS CONSIDERED WHETHER THE STANDARD MORTGAGE LIKELY
31 WILL PREVENT A DEFAULT BY THE CONSUMER ON THE NONSTANDARD MORTGAGE ONCE THE
32 LOAN IS RECAST.

33 C. A CREDITOR MAKING A COVERED TRANSACTION UNDER THIS SECTION MAY
34 OFFER TO THE CONSUMER RATE DISCOUNTS AND TERMS THAT ARE THE SAME AS OR BETTER
35 THAN THE RATE DISCOUNTS AND TERMS THAT THE CREDITOR OFFERS TO NEW CONSUMERS,
36 CONSISTENT WITH THE CREDITOR'S DOCUMENTED UNDERWRITING PRACTICES AND TO THE
37 EXTENT NOT PROHIBITED BY APPLICABLE STATE OR FEDERAL LAW.

38 D. FOR PURPOSES OF DETERMINING WHETHER THE CONSUMER'S MONTHLY PAYMENT
39 FOR A STANDARD MORTGAGE WILL BE MATERIALLY LOWER THAN THE MONTHLY PAYMENT FOR
40 THE NONSTANDARD MORTGAGE, THE FOLLOWING APPLY:

41 1. FOR PURPOSES OF THE COMPARISON CONDUCTED PURSUANT TO SUBSECTION A,
42 PARAGRAPH 2 OF THIS SECTION, THE CREDITOR MUST CALCULATE THE MONTHLY PAYMENT
43 FOR A NONSTANDARD MORTGAGE BASED ON SUBSTANTIALLY EQUAL MONTHLY, FULLY
44 AMORTIZING PAYMENTS OF PRINCIPAL AND INTEREST USING:

1 (a) THE FULLY INDEXED RATE AS OF A REASONABLE PERIOD OF TIME BEFORE OR
2 AFTER THE DATE ON WHICH THE CREDITOR RECEIVES THE CONSUMER'S WRITTEN
3 APPLICATION FOR THE STANDARD MORTGAGE.

4 (b) THE TERM OF THE LOAN REMAINING AS OF THE DATE ON WHICH THE RECAST
5 OCCURS, ASSUMING ALL SCHEDULED PAYMENTS HAVE BEEN MADE UP TO THE RECAST DATE
6 AND THE PAYMENT DUE ON THE RECAST DATE IS MADE AND CREDITED AS OF THAT DATE.

7 (c) A REMAINING LOAN AMOUNT THAT IS:

8 (i) FOR AN ADJUSTABLE-RATE MORTGAGE THE OUTSTANDING PRINCIPAL BALANCE
9 AS OF THE DATE OF THE RECAST, ASSUMING ALL SCHEDULED PAYMENTS HAVE BEEN MADE
10 UP TO THE RECAST DATE AND THE PAYMENT DUE ON THE RECAST DATE IS MADE AND
11 CREDITED AS OF THAT DATE.

12 (ii) FOR AN INTEREST-ONLY LOAN THE OUTSTANDING PRINCIPAL BALANCE AS OF
13 THE DATE OF THE RECAST, ASSUMING ALL SCHEDULED PAYMENTS HAVE BEEN MADE UP TO
14 THE RECAST DATE AND THE PAYMENT DUE ON THE RECAST DATE IS MADE AND CREDITED
15 AS OF THAT DATE.

16 (iii) FOR A NEGATIVE AMORTIZATION LOAN THE MAXIMUM LOAN AMOUNT,
17 DETERMINED AFTER ADJUSTING FOR THE OUTSTANDING PRINCIPAL BALANCE.

18 2. FOR THE PURPOSES OF THE COMPARISON CONDUCTED PURSUANT TO SUBSECTION
19 A, PARAGRAPH 2 OF THIS SECTION, THE MONTHLY PAYMENT FOR A STANDARD MORTGAGE
20 MUST BE BASED ON SUBSTANTIALLY EQUAL MONTHLY, FULLY AMORTIZING PAYMENTS BASED
21 ON THE MAXIMUM INTEREST RATE THAT MAY APPLY DURING THE FIRST FIVE YEARS AFTER
22 CONSUMMATION.

23 E. FOR THE PURPOSES OF THIS SECTION:

24 1. "NONSTANDARD MORTGAGE" MEANS A COVERED TRANSACTION THAT IS ANY OF
25 THE FOLLOWING:

26 (a) AN ADJUSTABLE-RATE MORTGAGE AS DEFINED IN 12 CODE OF FEDERAL
27 REGULATIONS SECTION 1026.18(s)(7)(i), WITH AN INTRODUCTORY FIXED INTEREST
28 RATE FOR A PERIOD OF ONE YEAR OR LONGER.

29 (b) AN INTEREST-ONLY LOAN AS DEFINED IN 12 CODE OF FEDERAL REGULATIONS
30 SECTION 1026.18(s)(7)(iv).

31 (c) A NEGATIVE AMORTIZATION LOAN AS DEFINED IN 12 CODE OF FEDERAL
32 REGULATIONS SECTION 1026.18(s)(7)(v).

33 2. "REFINANCING" HAS THE SAME MEANING PRESCRIBED IN 12 CODE OF FEDERAL
34 REGULATIONS SECTION 1026.20(a).

35 3. "STANDARD MORTGAGE" MEANS A COVERED TRANSACTION:

36 (a) THAT PROVIDES FOR REGULAR PERIODIC PAYMENTS THAT DO NOT DO ANY OF
37 THE FOLLOWING:

38 (i) CAUSE THE PRINCIPAL BALANCE TO INCREASE.

39 (ii) ALLOW THE CONSUMER TO DEFER REPAYMENT OF PRINCIPAL.

40 (iii) RESULT IN A BALLOON PAYMENT, AS DEFINED IN 12 CODE OF FEDERAL
41 REGULATIONS SECTION 1026.18(s)(5)(i).

42 (b) FOR WHICH THE TOTAL POINTS AND FEES PAYABLE IN CONNECTION WITH THE
43 TRANSACTION DO NOT EXCEED THE AMOUNTS SPECIFIED IN SECTION 6-1833,
44 SUBSECTION B.

45 (c) FOR WHICH THE TERM DOES NOT EXCEED FORTY YEARS.

1 (d) FOR WHICH THE INTEREST RATE IS FIXED FOR AT LEAST THE FIRST FIVE
2 YEARS AFTER CONSUMMATION.

3 (e) FOR WHICH THE PROCEEDS FROM THE LOAN ARE USED SOLELY FOR THE
4 FOLLOWING PURPOSES:

5 (i) TO PAY OFF THE OUTSTANDING PRINCIPAL BALANCE ON THE NONSTANDARD
6 MORTGAGE.

7 (ii) TO PAY CLOSING OR SETTLEMENT CHARGES REQUIRED TO BE DISCLOSED
8 UNDER THE REAL ESTATE SETTLEMENT PROCEDURES ACT (12 UNITED STATES CODE
9 SECTIONS 2601 THROUGH 2617).

10 ARTICLE 2. QUALIFIED MORTGAGES

11 6-1831. Safe harbor

12 A CREDITOR OR ASSIGNEE OF A QUALIFIED MORTGAGE, AS PRESCRIBED IN
13 SECTION 6-1833, 6-1834 OR 6-1837, THAT IS NOT A HIGHER-PRICED COVERED
14 TRANSACTION COMPLIES WITH THE REPAYMENT ABILITY REQUIREMENTS OF SECTION
15 6-1803.

16 6-1832. Higher-priced covered transactions

17 A. A CREDITOR OR ASSIGNEE OF A QUALIFIED MORTGAGE, AS PRESCRIBED IN
18 SECTION 6-1833, 6-1834 OR 6-1837, THAT IS A HIGHER-PRICED COVERED TRANSACTION
19 IS PRESUMED TO COMPLY WITH THE REPAYMENT ABILITY REQUIREMENTS OF SECTION
20 6-1803.

21 B. TO REBUT THE PRESUMPTION OF COMPLIANCE DESCRIBED IN SUBSECTION A OF
22 THIS SECTION, IT MUST BE PROVEN THAT, DESPITE MEETING THE REQUIREMENTS OF
23 SECTION 6-1833, 6-1834 OR 6-1837, THE CREDITOR DID NOT MAKE A REASONABLE AND
24 GOOD FAITH DETERMINATION OF THE CONSUMER'S REPAYMENT ABILITY AT THE TIME OF
25 CONSUMMATION, BY SHOWING THAT THE CONSUMER'S INCOME, DEBT OBLIGATIONS,
26 ALIMONY, CHILD SUPPORT AND MONTHLY PAYMENT, INCLUDING MORTGAGE-RELATED
27 OBLIGATIONS, ON THE COVERED TRANSACTION AND ON ANY SIMULTANEOUS LOANS OF
28 WHICH THE CREDITOR WAS AWARE AT CONSUMMATION WOULD LEAVE THE CONSUMER WITH
29 INSUFFICIENT RESIDUAL INCOME OR ASSETS OTHER THAN THE VALUE OF THE DWELLING,
30 INCLUDING ANY REAL PROPERTY ATTACHED TO THE DWELLING, THAT SECURES THE LOAN
31 WITH WHICH TO MEET LIVING EXPENSES, INCLUDING ANY RECURRING AND MATERIAL
32 NONDEBT OBLIGATIONS OF WHICH THE CREDITOR WAS AWARE AT THE TIME OF
33 CONSUMMATION.

34 6-1833. Qualified mortgages

35 A. EXCEPT AS PROVIDED IN SECTION 6-1834 OR 6-1837, A QUALIFIED
36 MORTGAGE IS A COVERED TRANSACTION:

37 1. THAT PROVIDES FOR REGULAR PERIODIC PAYMENTS THAT ARE SUBSTANTIALLY
38 EQUAL, EXCEPT FOR THE EFFECT THAT ANY INTEREST RATE CHANGE AFTER CONSUMMATION
39 HAS ON THE PAYMENT IN THE CASE OF AN ADJUSTABLE-RATE OR STEP-RATE MORTGAGE,
40 THAT DO NOT DO ANY OF THE FOLLOWING:

41 (a) RESULT IN AN INCREASE OF THE PRINCIPAL BALANCE.

42 (b) ALLOW THE CONSUMER TO DEFER REPAYMENT OF PRINCIPAL, EXCEPT AS
43 PROVIDED IN SECTION 6-1837.

44 (c) RESULT IN A BALLOON PAYMENT AS DEFINED IN 12 CODE OF FEDERAL
45 REGULATIONS SECTION 1026.18(s)(5)(i), EXCEPT AS PROVIDED IN SECTION 6-1837.

- 1 2. FOR WHICH THE LOAN TERM DOES NOT EXCEED THIRTY YEARS.
- 2 3. FOR WHICH THE TOTAL POINTS AND FEES PAYABLE IN CONNECTION WITH THE
- 3 LOAN DO NOT EXCEED THE AMOUNTS SPECIFIED IN SUBSECTION B OF THIS SECTION.
- 4 4. FOR WHICH THE CREDITOR UNDERWRITES THE LOAN, TAKING INTO ACCOUNT
- 5 THE MONTHLY PAYMENT FOR MORTGAGE-RELATED OBLIGATIONS, USING BOTH:
- 6 (a) THE MAXIMUM INTEREST RATE THAT MAY APPLY DURING THE FIRST FIVE
- 7 YEARS AFTER THE DATE ON WHICH THE FIRST REGULAR PERIODIC PAYMENT WILL BE DUE.
- 8 (b) PERIODIC PAYMENTS OF PRINCIPAL AND INTEREST THAT WILL REPAY
- 9 EITHER:
 - 10 (i) THE OUTSTANDING PRINCIPAL BALANCE OVER THE REMAINING TERM OF THE
 - 11 LOAN AS OF THE DATE THE INTEREST RATE ADJUSTS TO THE MAXIMUM INTEREST RATE
 - 12 SET FORTH IN SUBDIVISION (a) OF THIS PARAGRAPH, ASSUMING THE CONSUMER WILL
 - 13 HAVE MADE ALL REQUIRED PAYMENTS AS DUE PRIOR TO THAT DATE.
 - 14 (ii) THE LOAN AMOUNT OVER THE LOAN TERM.
- 15 5. FOR WHICH THE CREDITOR CONSIDERS AND VERIFIES AT OR BEFORE
- 16 CONSUMMATION THE FOLLOWING:
 - 17 (a) THE CONSUMER'S CURRENT OR REASONABLY EXPECTED INCOME OR ASSETS
 - 18 OTHER THAN THE VALUE OF THE DWELLING, INCLUDING ANY REAL PROPERTY ATTACHED TO
 - 19 THE DWELLING, THAT SECURES THE LOAN, IN ACCORDANCE WITH 12 CODE OF FEDERAL
 - 20 REGULATIONS PART 1026, APPENDIX Q AND SECTION 6-1804, PARAGRAPH 1 AND SECTION
 - 21 6-1806.
 - 22 (b) THE CONSUMER'S CURRENT DEBT OBLIGATIONS, ALIMONY AND CHILD SUPPORT
 - 23 IN ACCORDANCE WITH 12 CODE OF FEDERAL REGULATIONS PART 1026, APPENDIX Q AND
 - 24 SECTION 6-1804, PARAGRAPH 6 AND SECTION 6-1805.
- 25 6. FOR WHICH THE RATIO OF THE CONSUMER'S TOTAL MONTHLY DEBT TO TOTAL
- 26 MONTHLY INCOME AT THE TIME OF CONSUMMATION DOES NOT EXCEED FORTY-THREE PER
- 27 CENT EXCEPT THAT IT MAY EXCEED FORTY-THREE PER CENT IF THE CONSUMER MEETS
- 28 OTHER ABILITY TO PAY CRITERIA. FOR PURPOSES OF THIS PARAGRAPH, THE RATIO OF
- 29 THE CONSUMER'S TOTAL MONTHLY DEBT TO TOTAL MONTHLY INCOME IS DETERMINED:
 - 30 (a) EXCEPT AS PROVIDED IN PARAGRAPH 4, SUBDIVISION (b) OF THIS
 - 31 SUBSECTION, IN ACCORDANCE WITH THE STANDARDS IN 12 CODE OF FEDERAL
 - 32 REGULATIONS PART 1026, APPENDIX Q.
 - 33 (b) USING THE CONSUMER'S MONTHLY PAYMENT ON:
 - 34 (i) THE COVERED TRANSACTION, INCLUDING THE MONTHLY PAYMENT FOR
 - 35 MORTGAGE-RELATED OBLIGATIONS, IN ACCORDANCE WITH PARAGRAPH 4 OF THIS
 - 36 SUBSECTION.
 - 37 (ii) ANY SIMULTANEOUS LOAN THAT THE CREDITOR KNOWS OR HAS REASON TO
 - 38 KNOW WILL BE MADE, IN ACCORDANCE WITH SECTION 6-1804, PARAGRAPHS 4 AND 6.
- 39 B. A COVERED TRANSACTION IS NOT A QUALIFIED MORTGAGE UNLESS THE
- 40 TRANSACTION'S TOTAL POINTS AND FEES, AS DEFINED IN 12 CODE OF FEDERAL
- 41 REGULATIONS SECTION 1026.32(b)(1), DO NOT EXCEED:
 - 42 1. FOR A LOAN AMOUNT GREATER THAN OR EQUAL TO ONE HUNDRED THOUSAND
 - 43 DOLLARS, INDEXED FOR INFLATION, THREE PER CENT OF THE TOTAL LOAN AMOUNT.

1 2. FOR A LOAN AMOUNT GREATER THAN OR EQUAL TO TWENTY THOUSAND DOLLARS,
2 INDEXED FOR INFLATION, BUT LESS THAN ONE HUNDRED THOUSAND DOLLARS, INDEXED
3 FOR INFLATION, FIVE PER CENT OF THE TOTAL LOAN AMOUNT.

4 3. FOR A LOAN AMOUNT OF LESS THAN TWENTY THOUSAND DOLLARS, INDEXED FOR
5 INFLATION, EIGHT PER CENT OF THE TOTAL LOAN AMOUNT.

6 C. THE DOLLAR AMOUNTS, INCLUDING THE LOAN AMOUNTS, PRESCRIBED IN
7 SUBSECTION B OF THIS SECTION MUST BE ADJUSTED ANNUALLY ON JANUARY 1 BY THE
8 ANNUAL PERCENTAGE CHANGE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS
9 THAT WAS REPORTED ON THE PRECEDING JUNE 1.

10 6-1834. Special rules

11 NOTWITHSTANDING SECTION 6-1833, A QUALIFIED MORTGAGE IS A COVERED
12 TRANSACTION THAT SATISFIES BOTH:

13 1. THE REQUIREMENTS OF SECTION 6-1833, SUBSECTION A, PARAGRAPHS 1, 2
14 AND 3.

15 2. ONE OR MORE OF THE CRITERIA IN SECTION 6-1835.

16 6-1835. Eligible loans

17 A QUALIFIED MORTGAGE MUST BE ONE OF THE FOLLOWING AT CONSUMMATION:

18 1. A LOAN THAT IS ELIGIBLE EITHER:

19 (a) TO BE PURCHASED OR GUARANTEED BY THE FEDERAL NATIONAL MORTGAGE
20 ASSOCIATION OR THE FEDERAL HOME LOAN MORTGAGE CORPORATION OPERATING UNDER THE
21 CONSERVATORSHIP OR RECEIVERSHIP OF THE FEDERAL HOUSING FINANCE AGENCY
22 PURSUANT TO THE FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS
23 ACT OF 1992 (P.L. 102-550; 106 STAT. 3941; 12 UNITED STATES CODE SECTION
24 4617(a)).

25 (b) TO BE PURCHASED OR GUARANTEED BY ANY LIMITED-LIFE REGULATORY
26 ENTITY SUCCEEDING THE CHARTER OF EITHER THE FEDERAL NATIONAL MORTGAGE
27 ASSOCIATION OR THE FEDERAL HOME LOAN MORTGAGE CORPORATION PURSUANT TO SECTION
28 1367(i) OF THE FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT
29 OF 1992 (P.L. 102-550; 106 STAT. 3941; 12 UNITED STATES CODE SECTION
30 4617(i)).

31 2. A LOAN THAT IS ELIGIBLE TO BE INSURED BY THE UNITED STATES
32 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT UNDER THE NATIONAL HOUSING ACT
33 (12 UNITED STATES CODE SECTION 1701 THROUGH 1733).

34 3. A LOAN THAT IS ELIGIBLE TO BE GUARANTEED BY THE UNITED STATES
35 DEPARTMENT OF VETERANS AFFAIRS.

36 4. A LOAN THAT IS ELIGIBLE TO BE GUARANTEED BY THE UNITED STATES
37 DEPARTMENT OF AGRICULTURE PURSUANT TO 42 UNITED STATES CODE SECTION 1472(h).

38 5. A LOAN THAT IS ELIGIBLE TO BE INSURED BY THE RURAL HOUSING SERVICE.

39 6-1836. Sunset of special rules

40 A. EACH RESPECTIVE SPECIAL RULE DESCRIBED IN SECTION 6-1835, PARAGRAPH
41 2, 3, 4 OR 5 EXPIRES ON THE EFFECTIVE DATE OF A RULE ISSUED BY EACH
42 RESPECTIVE AGENCY PURSUANT TO ITS AUTHORITY UNDER THE TRUTH IN LENDING ACT
43 (15 UNITED STATES CODE SECTION 1639c) TO DEFINE A QUALIFIED MORTGAGE.

1 B. UNLESS OTHERWISE EXPIRED UNDER SUBSECTION A OF THIS SECTION, THE
2 SPECIAL RULES IN THIS SECTION ARE AVAILABLE ONLY FOR COVERED TRANSACTIONS
3 CONSUMMATED ON OR BEFORE JANUARY 10, 2021.

4 6-1837. Balloon payment qualified mortgages

5 NOTWITHSTANDING SECTION 6-1833, A QUALIFIED MORTGAGE MAY PROVIDE FOR A
6 BALLOON PAYMENT IF:

7 1. THE LOAN SATISFIES THE REQUIREMENTS FOR A QUALIFIED MORTGAGE IN
8 SECTION 6-1833, SUBSECTION A, PARAGRAPH 1, SUBDIVISION (a) AND PARAGRAPHS 2,
9 3 AND 5, BUT WITHOUT REGARD TO THE STANDARDS IN 12 CODE OF FEDERAL
10 REGULATIONS PART 1026, APPENDIX Q.

11 2. THE CREDITOR DETERMINES AT OR BEFORE CONSUMMATION THAT THE CONSUMER
12 CAN MAKE ALL OF THE SCHEDULED PAYMENTS UNDER THE TERMS OF THE LEGAL
13 OBLIGATION, AS DESCRIBED IN PARAGRAPH 5 OF THIS SECTION, TOGETHER WITH THE
14 CONSUMER'S MONTHLY PAYMENTS FOR ALL MORTGAGE-RELATED OBLIGATIONS AND
15 EXCLUDING THE BALLOON PAYMENT, FROM THE CONSUMER'S CURRENT OR REASONABLY
16 EXPECTED INCOME OR ASSETS OTHER THAN THE DWELLING THAT SECURES THE LOAN.

17 3. THE CREDITOR CONSIDERS AT OR BEFORE CONSUMMATION THE CONSUMER'S
18 MONTHLY DEBT-TO-INCOME RATIO OR RESIDUAL INCOME AND VERIFIES THE DEBT
19 OBLIGATIONS AND INCOME USED TO DETERMINE THAT RATIO IN ACCORDANCE WITH
20 SECTION 6-1809, EXCEPT THAT THE CALCULATION OF THE PAYMENT ON THE COVERED
21 TRANSACTION FOR PURPOSES OF DETERMINING THE CONSUMER'S TOTAL MONTHLY DEBT
22 OBLIGATIONS IN SECTION 6-1809 SHALL BE DETERMINED IN ACCORDANCE WITH
23 PARAGRAPH 4, SUBDIVISION (a) OF THIS SECTION, TOGETHER WITH THE CONSUMER'S
24 MONTHLY PAYMENTS FOR ALL MORTGAGE-RELATED OBLIGATIONS AND EXCLUDING THE
25 BALLOON PAYMENT.

26 4. THE LEGAL OBLIGATION PROVIDES FOR ALL OF THE FOLLOWING:

27 (a) SCHEDULED PAYMENTS THAT ARE SUBSTANTIALLY EQUAL, CALCULATED USING
28 AN AMORTIZATION PERIOD THAT DOES NOT EXCEED THIRTY YEARS.

29 (b) AN INTEREST RATE THAT DOES NOT INCREASE OVER THE TERM OF THE LOAN.

30 (c) A LOAN TERM OF FIVE YEARS OR LONGER.

31 5. THE LOAN IS NOT SUBJECT, AT CONSUMMATION, TO A COMMITMENT TO BE
32 ACQUIRED BY ANOTHER PERSON, OTHER THAN A PERSON THAT SATISFIES THE
33 REQUIREMENTS OF PARAGRAPH 6 OF THIS SECTION.

34 6. THE CREDITOR SATISFIES THE REQUIREMENTS PRESCRIBED BY 12 CODE OF
35 FEDERAL REGULATIONS SECTION 1026.35(b)(2)(iii)(A), (B) AND (C).

36 6-1838. Postconsummation transfer of balloon payment qualified
37 mortgages

38 A BALLOON PAYMENT QUALIFIED MORTGAGE THAT IS EXTENDED PURSUANT TO
39 SECTION 6-1837, PARAGRAPH 1 IMMEDIATELY LOSES ITS STATUS AS A QUALIFIED
40 MORTGAGE UNDER SECTION 6-1837, PARAGRAPH 1 IF LEGAL TITLE TO THE BALLOON
41 PAYMENT QUALIFIED MORTGAGE IS SOLD, ASSIGNED OR OTHERWISE TRANSFERRED TO
42 ANOTHER PERSON, UNLESS THE BALLOON PAYMENT QUALIFIED MORTGAGE IS SOLD, SIGNED
43 OR OTHERWISE TRANSFERRED:

44 1. TO ANOTHER PERSON THREE YEARS OR MORE AFTER CONSUMMATION OF THE
45 BALLOON PAYMENT QUALIFIED MORTGAGE.

1 2. TO A CREDITOR THAT SATISFIES THE REQUIREMENTS OF SECTION 6-1837,
2 PARAGRAPH 6.

3 3. TO ANOTHER PERSON PURSUANT TO A CAPITAL RESTORATION PLAN OR OTHER
4 ACTION UNDER 12 UNITED STATES CODE SECTION 1831o, ACTIONS OR INSTRUCTIONS OF
5 ANY PERSON ACTING AS CONSERVATOR, RECEIVER OR BANKRUPTCY TRUSTEE, AN ORDER OF
6 A STATE OR FEDERAL GOVERNMENTAL AGENCY WITH JURISDICTION TO EXAMINE THE
7 CREDITOR PURSUANT TO STATE OR FEDERAL LAW OR AN AGREEMENT BETWEEN THE
8 CREDITOR AND SUCH AN AGENCY.

9 4. PURSUANT TO A MERGER OF THE CREDITOR WITH ANOTHER PERSON OR
10 ACQUISITION OF THE CREDITOR BY ANOTHER PERSON OR OF ANOTHER PERSON BY THE
11 CREDITOR.

12 6-1839. Prepayment penalties

13 A. A COVERED TRANSACTION MAY NOT INCLUDE A PREPAYMENT PENALTY UNLESS
14 BOTH:

15 1. THE PREPAYMENT PENALTY IS OTHERWISE PERMITTED BY LAW.

16 2. THE TRANSACTION:

17 (a) HAS AN ANNUAL PERCENTAGE RATE THAT CANNOT INCREASE AFTER
18 CONSUMMATION.

19 (b) IS A QUALIFIED MORTGAGE UNDER SECTION 6-1833, 6-1834 OR 6-1837.

20 (c) IS NOT A HIGHER-PRICED MORTGAGE LOAN, AS DEFINED IN 12 CODE OF
21 FEDERAL REGULATIONS SECTION 1026.35(a).

22 B. A PREPAYMENT PENALTY:

23 1. MAY NOT APPLY AFTER THE THREE-YEAR PERIOD FOLLOWING CONSUMMATION.

24 2. MAY NOT EXCEED THE FOLLOWING PERCENTAGES OF THE AMOUNT OF THE
25 OUTSTANDING LOAN BALANCE PREPAID:

26 (a) TWO PER CENT, IF INCURRED DURING THE FIRST TWO YEARS FOLLOWING
27 CONSUMMATION.

28 (b) ONE PER CENT, IF INCURRED DURING THE THIRD YEAR FOLLOWING
29 CONSUMMATION.

30 6-1840. Alternative offer required

31 A CREDITOR MAY NOT OFFER A CONSUMER A COVERED TRANSACTION WITH A
32 PREPAYMENT PENALTY UNLESS THE CREDITOR ALSO OFFERS THE CONSUMER AN
33 ALTERNATIVE COVERED TRANSACTION WITHOUT A PREPAYMENT PENALTY AND THE
34 ALTERNATIVE COVERED TRANSACTION:

35 1. HAS AN ANNUAL PERCENTAGE RATE THAT CANNOT INCREASE AFTER
36 CONSUMMATION AND HAS THE SAME TYPE OF INTEREST RATE AS THE COVERED
37 TRANSACTION WITH A PREPAYMENT PENALTY. FOR PURPOSES OF THIS PARAGRAPH, "TYPE
38 OF INTEREST RATE" REFERS TO WHETHER A TRANSACTION IS EITHER OF THE FOLLOWING:

39 (a) A FIXED-RATE MORTGAGE, AS DEFINED IN 12 CODE OF FEDERAL
40 REGULATIONS SECTION 1026.18(s)(7)(iii).

41 (b) A STEP-RATE MORTGAGE, AS DEFINED IN 12 CODE OF FEDERAL REGULATIONS
42 SECTION 1026.18(s)(7)(ii).

43 2. HAS THE SAME LOAN TERM AS THE LOAN TERM FOR THE COVERED TRANSACTION
44 WITH A PREPAYMENT PENALTY.

45 3. SATISFIES THE PERIODIC PAYMENT CONDITIONS UNDER SECTION 6-1833.

1 4. SATISFIES THE POINTS AND FEES CONDITIONS UNDER SECTION 6-1833,
2 BASED ON THE INFORMATION KNOWN TO THE CREDITOR AT THE TIME THE TRANSACTION IS
3 OFFERED.

4 5. IS A TRANSACTION FOR WHICH THE CREDITOR HAS A GOOD FAITH BELIEF
5 THAT THE CONSUMER LIKELY QUALIFIES, BASED ON THE INFORMATION KNOWN TO THE
6 CREDITOR AT THE TIME THE CREDITOR OFFERS THE COVERED TRANSACTION WITHOUT A
7 PREPAYMENT PENALTY.

8 6-1841. Offer through a mortgage broker

9 IF THE CREDITOR OFFERS A COVERED TRANSACTION WITH A PREPAYMENT PENALTY
10 TO THE CONSUMER THROUGH A MORTGAGE BROKER, AS DEFINED IN 12 CODE OF FEDERAL
11 REGULATIONS SECTION 1026.36(a)(2), THE CREDITOR MUST BOTH:

12 1. PRESENT THE MORTGAGE BROKER AN ALTERNATIVE COVERED TRANSACTION
13 WITHOUT A PREPAYMENT PENALTY THAT SATISFIES THE REQUIREMENTS OF SECTION
14 6-1840.

15 2. ESTABLISH BY AGREEMENT THAT THE MORTGAGE BROKER MUST PRESENT THE
16 CONSUMER AN ALTERNATIVE COVERED TRANSACTION WITHOUT A PREPAYMENT PENALTY THAT
17 SATISFIES THE REQUIREMENTS OF SECTION 6-1840, OFFERED BY EITHER:

18 (a) THE CREDITOR.

19 (b) ANOTHER CREDITOR, IF THE TRANSACTION OFFERED BY THE OTHER CREDITOR
20 HAS A LOWER INTEREST RATE OR A LOWER TOTAL DOLLAR AMOUNT OF DISCOUNT POINTS
21 AND ORIGINATION POINTS OR FEES.

22 6-1842. Creditor that is loan originator

23 IF THE CREDITOR IS A LOAN ORIGINATOR, AS DEFINED IN 12 CODE OF FEDERAL
24 REGULATIONS SECTION 1026.36(a)(1), AND THE CREDITOR PRESENTS THE CONSUMER A
25 COVERED TRANSACTION OFFERED BY A PERSON TO WHICH THE CREDITOR WOULD ASSIGN
26 THE COVERED TRANSACTION AFTER CONSUMMATION, THE CREDITOR MUST PRESENT THE
27 CONSUMER AN ALTERNATIVE COVERED TRANSACTION WITHOUT A PREPAYMENT PENALTY THAT
28 SATISFIES THE REQUIREMENTS OF SECTION 6-1840, OFFERED BY EITHER:

29 1. THE ASSIGNEE.

30 2. ANOTHER PERSON, IF THE TRANSACTION OFFERED BY THE OTHER PERSON HAS
31 A LOWER INTEREST RATE OR A LOWER TOTAL DOLLAR AMOUNT OF ORIGINATION DISCOUNT
32 POINTS AND POINTS OR FEES.

33 6-1843. Applicability

34 SECTIONS 6-1839, 6-1840, 6-1841 AND 6-1842 APPLY ONLY IF A COVERED
35 TRANSACTION IS CONSUMMATED WITH A PREPAYMENT PENALTY AND IS NOT VIOLATED IF:

36 1. A COVERED TRANSACTION IS CONSUMMATED WITHOUT A PREPAYMENT PENALTY.

37 2. THE CREDITOR AND CONSUMER DO NOT CONSUMMATE A COVERED TRANSACTION.

38 6-1844. Open-end credit; evasion prohibited

39 IN CONNECTION WITH CREDIT SECURED BY A CONSUMER'S DWELLING THAT DOES
40 NOT MEET THE DEFINITION OF OPEN-END CREDIT IN 12 CODE OF FEDERAL REGULATIONS
41 SECTION 1026.2(a)(20), A CREDITOR SHALL NOT STRUCTURE THE LOAN AS AN OPEN-END
42 PLAN TO EVADE THE REQUIREMENTS OF THIS CHAPTER.

43 Sec. 2. Effective date

44 This act is effective from and after December 31, 2014.